

Cloud Services (SaaS) from Hilscher Gesellschaft für Systemautomation mbH (Headquarter) 09/2021

General Terms and Conditions (B2B)

I. General

The following supply and payment conditions apply for the overall business relations with our customers, who is not a consumer according to section 13 of the German Civil Code (BGB) concerning our Cloud and Software as a Service products and services.

II. Subject matter of the agreement

The subject matter of the agreement shall be specified in these General Terms and Conditions in addition to the provisions of the relevant Service Specifications, the Service Level Agreement and the relevant Licensing Conditions. If there is any conflict between these General Terms and Conditions and rules and/or specific terms of use within the relevant Service Specifications, the Service Level Agreement, and the relevant Licensing Conditions then the latter shall prevail.

The customer accepts them as binding for the present contract and - as amended - for all future transactions. Any deviating agreement requires our written confirmation. The customer waives the applicability of the customer's general terms and conditions. These shall not be an integral part of contract as a consequence of our silence or our deliveries.

III. Proposals/Quotations/Offers

Our quotations are always subject to confirmation. Illustrations, dimensions and weights, as well as information of any type are non-binding; the right of design modifications is reserved. Side agreements of any kind require our written confirmation for their validity; especially deviating drawing descriptions are only valid if unambiguously defined in detail.

Unless otherwise stipulated by a separate agreement, the agreement shall be deemed established upon receipt of the order confirmation, or at the latest upon provision of the service by Hilscher.

IV. Rights of use

The customer and the users he has set up shall be granted the non-exclusive right, limited to the term of use or the term of the agreement, to access the service functions via the internet. The customer shall not be granted any further rights.

The customer shall not have the right to use the service beyond the use permitted under this agreement, to allow third parties to use it, or to make it accessible to third parties without prior written consent by Hilscher. The customer shall not be permitted, in particular, to assign the right of use of the services or parts thereof to third parties without prior written consent by Hilscher.

The customer shall also pay the charges incurred by users he has set up and who are therefore authorized. The same shall apply in case of unauthorized usage by other third parties if and insofar as the customer is responsible for this usage.

The customer shall upon request, provide Hilscher with all information required to assert claims against third parties. In particular he shall communicate the names and addresses of these third parties and, without delay, the nature and scope of any claims he has against them arising from the unauthorized provision of the program for use.

V. Delivery

Deliveries are made according to our operational conditions. We do not guarantee that we meet delivery deadlines. If the customer is in arrears with the payment for a previous delivery, we are entitled to retain consignments without being liable for payment of damages. If we are impeded in contract performance by the set deadline due to production interruptions in our or our suppliers' facilities, e.g. by force majeure, traffic disruptions, strike, lock-out, the delivery period shall be extended accordingly. The customer may only withdraw from the contract after setting a reasonable period of grace upon expiry of the extended deadline. Such withdrawal must be notified in writing. If fulfilment of the contract is impossible for us due to the reasons as aforesaid, we are released from our duty to deliver. We will immediately inform the purchaser of the impossibility to fulfil the contract. Claims for damages by the purchaser due to delay or non-fulfilment of the contract is excluded. We are entitled to make partial deliveries.

VI. Duties and obligations of the customer

The customer shall notify his users about the details of this agreement in good time before usage starts and, in particular, about the rights and obligations in accordance with the General Terms and Conditions.

The customer shall be liable for any breaches of obligations by his users and other third parties where these breaches occur within the customer's sphere of control, unless he provides evidence that the breach is not attributable to him.

Should any personal data be collected, processed or used by the customer and a statutory requirement to obtain consent does not apply, the necessary consent of the parties involved shall be obtained.

Hilscher and its agents shall be indemnified against all claims by third parties that are based on the illegal use of the products and services associated herewith by the customer. If the customer realizes or can't be expected to realize that a violation of this type is about to occur, he shall be obligated to notify Hilscher without undue delay.

Persona access data (user ID, password) shall not be provide to third parties and shall be kept in a location that is protected against third party access. For security reasons, the data must be changed upon first-time use of the service and then at regular intervals. If there is reason to suspect that the access data has been disclosed to unauthorized persons, the customer must change this data immediately. Such data may be stored on PCs, or USB memory sticks in encrypted form only.

Any costs incurred by Hilscher when checking its equipment following submission of a fault report shall be reimbursed if the fault was not in Hilscher's equipment and this could have been recognized by the customer if had made a reasonable effort to find the fault.

VII. Payment

Remuneration and ancillary costs shall, in principle, be net charges plus any applicable statutory taxes and duties. Charges to be paid for the use of services shall be billed in accordance with the chosen payment method. The invoices shall be paid within 30 days of the date of the invoice, unless otherwise agreed. Starting on the day on which the service is initially provided ready for operation, monthly charges shall be payable for the rest of the month on a pro rata basis. These charges shall thereafter be payable monthly in advance. Any other charges, in particular usage-dependent charges, shall be payable following the performance of the service.

The customer may only offset undisputed or legally enforceable claims. The customer shall be entitled to assert a right of retention only for counterclaims arising from the agreement.

VIII. Default

If the customer is in arrears with a significant amount due, Hilscher shall have the right to decommission services at the customer's expense. In this case, the customer shall still be required to pay the monthly charges. If the customer defaults in the payment of an amount corresponding to the basic monthly charge for two months, Hilscher shall have the right to terminate the agreement without notice. Hilscher reserves the right to assert any other claims arising from a default in payment.

IX. Liability

Claims for damages are excluded regardless of the kind of violation of duty, including illegal acts, unless due to wilful misconduct or gross negligence on our part. In case of culpable violation of material contractual obligations (cardinal duties), we shall be liable for any negligence, but only up to the amount of typically occurring foreseeable damages. Claims for loss of profits, expenses saved, claims for compensation by third parties or other indirect consequential damages may not be asserted, unless a warranted property is specifically intended to protect the customer against such damage. The limitations and exclusions of liability as mentioned above shall not apply to claims that have arisen due to fraudulent behaviour on the part of Hilscher, as well as to liability for warranted properties, to claims under the German Product Liability Act (Produkthaftungsgesetz) or to damage resulting from injury to the life, or health.

The liability shall be excluded concerning data loss or hardware faults caused by incompatibility between the components already present in the customer's Electronic-Device, e.g. PCs, tablets, smartphones, and new or modified hardware and software, or for system malfunctions that may result from existing configuration errors or older, interfering drivers that were not completely removed.

The above mentioned exclusion of liability also applies to our employees, workers, representatives and vicarious agents.

X. Marking of goods, trademark rights

A change of our goods or any special marking that represent the mark of origin of the customer or a third party or could purport that they are special products is impermissible. If third parties make justified claims to trademark rights, we will acquire a license for the goods as such or replace them by goods that do not infringe trademark rights at our option and our expenses. Should this not be possible for legal or technical reasons or should not be reasonable from economical aspects, we will take them back against refund of the purchase price. We accept no liability for infringements of third party trademark rights for goods manufactured by us according to the customer's specifications.

This s also applies if we have participated in the development or have developed the goods in accordance with the customer's to the specifications.

XI. Data protection

Hilscher shall acquire no rights to the data stored by the customer in the course of using the services, in particular third-party personal data. Hilscher shall, however, be entitled to use this data exclusively on the instructions of the customer as per the following provisions and within the scope of this agreement.

In the case of commissioned proceeding of personal Data, Hilscher shall only collect, process, use or access personal data within the bounds of the concluded agreement and according to the customer's instructions.

During commissioned data processing, the customer shall be fundamentally responsible for complying with the provision set forth in the European Data Protection Directive (Datenschutz-Grundverordnung-DGSVO) as well in the German Federal Data Protection Act (Bundesdatenschutzgesetz-BDSG) with regard to personal information.

The customer shall retain control of the data in terms of contract law and data protection law. Whether and to what extent third parties enter or access such data shall solely at the discretion of the customer. Insofar as the customer authorized third parties to use personal data, the customer shall ensure appropriate organization of authorisation management, password issuing, etc.

Hilscher shall ensure the technical and organizational security and other measures in accordance with Art. 32 DGSVO.

Hilscher shall no longer be entitled to use the data when this agreement is terminated. Unless otherwise agreed, Hilscher shall then delete the data within 30 days. The data can be handed over to the Partner in a common format against reimbursement of the costs incurred.

XII. Effectiveness

Should any of these terms and conditions be inapplicable for any reason whatsoever, this shall not affect the effectiveness of the remaining terms and conditions.

XIII. Place of jurisdiction, venue

The place of jurisdiction is Frankfurt/Main. The venue for all disputes is Frankfurt/Main, to the extent the purchaser is a registered merchant, public law legal entity, public law special fund, and the law does not mandatorily stipulate otherwise. These terms and conditions shall exclusively be governed by German law with exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

XIV. Miscellaneous

Hilscher does not assume any responsibility for the products being appropriate to the aim intended by the customer, this responsibility is subject solely to the customer's discretionary power and responsibility.

In particular it is hereby expressly agreed that any use of the services as a security system in general or in or for application for medical equipment, for aviation or space or nuclear purposes, in safety related automotive application inside of vehicles or for any illegal purpose or purposes violating national or international restrictions such as embargos shall be excluded.

Hilscher and the Customer agree that products or programs have not been developed or designed for any of those or similar purposes.