

General Terms and Conditions of AGILITA AG for Services

1. General

1.1 Scope of Application

These General Terms and Conditions («GTC») apply to all contractual relationships («Service Agreement») in which AGILITA AG («AGILITA») provides services to the «Customer» that do not involve the provision and maintenance of standard software and/or the provision of access to cloud services («Services»). Services include consulting services and/or work performances.

1.2 Customer GTC

1.2.1 Any general terms and conditions of the Customer (including, but not limited to, terms of purchase) that deviate from and/or supplement these GTC are expressly rejected. Such terms shall not apply.

1.2.2 Deviating and/or supplementary general terms and conditions of the Customer shall not become part of the Service Agreement even if AGILITA fulfills an order from the Customer without objecting to the Customer's terms and conditions referred to in the order.

1.3 Conclusion of the Service Agreement

Service Agreements are concluded upon receipt of AGILITA's confirmation that it will perform the Services or upon the execution of a Service Agreement by the parties. Customer's acceptance of an offer from AGILITA only leads to the conclusion of a Service Agreement if the offer includes an acceptance period and AGILITA receives the acceptance within that acceptance period. Offers without an acceptance period are non-binding.

2. Obligations and Services of AGILITA

AGILITA's obligations as well as the scope and requirements of the Services are comprehensively and exhaustively set forth in the Service Agreement.

3. Provision of Services

3.1 Project Manager and Consultants

AGILITA decides which project manager and which consultants it assigns to fulfill and execute the respective Service Agreement («Project») and reserves the right to replace them at any time, taking the Customer's interests into account where possible. The Customer's consent is not required.

3.2 Engagement of Third Parties

AGILITA is entitled to engage a suitable third party to partially perform Services of the respective Service Agreement, provided that AGILITA remains responsible for the performance. The Customer's consent is not required.

3.3 Place of Performance

The Services may be provided, at AGILITA's discretion, at AGILITA's business premises, at Customer's location, or remotely. Even if the Services are provided at the Customer location, the Customer has no authority to issue instructions to the consultants engaged by AGILITA.

3.4 Meeting Minutes

AGILITA may prepare minutes of discussions regarding the clarification and/or modification of contractual terms, in particular the subject matter of the Service Agreement. The Customer shall review the minutes promptly and notify AGILITA in writing of any necessary changes or additions. In the absence of such written notification, the content of the relevant minutes shall be deemed accepted by the Customer.

3.5 Items Provided Pre-Contractually

Items provided to the Customer by AGILITA prior to the conclusion of a Service Agreement (e.g. proposals, test programs, concepts) are and remain the intellectual property of AGILITA or, if they originate from a contractual partner of AGILITA, of the respective contractual partner (see Section 8 of the GTC). They may not be reproduced or made accessible to third parties. If no contract is concluded, the relevant items must be returned or deleted and may not be used. Furthermore, the provisions of these GTC also apply to the pre-contractual legal relationship, in particular the exclusion of liability and the limitation of liability pursuant to Section 11 of these GTC.

3.6 Additional Services

If the Customer requests an extended scope of services beyond the respective Service Agreement, these additional services and the corresponding fee to be paid by the Customer shall be mutually agreed upon in an addendum to the Service Agreement (see Section 6 of these GTC: Change Request Procedure).

3.7 Acceptance of Work

3.7.1 The Customer shall accept work results immediately in accordance with this Section 3.7 by signing the acceptance report.

3.7.2 If a Service Agreement covers several individual works or partial works that can be used by the Customer independently of one another, these individual works or partial works shall be accepted separately.

3.7.3 In the case of subsequent acceptances, only the functioning of the new partial work and the correct interaction of the previously accepted partial works with the new (partial) work shall be tested.

3.7.4 The Customer must inspect the (partial) work product immediately upon delivery and, through the designated contact person, either declare acceptance in writing without delay or report any identified defects with a detailed description and specification of the symptoms of the defect. Acceptance is not affected by minor defects. The productive use or productive operation of (partial) work results by the Customer shall in any case be deemed acceptance of the respective (partial) work result. Section 10 of these GTC applies to the warranty for defects in work services (so called *Werkleistungen*).

3.7.5 If acceptance is postponed or refused due to material defects, the Customer is obligated to re-inspect the work result immediately in accordance with this Section upon notification that the defects have been remedied.

4. Customer's Obligations to Cooperate

- 4.1** The Customer is obligated to perform all acts of cooperation necessary for the provision of the Services in a timely manner as its primary contractual obligation, so that AGILITA can properly fulfill the Service Agreement.
- 4.2** In particular, the Customer shall provide the working environment («IT Systems») necessary for the performance of the contractually agreed Services, in accordance with AGILITA's specifications where applicable.
- 4.3** The Customer shall grant AGILITA direct access, including via remote data transmission, to software (in particular to the software to be implemented) and to the IT Systems. The Customer shall answer questions and review results. To the extent that the Customer provides materials to AGILITA for the performance of Services, the Customer shall ensure that such materials are free from third-party rights that could impede AGILITA's performance of Services.
- 4.4** The Customer shall designate in writing a competent employee as the contact person for AGILITA and an email address for inquiries during normal business hours.
- 4.5** The Customer shall test work products provided by AGILITA in fulfillment of the Service Agreement regarding their absence from defects and their usability before putting them into operational use. This also applies to work received by the Customer as part of the subsequent performance pursuant to Section 10.2.2 and Section 10.3.1 of these GTC. The Customer shall assist AGILITA free of charge to the extent necessary in troubleshooting and resolving issues, in particular by providing the data, information, and files necessary to remedy defects, as well as by enabling remote access in the event of a material defect in the software to be implemented.
- 4.6** The Customer shall take appropriate precautions in the event that the work results are subject to malfunctions (e.g. through data backup, fault diagnosis, and regular verification of the results). In the absence of an express written notice in individual cases, the consultants engaged by AGILITA may always assume that all data with which they may come into contact has been backed up by the Customer.

5. Performance Dates

- 5.1** Dates and deadlines for the provision of Services are approximate and non-binding, unless they are expressly agreed as binding in the Service Agreement.
- 5.2** If the Customer is in default with its obligations to cooperate, any deadlines for the Service delivery and performance shall be extended accordingly.

6. Change Request Procedure

- 6.1** During the term of a Project, Customer's contact person and the project manager appointed by AGILITA may propose changes (in particular to the agreed Services, methods, and deadlines) in writing at any time.
- 6.2** If the Customer proposes a change, AGILITA will notify the Customer whether the change is possible and what effects it will have on the Service Agreement, particularly with regard to the timeline and compensation. In the event of a proposed change by AGILITA, the Customer shall notify AGILITA within the deadline set by AGILITA whether it agrees to the change.

- 6.3** The Customer must notify AGILITA in writing within the deadline set by AGILITA if it accepts any proposed change under these terms. If the proposed change is accepted, the additional Services and the fee to be paid by the Customer for these Services shall be agreed upon in writing in an addendum to the Service Agreement («Change Request»).

- 6.4** As long as no agreement on the change has been reached (in particular, if no notification has been provided in accordance with Section 6.3 of these GTC), the work shall continue in accordance with the existing Service Agreement.

7. Remuneration, Invoicing, Due Date, and Taxes

7.1 Remuneration

For the provision of the contractually agreed Services, the Customer is obligated to pay the remuneration specified in the Service Agreement.

7.2 Out-of-Pocket Expenses and Costs

The Customer is obligated to reimburse AGILITA for out-of-pocket expenses and costs (in particular costs, fees, and expenses) incurred in connection with the provision of the contractually agreed services. Travel time of AGILITA employees is considered working time and is to be compensated in accordance with the agreed terms in the Service Agreement (e.g. daily and hourly rates).

7.3 Invoicing

- 7.3.1** The contractually agreed remuneration for the Services rendered and costs incurred shall be invoiced monthly.
- 7.3.2** AGILITA may require partial payments or full advance payments if no business relationship yet exists with the Customer, if delivery to the Customer is to take place outside of Switzerland, or if there are grounds to doubt the Customer's timely payment.
- 7.3.3** If remuneration based on time and material has been agreed, AGILITA shall provide a statement of Services as part of or as an attachment to the invoice. The listed fees and expenses shall be deemed irrevocably accepted unless the Customer objects to them within 14 days of receipt of the statement of Services.

7.4 Terms of Payment and Due Date

AGILITA's invoices are due for payment within 14 days of the invoice date without any deductions (including, but not limited to, discounts, fees, taxes, levies, etc.) and excluding any set-off. The last day of this payment period and any payment period specified in the Service Agreement constitute a specific due date within the meaning of Art. 102 (2) of the Swiss Code of Obligations.

7.5 Taxes

All prices are exclusive of the applicable statutory value-added tax.

8. Rights to Work Products, Pre-existing Rights, and Know-how

8.1 Rights to Work Products of AGILITA

8.1.1 Upon full payment of the remuneration owed, AGILITA grants the Customer the following rights of use to work results created in the course of the performance of the Service Agreement. These include the non-exclusive, perpetual right to use, reproduce, and modify the work products in Switzerland, and to make them available to third parties (while maintaining confidentiality and to the extent necessary for Customer's business purposes) for project-related use. Any further use, disclosure, or imitation is prohibited.

8.1.2 Should these work results have been created based on Customer's specifications or with Customer's cooperation, and should the Customer thereby have become a co-author of the work result, the Customer grants AGILITA the exclusive, unrestricted, and irrevocable right to all known and unknown types of use of the work result.

8.2 Pre-existing Rights

Any elements, methods, tools, templates, concepts, and professional or technical know-how that existed prior to the Services or that AGILITA developed independently of the Services, as well as all intellectual property rights to software developed by AGILITA, shall remain the property of AGILITA.

8.3 Know-how

AGILITA is entitled to reuse without restriction and free of charge the generic know-how gained from the provision of the Services, as well as experiences, process models, and non-customer-specific elements, for future projects and services provided to third parties.

9. Term and Termination

9.1 Term

Unless otherwise stipulated in the respective Service Agreement, each Service Agreement shall enter into force upon signature by all parties and shall remain in effect until the agreed services in the Service Agreement have been fully rendered.

9.2 Termination

9.2.1 Either party may terminate the Service Agreement in writing at any time with 30 days' notice effective at the end of the month. In the event of termination, the Customer must pay for the Services already performed by AGILITA.

9.2.2 The right to terminate for cause (in particular, default of payment following a notice) remains unaffected. In the event of default of payment, AGILITA is further entitled, following notice and after the expiration of a reasonably short grace period, to suspend Services until full payment is made, without AGILITA thereby being in default. Customer's payment obligations and other rights of AGILITA remain unaffected.

9.2.3 Upon termination, all Confidential Information of the parties must be returned immediately to the disclosing party or, at the request of the disclosing party, destroyed; proof of destruction must be provided accordingly.

10. Material and Legal Defects and Other Performance Disruptions

10.1 General

For work products eligible to statutory liability for material defects and defects of title, AGILITA warrants in accordance with this Section 0 that the work product possesses the expressly agreed specifications, is at least suitable for the ordinary use reasonably expected by the Customer, and that no third-party rights conflict with the Customer's right of use pursuant to Section 8.1 of these GTC. AGILITA makes no warranties or representations whatsoever regarding work results (in particular software) originating from a third party.

10.2 Material Defects (*Sachmängel*)

10.2.1 Obligation to Inspect and Give Notice of Defects

The Customer is obligated to inspect the work results for material defects immediately upon delivery and to immediately notify AGILITA in writing and in a substantiated manner of any material defect discovered.

Material defects that are not detectable upon proper inspection («**hidden material defects**») must be reported promptly after discovery by the Customer to AGILITA in writing and in a substantiated manner. In the event of an alleged defect in title, the Customer must immediately notify AGILITA in writing of any intellectual property infringements asserted against it.

10.2.2 Rights in Case of Defects

In the event of a material defect, the Customer initially has the sole right to request subsequent performance within a reasonable period of at least 30 days («**period for subsequent performance**»). As part of the subsequent performance, AGILITA is entitled, at its discretion, to remedy the material defect either by providing a new, defect-free version of the work results or by eliminating the material defect (repair). At AGILITA's discretion, the rectification of a material defect may also consist of AGILITA showing the Customer reasonable options for avoiding the effects of the material defect (in particular, circumventing or suppressing the material defect). The Customer must accept a new version of the work results if the agreed functional scope is maintained and acceptance is not unreasonable.

If AGILITA cannot remedy a material defect within the period for subsequent performance, or if the repair or replacement is deemed to have ultimately failed for other reasons, the Customer may reduce the remuneration.

10.2.3 AGILITA shall pay damages within the limits set forth in Section 11 of these General Terms and Conditions. Other rights arising from material defects are excluded. AGILITA is released from its warranty obligation to the extent that a material defect in the work results is attributable to circumstances for which AGILITA is not responsible. This includes, in particular, material defects attributable to the fact that the work results are delivered to an environment operated or provided by a third party (e.g. SAP Cloud Services).

10.2.4 Statute of Limitations and Forfeiture

Claims by the Customer arising from a breach of warranty pursuant to Section 10.2 of these Terms and Conditions shall be barred by the statute of limitations and forfeited upon the expiration of 6 months from the date of acceptance of the respective work product pursuant to Section 3.7 of these Terms and Conditions.

10.3 Defects in Title (*Rechtsmängel*)

10.3.1 Rights in Case of Defects

In the event of a defect in title, the Customer initially has the sole right to subsequent performance within a reasonable period of at least 30 days («**period for subsequent performance**»). As part of the subsequent performance, AGILITA is entitled, at its discretion, to remedy the defect of title either by securing a valid right to use the work products, or by modifying or replacing them in a manner that eliminates the infringement.

If AGILITA is unable to remedy a defect in title within the period for subsequent performance, or if the repair or replacement is deemed to have ultimately failed for other reasons, the Customer may reduce the remuneration. AGILITA shall pay damages within the limits set forth in Section 11 of these General Terms and Conditions. Other rights arising from defects in title are excluded unless they are mandatory under applicable law, in particular in cases of intentional fraud or gross negligence.

10.3.2 Prerequisites for Claims for Defects

Customer's rights set forth in Section 10.3.1 of these GTC apply only if (cumulatively):

- the Customer immediately notifies AGILITA in writing of any intellectual property infringements asserted against it;
- the Customer assists AGILITA to a reasonable extent in defending against the asserted claims;
- the Customer does not refuse or hinder AGILITA from remedying the defect in title;
- the Customer authorizes AGILITA to conduct the defense (including the conclusion of settlements), and AGILITA reserves the right to take all defensive measures, including out-of-court settlements;
- the infringement of intellectual property rights is not based on an instruction from the Customer; and
- the infringement of intellectual property rights was not caused by the Customer's unauthorized modification of AGILITA's work results or their use in a manner not in accordance with the Service Agreement.

10.3.3 Infringement of Intellectual Property Rights by the Customer

To the extent that the Customer is responsible for the infringement of intellectual property rights, claims against AGILITA are excluded.

10.4 Absence of a Defect / Failure to Perform

If AGILITA provides services for troubleshooting or rectifying defects even though there is neither a material defect nor a defect of title, AGILITA may demand reasonable compensation in accordance with the provisions of the Service Agreement. This applies in particular if the reported error or defect is not verifiable or cannot be attributed to AGILITA, or if it results from unsuitable or improper operation, incorrect installation of the software by the Customer or a third party on its behalf, or the use of the software in an unauthorized system environment, or improper interference by the Customer or a third party on its behalf in AGILITA's Service (e.g. for the purpose of fault rectification).

11. Liability

11.1 Each party shall be liable to the other party for damages arising out of or in connection with these GTC and the associated Service Agreement, regardless of the legal basis, in cases of intent or gross negligence.

11.2 Liability for indirect or consequential damages (including, but not limited to, lost profits, unrealized savings, additional expenses incurred by the Customer, loss of use, operational and production downtime, data loss, and costs for data recovery or restoration, as well as claims by third parties) is hereby excluded to the extent permitted by law.

11.3 To the extent that AGILITA's liability is neither excluded nor limited, AGILITA shall be liable for damages up to the amount of the agreed and received remuneration, limited to the remuneration owed and received for an entire contract year.

12. Force Majeure

AGILITA shall not be liable for damages arising from a delay, hindrance, or prevention of performance whose cause is reasonably beyond its control («**Extraordinary Circumstances**»). Extraordinary Circumstances may include, for example: strikes, accidents, governmental measures, natural disasters, delayed performance by third parties, and other circumstances for which AGILITA is not responsible. Any deadlines and dates shall be extended.

13. Confidentiality

13.1 AGILITA and the Customer agree and shall ensure that they and their employees treat as confidential, without time limitation, all information obtained prior to and in the course of the performance of the Service Agreement as confidential for an indefinite period if AGILITA or the Customer protect such information against unrestricted disclosure to third parties, or which, given the circumstances of its disclosure or its content, is to be regarded as confidential (in particular the content of Service agreements, documentation, programs, and data) («**Confidential Information**») and to use Confidential Information only within the scope of the performance and execution of the Service Agreement. Section of these GTC remains unaffected.

13.2 The reproduction of Confidential Information in any form is prohibited, unless it occurs within the scope of the execution of the Service Agreement and in fulfillment of the purpose of the respective Service Agreement. Reproductions of Confidential Information (to the extent permitted) of the other party must contain all notices and annotations regarding its confidential or secret nature that are included in the original.

13.3 With respect to the other party's Confidential Information, each party shall take all reasonable steps to treat all Confidential Information as confidential and shall grant access to the other party's Confidential Information only to those persons who require such access for the performance and fulfillment of the Service Agreement.

13.4 Excluded from the duty of confidentiality is Confidential Information that (i) must be disclosed due to legal obligations, (ii) is necessary to protect rights under the Service Agreement and/or these GTC, (iii) is generally accessible, (iv) was already publicly known without a breach of a confidentiality duty at the time of its disclosure to the other party, (v) becomes publicly known after disclosure to the other party through no fault of the other party.

14. Data Protection

- 14.1** The parties agree to comply with the relevant provisions of data protection law.
- 14.2** Unless AGILITA's access to personal data processed by the Customer is necessary for the performance of the Service Agreement, the Customer must secure personal data in such a way that AGILITA does not gain access to it.
- 14.3** In the event that AGILITA obtains access to Customer's personal data, AGILITA shall collect, process, and use such data in compliance with the provisions of data protection law and solely for contractually agreed purposes. Otherwise, AGILITA does not act as a data processor.
- 14.4** Should AGILITA, in exceptional cases, process personal data on behalf of the Customer, e.g. during the temporary migration of personal data, the parties shall enter into a data processing agreement.

15. Non-Solicitation

The Customer is obligated not to actively solicit AGILITA employees involved in the performance of the Service Agreement, either for its own benefit or for the benefit of third parties. Solicitation also includes instances where the Customer utilizes Services provided by AGILITA employees during the term of the Service Agreement outside the scope of the Service Agreement, or where the Customer hires an AGILITA employee during the term of the Service Agreement or within three years after its termination.

16. Miscellaneous

16.1 Written Form

Any amendments or additions to the Service Agreement (including this Section), as well as all legally relevant notices (in particular notices of termination, reminders, and setting of deadlines), must be in writing to be valid. A PDF of a signed document shall also be deemed to be in writing.

16.2 Severability Clause

Should any provision of the Service Agreement and/or these GTC be wholly or partially void, invalid, or unenforceable, this shall not affect the validity and enforceability of the remaining provisions of the Service Agreement and these GTC. The void, invalid, or unenforceable provision shall be replaced by a provision that most closely approximates the originally intended economic purpose. The same applies to any gaps in these GTC.

16.3 Assignment

The assignment of the Service Agreement or individual parts thereof is permitted only with AGILITA's consent. A change in the ownership structure of the Customer or AGILITA (including, but not limited to, merger, acquisition) does not constitute grounds for termination and therefore does not release the parties from their contractual obligations.

16.4 Prohibition on Offsetting

The Customer is not entitled to set off amounts invoiced by AGILITA AG against its own claims.

16.5 Governing Law and Jurisdiction

- 16.5.1** The Service Agreement and these GTC, as well as any (contractual and non-contractual) claims arising from or in connection with the Service Agreement and/or these GTC, shall be governed by Swiss substantive law, excluding conflict-of-law provisions, in particular excluding the applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention, CISG).
- 16.5.2** All disputes or claims arising out of or in connection with the Service Agreement and/or these Terms and Conditions shall be decided exclusively by the ordinary courts of Wallisellen, Switzerland.