

General Terms and Conditions of treibauf AG

Valid as of 01.01.2021

1. Scope

The following General Terms and Conditions (GTC) are applicable, unless other written agreements have been made. The acceptance of a contract acknowledges the acceptance of this GTC by the contract partner. General Terms and Conditions of the contract partner are not accepted. Such terms and conditions shall only be valid if they have been expressly accepted by treibauf AG.

2. Offers, Conclusion of contracts

Offers made by treibauf AG are non-binding, unless explicitly agreed. Oral agreements are only valid if they are confirmed in writing.

3. Prices

Package prices are based on the assumptions made at conclusion of the contract. On unforeseen changes to these initial conditions, treibauf AG reserves the right to change package prices in agreement with the contract partner.

Time and material prices are based on the actual effort and the agreed hourly rate.

Charges for services performed by treibauf AG are based on the treibauf AG price list valid at the time the services are offered.

Value Added Tax, travel expenses (travelling time, mileage and tickets, overnight expenses), meals, transport costs, insurance and additional expenses are not included. These will be billed separately. Services performed for export are in principle free from VAT. Due to legal requirements, it may be that in certain cases, depending on the type of service and where it is performed, VAT may be due.

4. Payment Terms

Full payment must be made within 30 days of billing, unless otherwise agreed in writing beforehand.

Charges to treibauf AG by bank or post service arising from the payment may be charged to the contract partner on the next bill.

5. Settlement

Other claims or counter-claims by the contract partner, even if they arise from the same contract, may only be deducted with the written agreement of treibauf AG.

6. Delivery and Installation

The delivery period begins from the date of the conclusion of the contract. A delayed delivery does not give the contract partner any right to claim damages, to reduce the price, or to withdraw from the contract.

7. Guarantee

treibauf AG guarantees its own products, developed and installed by treibauf AG, to be free of defects and to be functional. The warranty period is 60 days starting from the date of delivery. Inside this period defective products will be replaced or corrected free of charge. All additional guarantees, in particular a right of replacement, mitigation, or compensation, are excluded.

There is no guarantee for products, neither hardware or software, which treibauf AG, in order to complete the contract, has purchased or has purchased the right to use. On request, treibauf AG may cede to the contract partner the right to claim warranty against the third party. If treibauf AG must correct defects in third party products, the costs of doing so will be charged to the contract partner.

8. Liability

treibauf AG is liable according the provisions of Art. 398 f. OR for faithful and accurate performance of IT services.

Any liability within or outside the scope of the contract, which exceeds the guarantee above, in particular consequent or indirect damage is, in as much as legally permissible, excluded. This disclaimer does not apply to deliberate or negligent damage. In any case, including negligence, the liability is restricted to the contracted sum.

9. Title Retention

Goods delivered remain property of treibauf AG until the payment of the complete purchase price.

10. Confidential Data

treibauf AG will handle financial, statistic or personal data, which is indicated to be confidential and is relevant to the contract partners business, and which in the course of fulfilling the contract is made available to us, with the same discretion and care as with internal confidential data. This obligation applies to all treibauf AG and external employees. This condition remains valid for 10 years after the end of the contract.

This confidentiality does not apply for data which is generally available, nor which was already known to treibauf AG, nor for data which treibauf AG obtains independently outside the contract or rightfully from third parties. Additionally, ideas, concepts, experience or methods, which pertain to information processing and which are made available to treibauf AG or which are developed during the delivery of the services alone or with the contract partner, need not be handled confidentially by treibauf AG.

11. Rights to Software and Hardware

The intellectual property rights to and the copyright of the software and documentation of treibauf AG's products Matchbox, Pepper, Openvez, and Simpatico remain with treibauf AG. treibauf AG guarantees that the products developed by treibauf AG and third party components in those products do not violate the rights of third parties.

The rights and obligations regarding the use of software and hardware, which are assumed or purchased from third parties, depend on the conditions of the manufacturer or seller, and must be taken on by the contract partner.

12. Intellectual Property

The rights to documents and analyses in human readable or machine readable form belong to both the contract partner and to treibauf AG. Both parties to the contract may exercise and dispose of these rights independently and without restriction, with no need of the agreement of the other party. Both parties have the right to furnish the documents and analyses with their copyright. Ideas, concepts, experience or methods which pertain to information processing which are developed during the delivery of the services by treibauf AG alone or together with the contract partner may utilised freely by both parties. If discoveries, inventions or improvements are made during the contract, which include ideas, concepts, experience or methods pertaining to information processing, then the following applies:

Intellectual property rights to discoveries or improvements

- which are made by employees of the contract partner, belong to the contract partner. The contract partner allows treibauf AG a non-exclusive, inalienable, worldwide and free right of use.
- which are made by treibauf AG, belong to treibauf AG. treibauf AG allows the contract partner a non-exclusive, inalienable, worldwide and free right of use for his own non-commercial proposes. Marketing rights are explicitly excluded.
- which are made by employees of the contract partner together with treibauf AG and/or third parties employed by treibauf AG belong to the contract partner and to treibauf AG, to be used without charge.

Excluded from these provisions are developments to the treibauf AG products Matchbox, Pepper, Openvez and Simpatico. Here all rights to software and documentation belongs solely to treibauf AG. Only treibauf AG may market these products.

The contract partner pledges that he will not release to treibauf AG documentation, which directly or indirectly includes copyrighted works of third parties unless he is authorised to do so.

13. Maintenance and Services

Contracts pertaining to maintenance and servicing are for a period of 36 months, and may be terminated in writing with a notice period of 3 months before the end of the contract. If the contract is not terminated, the contract will be tacitly renewed for a further 12 months. The maintenance fees includes the cost for the allocation of resources. Work performed will be billed separately.

Service charges include the contractually specified services. Not included are additional costs as a consequence of factors not attributable to treibauf AG or due to changes not performed by treibauf AG.

Business hours for treibauf AG are Monday to Friday, from 08:00 to 12:30 CET and from 13:30 to 17:00 CET except on federal and local holidays. Depending on urgency, treibauf AG will attempt to uphold a good level of service outside of these hours, but enters no agreement to do so.

14. Labour Piracy

The contract partner pledges that he will not entice away employees of treibauf AG, neither directly nor indirectly, actively nor passively. This condition remains valid for at least 18 months after the end of the contract. Breach of this clause incurs a penalty of CHF100'000 per pirated employee to be paid immediately to treibauf AG.

15. Jurisdiction, Applicable Law

Jurisdiction is at the domicile of treibauf AG. treibauf AG reserves the right to prosecute the contract partner at treibauf AG's choice at the contract partners domicile or another jurisdiction. Legal relations with treibauf AG are exclusively subject to Swiss law. The application of the UN Convention on Contracts for the International Sale of Goods ("CISG") is excluded.

16. Termination without notice

If the contract is terminated without notice (by maintenance contracts before the end of their term, by services before the completion of the agreed number of hours), compensation of 40% of the remaining amount will be due. Costs of external employees mandated by treibauf AG will be charged 100% to the contract partner. The parties have no other claims on each other.

17. Changes, Additions and partial Invalidity

Changes or additions to the contract must be in writing and validly signed by both parties to the contract.

If any clauses of the agreements contravene applicable law, all other clauses remain applicable. In this case void or inoperative provisions will be replaced by valid provisions, which as nearly as possible approach the same commercial effect as the invalid provisions.

18. Original Text

This GTC has been drawn up in German and translated into English, and may also be translated into other languages. The German version is deemed to be the binding text.