

General Terms and Conditions parsionate GmbH

§1 Applicability, Validity of Offers

- (1) These General Terms and Conditions shall govern all business transactions between Parsionate GmbH, (hereinafter "Parsionate") and Customer (the "Parties"). Any agreements involving the delivery, adaptation or care of standard products involving human capital management solutions shall be governed by the standard terms and conditions for product licenses and care.
- (2) Any general terms and conditions of Customer shall not become a part of the agreement between the Parties, even if such general terms and conditions are enclosed with requests for submission of an offer, or with orders, order confirmations, declarations of acceptance, etc., and whether or not Parsionate objects to such general terms and conditions.
- (3) Offers submitted by Parsionate are valid for one month from the date the offer is made, unless a different time period is specified in the offer documentation.

§2 Delivery of services by Parsionate

- (1) Parsionate agrees to render all services in accordance with the terms and conditions of the agreement between the Parties and in compliance with generally accepted technical and engineering standards. Any technical or other specifications or standards shall be binding only if expressly referenced in the offer documentation and only in the version in effect at the time the offer is submitted. Dates or time periods for delivery or performance shall be binding on Parsionate only if designated as binding by Parsionate in writing.
- (2) Delivery of any source code by Parsionate is hereby excluded unless expressly included in the scope of performance.
- (3) Procurement and care of all standard software, as well as necessary hardware, shall be the sole responsibility of Customer. Customer's responsibility also includes procurement and care of any standard software, program tools or auxiliary programs necessary for use of any Work Results (as defined in § 7 (1) below). Any exceptions to the foregoing are subject to express written agreement by the Parties and shall entitle Parsionate to additional compensation.
- (4) Parsionate agrees to employ carefully selected staff with the necessary qualifications for delivery of all services. Parsionate reserves the right to replace any assigned staff, including staff expressly named in the offer or other documentation, with other individuals with comparable qualifications and experience, subject to prior notice to Customer.
- (5) In the event that the Statement of Work (*Leistungsbeschreibung*) contains any unintended gaps or ambiguities, Parsionate may amend the Statement of Work at its reasonable discretion as appropriate.
- (6) Under applicable laws governing the provision of legal and tax advice, Parsionate is not authorized to represent or advise third parties in legal or tax matters. Such services therefore fall outside the range of services offered by Parsionate. Services rendered by Parsionate likewise exclude any advice on the U.S. Sarbanes Oxley Act or similar laws. Customer is fully responsible for compliance with all legal and tax requirements applicable to agreements between the Parties, and Customer shall notify Parsionate in due time of any requirements relevant for performance.

- (7) Parsionate may use subcontractors for the performance of any agreements between the Parties. Parsionate shall notify Customer of any subcontractors, unless such subcontractor is an affiliate of the Parsionate Group (which shall mean any companies affiliated with Parsionate within the meaning of Sections 15 ff. AktG).

§3 Obligations of Customer

- (1) Customer acknowledges and agrees that compliance with Customer's duties of cooperation is a basic prerequisite for the delivery of services by Parsionate and, as such, is a contractual obligation of Customer. Customer agrees to make available to Parsionate, at no cost, all premises, technical environments, system access, information and documents necessary for the delivery of services by Parsionate. In addition, Customer shall without undue delay (*unverzüglich*) make and notify Parsionate of all decisions required to be made by Customer with regard to the substance or implementation of projects, and Customer shall, without undue delay, review any changes proposed by Parsionate.
- (2) Customer shall, without request by Parsionate, inform Parsionate of any requirements or procedures that are standard in the industry or specific to Customer's business, to the extent relevant to the delivery of services. Customer shall make available to Parsionate in due time, and without request by Parsionate, all technical and other documentation or information necessary for successful completion of the project. In addition, Customer shall, in a timely manner, obtain all permits, licenses and approvals necessary for implementation of the project.
- (3) In the event that Customer fails to perform any obligations as agreed, the corresponding obligations of Parsionate to provide services shall be suspended for the duration of non-performance plus a reasonable time period for resuming work. Customer shall be responsible for any additional costs (including, without limitation, any additional costs for extended availability of staff or materials) incurred by Parsionate as a result of Customer's non-performance, and Parsionate may invoice Customer for such additional costs at the agreed rates and prices.
- (4) If marketing sciences services are rendered by Parsionate, Customer shall comply with the following additional obligations: Customer shall make available to Parsionate, in a timely manner, all information and data on Customer's media campaigns, to the extent necessary for delivery of the agreed services. For TV advertising campaigns, such information and data shall include, without limitation, the date and time of the broadcast, the name of the broadcasting station, GfK (*Gesellschaft für Kommunikation*) block code, the length of the advertising piece, the net price per 30 seconds, and a full description of any discounts received from each broadcasting station. For print advertising campaigns, such information and data shall (for each print ad) include, without limitation, the actual costs and data, information on any placement-, edition- or season-based premiums or discounts, as well as a full description of the placement received for the ad, and booking instructions.

§4 Modification of Services (Change Requests)

- (1) Either Party may at any time propose changes to the substance or scope of any agreed services (hereinafter in each case referred to as a "Change Request"). Any Change Requests shall be delivered in writing to the other Party.

- (2) Upon submission of any Change Request by Customer, Parsionate shall notify Customer of the anticipated costs, time for reviewing the Change Request, and any additional compensation payable by Customer for the review of the Change Request. If Customer orders review of the Change Request subject to Parsionate's terms and conditions, Parsionate shall inform Customer, upon completion of the review, of the anticipated consequences resulting from implementation of the Change Request. Otherwise Parsionate shall have no obligation to review the Change Request. Customer shall compensate Parsionate for review of any change requests based on the agreed rates, whether or not Customer ultimately contracts with Parsionate for implementation of the Change request.
- (3) Parsionate shall not reject a Change Request without valid reason (*ohne erheblichen Grund*). A valid reason for the rejection of a Change Request exists, for example, if implementation of the Change Request would, in the opinion of Parsionate, jeopardize the success of performance, if the requested change falls outside the range of services offered by Parsionate, or if the resources necessary for implementation of the Change Request are not available to Parsionate. Customer may reject any Change Request by Parsionate for any or no reason. In the event that Customer rejects any Change Request from Parsionate against Parsionate's recommendation, Customer shall be responsible for all resulting consequences. Parsionate's contractually agreed obligations shall remain unaffected thereby.
- (4) Any modification to these General Terms and Conditions shall not be valid unless and until a valid written agreement defining the terms and conditions for implementation of the Change Request (including, without limitation, the type and scope of services, scheduling, price) has been signed by both Parties (heretofore and hereinafter referred to as a "Contract Modification"). Parsionate shall continue to deliver services on the basis of the existing agreements until the Parties have signed a valid Contract Modification.

§5 Acceptance (*Abnahme*)

- (1) All tangible products and other work to be delivered by Parsionate in accordance with these General Terms and Conditions (hereinafter individually referred to as a "Work" and collectively referred to as the "Works") are subject to acceptance by Customer. The results of services rendered shall not be subject to acceptance. The Statement of Work may define Milestones that are subject to separate acceptance. Accepted Milestones shall provide the basis for continuation of the work and provide no grounds for exercising any right of rescission. The integration of Milestones and other Works is subject to separate acceptance.
- (2) All Works shall be delivered by Parsionate to Customer for acceptance upon completion. Customer shall accept all Works within five (5) business days from delivery, provided that the Works are free of any defects preventing acceptance.
- (3) For Works involving software development, software implementation or systems integration work, the Parties shall agree upon the procedure and scope of the acceptance test by mutual agreement at commencement of performance. For the acceptance test Customer shall make available to Parsionate, in due time, prior to delivery of the Works, and in the formats specified by Parsionate, all test data in the agreed quantities and qualities and in machine-readable form, as well as the test results anticipated by Customer. Parsionate shall have the right to attend the acceptance test and inspect the results thereof.

- (4) Errors preventing acceptance (*abnahmeverhindernde Mängel*) are any errors falling into one of the first two of the following categories:

Errors in category 1 are any non-conformities as a result of which the Work subject to acceptance (or any essential part thereof) is unusable for Customer (example: frequent and unavoidable system crashes).

Errors in category 2 are any non-conformities as a result of which the use of important functions of a Work is substantially limited and Customer is unable to circumvent such limitations for a reasonable time period (example: wrong contents, data fields that are not validated or are used differently than agreed, or errors in reports).

Errors in category 3 are any other non-conformities.

- (5) The Parties shall assign any errors to the above error categories by mutual agreement. The results of the acceptance inspection, including any errors discovered during inspection as well as the relevant error category, shall be documented by Customer in a binding acceptance protocol within the acceptance period. If Customer justifiably refuses acceptance for a particular Work, all errors preventing acceptance as documented in the acceptance protocol shall be remedied by Parsionate. The necessary steps of the acceptance test shall then be repeated.
- (6) Works shall be deemed to have been accepted by Customer if Customer either commences with productive use of the Works or fails, within the agreed time period, to deliver to Parsionate a list of errors showing at least one material defect in category 1 or category 2 preventing acceptance.

§6 Payment, Payment Terms

- (1) Unless otherwise agreed, Parsionate will invoice Customer for services rendered on a monthly basis based upon the amount of time and costs actually expended.
- (2) In the event that services are charged on the basis of "man-days," or "person-days," each such "day" shall mean a time period of up to eight work hours of an employee per calendar day.
- (3) In the event that Parsionate incurs any additional expense or effort as result of any gaps or ambiguities in any documentation made available by Customer, Parsionate may invoice Customer for such additional expense or effort at the agreed rates. The right to payment for additional expense or effort shall also apply for expense or effort arising out of any contradictory or erroneous information provided by Customer.
- (4) In addition to the agreed compensation, Parsionate shall invoice Customer for any travel costs, expenses or other incidental costs or expenses incurred by Parsionate in the performance of the agreed services. Parsionate shall invoice Customer for such costs or expenses based upon the amounts actually incurred.
- (5) All prices are net prices in Euros, and exclude applicable VAT (*Umsatzsteuer*) and any other taxes, unless otherwise agreed.
- (6) Invoices shall be due within 14 days from receipt of the invoice. In the case of uncertainty regarding the date on which an invoice is received, invoices shall be deemed to have been received three business days from the invoice date.

§7 Copyrights and Licenses

- (1) Parsionate hereby grants to Customer, subject to payment of the agreed price and, in the case of Works, subject to acceptance, a license to use the Works and service results (heretofore and hereinafter collectively referred to as the "Work Results" (*Arbeitsergebnisse*)) in Germany in perpetuity for Customer's internal business purposes. Customer may transfer the foregoing license, or grant a non-exclusive license to the Work Results, to any companies affiliated with Customer within the meaning of German Stock Corporation Act §§ 15 et seq. as of the signing date of these General Terms and Conditions.
 - (2) Until receipt of full payment and, if agreed, acceptance of the Work Results, Customer shall have the right to test the Work Results to the extent agreed by the Parties. This right shall be forfeited if Customer is in default on its payment obligations for more than 30 days, despite written demand from Parsionate.
 - (3) The provisions of subsection (1) shall not apply to any standard products included in the Work Results. As used herein, "standard products" are distinct products or solutions of Parsionate or third parties that are subject to separate license terms. The rights of Customer to such standard products shall be governed exclusively by the applicable license terms for such standard products.
 - (4) Notwithstanding the provisions of subsection (1), Customer shall, for any Work Results that include open source software or adaptations of such software, receive licenses in accordance with the license terms applicable to such software. Both Parties agree to comply with such license terms.
 - (5) The grant of license made in subsection (1) shall exclude a license to any pre-existing materials or solutions of Parsionate, including any modified versions or derivatives thereof (Collectively, "Parsionate Assets"). Parsionate reserves all right, claim and interest in and to any Parsionate Assets. The licenses granted to Customer for any Parsionate Assets included in the Work Results shall be determined based upon the contractual purpose as agreed by both Parties. Any right of isolated use of Parsionate Assets without the Work Results is hereby excluded.
 - (6) Parsionate shall have the right, subject to the duties of confidentiality defined herein, to use without limitation all know-how acquired in the course of a project, including, without limitation, all concepts, procedures, methods, and Milestones providing the basis for the Work Results.
 - (7) Parsionate reserves the right to register in its own name and for its own account patents, including utility patents (*Gebrauchsmuster*), for any patentable Work Results produced in the course of a project. Parsionate grants Customer the right to use any registered intellectual property rights in conjunction with the Work Results, as contemplated hereby. The compensation agreed herein shall be in full and final settlement of the foregoing grant of license.
 - (8) Customer hereby grants Parsionate the non-exclusive right to use free of charge any intellectual property rights of Customer, to the extent necessary for the delivery of services by Parsionate.
- (1) Customer shall provide Parsionate with written notice of any defects in the Works promptly upon discovery, enclosing therewith a detailed description of the defects. Any claims based upon product defects are time-barred (*verjähren*) 12 months of Customer's acceptance, unless Parsionate has fraudulently concealed (*arglistig verschwiegen*) a product defect. In the event of partial delivery, the limitation period shall begin to run from acceptance of the materials accepted in the partial delivery giving rise to the claim. Any obligations of Customer to provide notice of product defects under applicable commercial law shall remain unaffected hereby.
 - (2) Any product defects of Works involving software development, software implementation or systems integration services shall, by mutual agreement of the Parties, be assigned to the error categories defined in Section 5 (4) of these General Terms and Conditions.
 - (3) Parsionate may remedy any product defects by methods and means of its own choice. Remedies also include any reasonable workarounds made available by Parsionate to Customer. Parsionate may also demand that Customer install "bug fixes" in any software components made available to Customer. Parsionate may at its reasonable discretion (*mit billigem Ermessen*) determine the time for remedying any product defects not preventing acceptance.
 - (4) Upon demand Customer shall make available to Parsionate, to a reasonable extent and at no cost to Parsionate, all documentation and information required by Parsionate for analysis and remedy of any product defects. In addition, Customer shall, to a reasonable extent and at no cost to Parsionate, assist Parsionate with the analysis and remedy of any product defects, in particular by making available computers, workstations and telecommunications systems.
 - (5) If Parsionate's final attempt to remedy a product defect has failed, Customer may demand a reduction in the price (*die Vergütung mindern*) of the defective Work or, if product defects prevent acceptance, rescind the Agreement (*vom Vertrag zurücktreten*). Whether the final attempt to remedy a product defect has failed shall be determined in consideration of the complexity of the problem and surrounding circumstances, it being agreed and understood that two failed attempts shall not be sufficient to constitute a "failed attempt" by Parsionate. Any right of Customer to remedy product defects independently or with the assistance of third parties is hereby excluded. Customer shall have no claims for damages against Parsionate except as provided in Section 10 of these General Terms and Conditions.
 - (6) Parsionate assumes no liability for any product defects caused by errors or gaps in any performance specifications or concepts approved by Customer or by any defective work delivered by Customer or any other contractors of Customer. Likewise, Parsionate assumes no liability for any product defects if the Work Results have been modified, unless Customer can demonstrate that the defect was not caused by the modification.
 - (7) In addition to paying the agreed compensation, Customer shall pay to Parsionate the agreed rate per person-day in compensation of any additional costs incurred by Parsionate as a result of any unjustified notices of defect.

§8 Warranty (*Mängelansprüche*) for Product Defects (*Sachmängel*) in Works

The provisions of this Section shall apply exclusively to product defects in Works.

§9 Warranty for Defects in Title (Rechtsmängel)

- (1) Parsionate warrants (gewährleistet) that all Work Results delivered to Customer in performance under these General Terms and Conditions shall not infringe any third-party rights if used as agreed, and in accordance herewith. Parsionate shall not be liable under this warranty unless Customer provides Parsionate with prompt written notice of any third-party claims and allows Parsionate to defend such claims and entertain settlement negotiations. Customer shall, to a reasonable extent and at no cost to Parsionate, assist Parsionate with the defense of any third-party claims, in particular by making available all necessary information. Any obligations of Customer to provide notice of product defects under applicable commercial law shall remain unaffected hereby.
- (2) Rights within the meaning of this Section shall only refer to rights held by third parties in the Federal Republic of Germany.
- (3) If third-party rights impair the agreed use of any Work Results by Customer, Parsionate may, at its sole option, either modify the Work Results such that they no longer infringe the third-party rights, or, in the alternative, acquire for Customer the legal rights necessary for use of the Work Results. Any right of Customer to modify Work Results independently or with the assistance of third parties is hereby excluded.
- (4) Customer shall have no claims for damages against Parsionate, except as provided in Section 10 of these General Terms and Conditions.
- (5) Customer shall have no claims based upon any defects in title, if Work Results have been modified by Customer or any third parties, unless Customer can show that the infringement did not result from modification of the Work Results. Customer further shall have no claims based upon any defects in title if infringement results from any combination of the Work Results of Parsionate with products or services of any third parties other than subcontractors of Parsionate.
- (6) Any claims of Customer based upon defects in title to the Works are time-barred 12 months after Customer's acceptance of such Works, unless Parsionate has fraudulently concealed a defect in title.

§10 Liability

- (1) Parsionate is subject to unlimited liability for any damages caused by grossly negligent (*grob fahrlässig*) or willful (*vorsätzlich*) misconduct of Parsionate, or its legal representatives or agents, as well as for damages resulting from any wrongful harm to life, limb or health.
- (2) Parsionate also assumes liability for any damages caused by ordinary negligence if, and solely to the extent, Parsionate breaches any material obligation (*vertragswesentliche Pflicht*) under the agreement. Material obligations are obligations which are essential for the achievement of the purpose of the agreement and on which the Customer may reasonably rely. In such cases, Parsionate's liability shall be limited to damages reasonably foreseeable (*vertragstypischer vorhersehbarer Schaden*) at the time the agreement was signed.
- (3) The foregoing limitations of liability shall also inure to the benefit of Parsionate's legal representatives and employees, and shall also apply in cases involving liability for culpa in contrahendo or tort.
- (4) Any liability for damages under the German Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected hereby.

- (5) Any liability of Parsionate for lost data shall be limited to compensatory damages in the amount necessary for restoration of the data using electronic backup media. The obligation of Customer to back-up data on a regular basis according to the state of the art shall remain unaffected thereby.
- (6) Unless provided otherwise in these General Terms and Conditions, any and all claims of Customer against Parsionate shall be subject to a limitation period of one year from the date of accrual and the date on which Customer discovered or, absent recklessness on the part of Customer, would have discovered the circumstances giving rise to the claim, except for claims defined in subsections (1), (2), or (4).

§11 Confidentiality

- (1) Each Party shall maintain confidentiality with respect to all confidential information of the other Party received in connection with the Parties' cooperation. Specifically, each Party shall protect such information from access by any unauthorized third parties, using the same standard of care such Party uses with respect to its own information of like kind (but, in no event, less than a reasonable standard of care). As used herein, unauthorized third parties shall exclude any subcontractors or employees of Parsionate Group assigned by the Parties to work on a project in accordance with the terms of these General Terms and Conditions. The Parties agree to require any such employees or third parties involved in the Parties' cooperation to comply with a duty of confidentiality comparable in scope to the one provided for herein.
- (2) Confidential information shall consist of any information of a Party -- in any shape or form -- that has been designated as confidential in writing by a Party or the confidentiality of which is obvious from the nature of such information, and shall include, without limitation, any business and trade secrets. Confidential information shall also include Parsionate Assets and any proprietary source codes received by Customer from Parsionate.
- (3) Confidential information shall exclude any information which the receiving Party can show (i) is or was generally accessible by the public, (ii) was acquired by the receiving Party prior to disclosure by the other Party without being subject to a duty of confidentiality, (iii) was developed independently and without using any confidential information of the other Party, or (iv) was acquired from a third party who was not subject to a duty of confidentiality.
- (4) All staff assigned by Parsionate to work with personal data within the meaning of the provisions of the Federal Data Protection Act (*Bundesdatenschutzgesetz*) shall be required to comply with the duty of data secrecy (as defined in Federal Data Protection Act § 5).
- (5) Parsionate reserves the right to retain a complete set of copies of all Work Results and project documentation for internal purposes, whether or not such copies contain confidential information.
- (6) The above duties of confidentiality shall survive termination of these General Terms and Conditions.

§12 Termination of Service Agreements

- (1) Service agreements (*Dienstvertrag*) may be terminated by either Party at end of any given month upon two weeks' prior written notice, unless otherwise agreed by the Parties. The rights provided for in German Civil Code (*BGB*) § 626 shall remain unaffected hereby.

- (2) Contracts of work (Werkvertrag) may be ordinary terminated by the customer at end of any given month while respecting a period of four weeks' prior written notice.

If the customer terminates a contract of work, Parsionate has the right to request in lieu of compensation, the customer to pay (i) all by the premature termination of the contract of work performed on the basis of agreed charging rates (or, where they are not defined, the average person-day rate under the service contract) and (ii) plus 40% of the remaining agreed or anticipated total amount of compensation due to termination. Customer may furnish proof of higher saved expenses; the agreed allowance is to reduce accordingly.

§13 Miscellaneous

- (1) Where these General Terms and Conditions or other parts of the agreement contain a German term as a translation for an English term, the German term shall be binding for the interpretation of the entire agreement. The given German terms shall apply to all of the respective English terms throughout the agreement.
- (2) Any collateral agreements, modifications or amendments to these General Terms and Conditions or other parts of the agreement shall be invalid unless executed in writing and duly signed by both Parties. The foregoing provision shall also apply to any waiver of this clause.
- (3) If any provision of these General Terms and Conditions or other parts of the agreement is invalid or void, the validity of the remaining provisions shall remain unaffected thereby. Any invalid or void provision shall be replaced by such lawful provision as most closely reflects the commercial intent and purpose of the original provision. The foregoing shall apply analogously if any provision has been inadvertently omitted from the agreement.
- (4) Parsionate may use the name and trademark of Customer for reference purposes.
- (5) Customer shall not publicize Parsionate's name in connection with any projects implemented by Parsionate except with the prior consent of Parsionate.
- (6) Customer shall not assign, pledge or otherwise transfer to any third parties any rights or obligations arising from these General Terms and Conditions, or any agreement hereunder, except with the prior written consent of Parsionate.
- (7) Customer shall have no right to offset (*aufrechnen*) any counterclaims against Parsionate's claims for payment, unless such counterclaims have been established by a final and conclusive court judgment or are undisputed.
- (8) All agreements between the Parties shall be exclusively governed by and construed in accordance with the laws of the Federal Republic of Germany, with the exception of the UN Convention on Contracts for the International Sale of Goods.
- (9) Any disputes arising from or in connection with any agreements between the Parties shall be determined by a court of competent jurisdiction (*ordentliches Gericht*) in Frankfurt am Main, Germany.