

General terms of conditions

State 01-2023 (January 2023)

1. Scope, general principles

1.1. These General Terms and Conditions (GTCs) apply to all offers, deliveries and services of Q Point AG (CH), Q Point GmbH (AT) and Q Point GmbH (DE) – all referred to hereinafter as QP. They shall also apply to all future business relationships – in particular for verbal, telephone, electronic and postal offers, deliveries and services, even if not once again expressly agreed. For these GTCs to be effective, reference to them and their disclosure on offers, order confirmations, invoices or other company documentation is also sufficient.

1.2. Purchasing or other general terms and conditions of the Buyer shall not be binding for us unless they are expressly accepted in writing by QP.

1.3. Amendments to the terms and conditions of business or the contract must be made in writing and shall be brought to the attention of the customer two months before they come into force. In this case, the customer has the option to terminate the contractual relationship prematurely and without observing the agreed notice period.

2. Offers/Conclusion of contract

2.1. Assurances of properties, ancillary agreements and amendments shall only be valid if confirmed in writing by QP.

2.2. QP is expressly permitted to cite customers as references and to use their company logo for advertising purposes (brochures, trade events, homepage, advertising material, etc.), unless otherwise agreed.

3. Commissioning of services/Consultancy services

3.1. The order must be placed in writing. The conditions according to the order confirmation or user agreement incl. appendices shall apply. This can also be done individually within the scope of a software user agreement.

3.2. If expenses in connection with an order exceed any lump-sum agreement, QP may claim the difference. Prior agreement with the customer shall be required.

4. Prices and terms of payment / Invoicing

4.1. Invoices shall be issued electronically and shall be sent to the e-mail address provided by the Customer or to the Customer's general published contact address. A paper invoice will only be sent if required.

4.2. Invoicing on the part of QP shall be carried out by the company which is the contracting party. The services can also be provided by other Q Point companies.

4.3. All prices are exclusive of statutory VAT. Payment of the invoice amount shall be made without any deductions. Otherwise the terms of payment according to the offer or order confirmation of QP shall apply. If the customer is in arrears with payments - in the case of agreement of part payments with one instalment - the outstanding part payments shall become due immediately. QP shall be entitled - without prejudice to the rights arising from the retention of title - to withdraw from the contract or to demand damages for non-performance. If a customer is in default, QP shall be entitled to charge interest at the statutory rate from the relevant point in time.

4.4. Should the customer fail to meet its payment obligations or should QP become aware of other circumstances that call into question the customer's creditworthiness, QP shall be entitled to call due the entire remaining debt and to demand advance payments or the provision of security for any outstanding deliveries. Offsetting with counterclaims is explicitly excluded.

4.5. The prices are subject to an annual index adjustment. For Customers in Switzerland the Total Index (basis: 2015=100), for Customers in Germany the Harmonised Consumer Price Index HICP (basis: 2015=100) for Germany and for all other Customers the Harmonised Consumer Price Index HICP (basis: 2015=100) for Austria shall apply as the index basis. If these index values are no longer calculated or published, QP shall be entitled to use other corresponding indices which come closest to the content of the aforementioned indices. If the change in the index value between the month of the conclusion of the contract (or the last adjustment month) and the invoice month exceeds the value of 5%, a price adjustment shall be made to the full extent.

4.6. Subsequent price negotiations and invoice reductions for contractually agreed and performed services are excluded.

5. Postponement, withdrawal and cancellation of the contract

5.1. In the event of cancellation or postponement of ordered services up to 48 hours prior to service provision, the order will not be invoiced. Expenses already booked for accommodation/transport will be charged in full.

5.2. If entire projects or individual project days are postponed or cancelled at short notice (less than 48 hours before the service is provided), fees and expenses amounting to 50% of the cancelled dates shall be due. Travel costs already incurred that cannot be cancelled will be charged in full. The fees and expenses for the newly added project days will be charged according to the offer.

6. Delivery conditions, limitation of liability and warranty

6.1. The dates and deadlines stated by QP are non-binding unless otherwise agreed in writing.

6.2. In the case of shipment of goods by QP, the acceptance confirmation of the parcel service shall be deemed to be the acceptance. The risk shall pass to the customer as soon as the consignment has been handed over to the company responsible for transport.

6.3. Shipment shall be made in accordance with the goods at QP's discretion. Express shipping or additional insurance shall take place at the request of the customer and shall be invoiced accordingly.

6.4. Liability for data backup and protective measures against viruses and data protection at the customer's premises shall be borne exclusively by the customer itself.

6.5. The warranty shall commence at the point in time specified under point 6.2 for the transfer of risk. For third-party products, our liability is limited to the assignment of the warranty claims to which we are entitled against the suppliers of the third-party products.

6.6. Compensation for non-performance may only be claimed if QP or one of its vicarious agents has caused the damage intentionally or through gross negligence.

7. Retention of title

7.1. The delivered goods shall remain the property of QP until the claim arising from the delivery of goods to the customer has been settled. Customer shall be entitled to process, use and sell the goods in the ordinary course of business as long as it is not in default against QP. Pledges and transfers of ownership by way of security shall not be permitted.

7.2. For business relations within the framework of a rental or hire-purchase agreement, the provisions of the respective agreement shall apply separately.

8. Additional provisions for special areas for maintenance and repair services - our terms and conditions of contract apply

8.1. For software supplied and/or maintained by us, the agreements contained in the usage agreements or in the software licence and software maintenance agreement shall also apply.

9. Applicable law, place of performance, place of jurisdiction

9.1. Unless otherwise agreed, the law at the registered office of the respective QP company shall apply to all legal relationships between QP and the customer. The place of performance for our obligations shall be the registered office of the respective QP company. The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of the respective QP company, insofar as this is legally permissible.

9.2. Severability clause: If a provision in these Terms and Conditions or in the context of other agreements with the customer is or becomes invalid, this shall not affect the validity of the remaining provisions or agreements. At the same time, the ineffective provision shall be replaced by an effective one which realises the economic purpose pursued by the ineffective provision as far as possible.

10. Data protection / Information of the customer

10.1. The customer shall be obliged to immediately disclose any changes to its master data, in particular contact data and contact persons.

10.2. Personal data is stored by QP and only processed and used in strict compliance with the applicable data protection regulations. We uphold the principle of not selling, renting or otherwise making available personal data. By cooperating, the customer agrees to the storage of his data within the framework of the business relationship.

10.3. For the processing of personal data within the framework of a software transfer and use agreement, we refer to the corresponding data protection declaration.