



In the event of any inconsistencies, the text in the German language version of the General Terms & Conditions shall prevail over the English translation.

## GENERAL TERMS AND CONDITIONS

### 1. Scope and Application

- 1.1 These General Terms and Conditions (hereinafter referred to as "GTC") govern the relations between the customer and CritMitS Criterion Mitigation Service LLC, the contractor (hereinafter referred to as "CritMitS").
- 1.2 The General Terms and Conditions are considered an integral part of the Engagement Letter / Contract and complement the understanding made therein.
- 1.3 Unless expressly agreed otherwise, offers by CritMitS are valid for 30 calendar days from the date of issue.
- 1.4 Deviating provisions shall only apply in writing and with confirmation by CritMitS.

### 2. Scope and Execution of the Engagement

- 2.1 The scope of the services to be rendered by CritMitS shall be determined by the Engagement Letter / Contract and any eventual description of the work to be performed.
- 2.2 The engagement shall be executed in accordance with the principles of due professional practice.
- 2.3 The examination of the correctness, completeness, and accuracy of the documents and figures provided, in particular bookkeeping and financial reporting, are not covered by the engagement unless expressly agreed otherwise.
- 2.4 Provided CritMitS cannot detect any obvious inaccuracies, CritMitS may accept the data provided by the customer as being accurate and correct.
- 2.5 CritMitS assumes no liability whatsoever for incorrect or incomplete disclosures in the materials and figures provided

### **3 Duty of Confidentiality, Secrecy, and References**

- 3.1 Subject to the express release by the customer, CritMitS and all those individuals and parties involved in the engagement are bound to maintain complete secrecy regarding the nature, scope and content of the work carried out. This shall remain in force beyond the termination of the present contractual relationship.
- 3.2 CritMitS reserves the right to name the existence of a contractual relationship in possible references as well as marketing documents and to display a possible existing logo of the customer.

### **4 Cooperation with Third Parties**

- 4.1 CritMitS is entitled to engage employees, competent third parties and companies (right of substitution) to execute the order.
- 4.2 The involvement of employees and subcontractors will be brought to the customer's attention in time.
- 4.3 Third parties are subject to the duty of confidentiality in accordance with Section 3.1 above.

### **5 Liability**

- 5.1 CritMitS will ensure the execution of the agreed services in good faith and with due care.
- 5.2 CritMitS is not liable for simple negligence <sup>1</sup>.
- 5.3 CritMitS assumes no liability whatsoever for the fault of any vicarious aides or other third parties.
- 5.4 Any further liability and warranty is excluded. In particular, CritMitS assumes no liability whatsoever for any consequential damages or recourse of third parties against the customer.
- 5.5 CritMitS is not responsible for the content and data provided by the customer (sections 2.3, 2.4, 2.5). CritMitS may accept the facts and figures stated by the customer as correct, provided that it cannot detect any obvious inaccuracies.

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<sup>1</sup> (e.g. the failure to use ordinary care or taking precautions; negligence which is neither gross, wanton, willful nor deliberate)

- 5.6 CritMitS accepts no liability whatsoever for incorrect and incomplete information in the materials and figures submitted to CritMitS.
- 5.7 In particular, CritMitS is not obligated to check the supplied data, documents, and contents for potential legal infringements. Any resulting recourse, expenses, and disadvantages at the expense of CritMitS shall be reimbursed by the customer and CritMitS shall be exempted from any liability.
- 5.8 CritMitS assumes no liability or responsibility whatsoever for any damage caused by the customer or third parties employed by the customer or for any delay in the execution of the order.

## **6 Duties of the Customer**

- 6.1 The customer is required to cooperate as far as it is necessary for the proper execution of the order.
- 6.2 The customer shall undertake all preparatory and cooperation activities that are necessary for the performance of CritMitS' services and shall refrain from doing anything that hinders or could compromise the contractual provision of services.
- 6.3 In particular, the customer shall grant CritMitS access to the customer's IT infrastructure, if necessary. The customer shall supply the necessary documents, data, and supporting material free of charge.
- 6.4 The customer will make all documents required for the execution of the engagement available to CritMitS in due time and in full. The same shall apply accordingly to information on all transactions and circumstances which may be relevant for the execution of the engagement.
- 6.5 The customer shall refrain from doing anything that could impair the independence of CritMitS.
- 6.6 All data and documents submitted by the customer for processing must comply with the minimum technical requirements stipulated by CritMitS. The effects of non-compliant or faulty data and documents shall be assumed by the customer, whereby CritMitS shall be entitled to charge the costs of correcting them in accordance with the applicable rates.

## 7 Acceptance

- 7.1 Project work and the like shall be subject to acceptance by the customer.
- 7.2 If the customer fails to carry out a proper acceptance test, the work and services provided by CritMitS shall be deemed accepted and approved.
- 7.3 CritMitS shall remedy defects which do not allow the business or technical use of the services free of charge, or rectify them.
- 7.4 Insignificant defects as well as subsequent additional orders by the customer will be remedied or executed against compensation.
- 7.5 The above provisions regarding acceptance and ramifications regulate the claims of the customer conclusively.

## 8 Determination of Remuneration

- 8.1 Because the parameters vary for each contract, the fee is agreed on a case-by-case basis. Fees are mainly affected by the working hours to be incurred, the complexity of the task, the degree of difficulty and the extent, the responsibilities associated with the task, the position of the executing person, and the legal form of the customer.
- 8.2 The initial consultation is subject to a charge and is provided at an hourly rate in line with the mandate. If the costs of the initial consultation are 10 % or less of the total cost of the service, the costs will be refunded to the customer in the final invoice.
- 8.3 Travel time is generally deemed to be working time.
- 8.4 All services of CritMitS which are not expressly compensated by the agreed fee will be charged separately or will be reimbursed. This applies in particular to all ancillary services provided by CritMitS, such as cash expenses incurred by CritMitS which go beyond the ordinary course of business (e. g. courier services, extraordinary shipping costs or travel).

- 8.5 The prices are exclusive of value added tax and other levies or ancillary services. CritMitS is entitled to demand advance payments to cover its expenses.
- 8.6 In general, 50% of the estimated order volume is due before the start of work. If the engagement is concluded within 8 working weeks, the remaining fee will be due immediately upon submission of the work results (exception see section 8.7).
- If a mandate lasts longer than 8 working weeks, the parties agree on invoicing and payment terms individually.
- CritMitS cost overviews of project work are in principle not binding. If it can be foreseen that the actual costs exceed the estimated costs provided by CritMitS in writing by more than 20%, CritMitS will inform the customer of the increased level of costs. The overrun of costs shall be deemed to have been approved by the customer if the customer does not object in writing within three work days of this notification and simultaneously discloses cheaper alternatives.
- 8.7 Services for first-time clients as well as customers residing outside of Switzerland are only provided against prepayment.
- 8.8 CritMitS shall be entitled to appropriate remuneration for all work carried out by CritMitS that is not implemented by the customer for whatever reason. With the payment of this remuneration, the customer acquires no rights to the work product at all. Concepts, plans, and drafts of scenarios that have not been realized must be returned to CritMitS without delay.
- 8.9 Invoices of CritMitS are due 10 days net from the date of invoice without any deduction, unless otherwise agreed (see points 8.6 and 8.7).
- In case of past due payment, default interest in the amount of currently 10 %<sup>2</sup> annually is payable without further notice as well as overdue charges of CHF 20 per reminder.
- Any work or services rendered remain the property of CritMitS until full payment has been made. If rights of use are agreed upon, these shall only be deemed to have been granted after payment has been made.

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<sup>2</sup> The general provisions on interest on past due payment can be found in The Code of Obligations Art. 104 ff.

- 8.10 Netting with credit is excluded without the express consent of CritMitS.
- 8.11 With a one-month notice, CritMitS can make price adjustments at any time.
- 8.12 Price adjustments due to subsequent changes to the provisions of the terms and conditions of the agreement or due to changes in statutory provisions are reserved under any circumstances.

## **9 Retention and release of work results and records**

- 9.1 The customer shall be responsible for the statutory retention requirements pursuant to Art. 957 ff of the Swiss Code of Obligations.
- 9.2 CritMitS shall not be under any obligation to keep the documents and materials provided by the customer within the scope of the engagement.

## **10 Intellectual property and protected rights**

- 10.1 All intellectual property rights (e. g. ownership, copyright, and usage rights, etc.) relating to the services provided by CritMitS, including those arising from presentations (e. g. suggestions, ideas, sketches, preliminary drafts, scribbles, layouts, etc.) as well as individual parts thereof, shall remain with CritMitS and may be withdrawn by CritMitS at any time by. The customer must surrender the materials, presentations, etc. contributed by CritMitS in full and without delay at the request of CritMitS.
- 10.2 CritMitS is entitled to reuse ideas, concepts and procedures which have been developed during the fulfilment of the engagement. These rights apply irrespective of whether employees of the customer were involved in the developments.
- 10.3 In the event of claims made by third parties due to alleged infringement of property rights, the customer is bound to notify CritMitS immediately and, at CritMitS' request, transfer to CritMitS the powers to handle proceedings. Any liability on the part of CritMitS shall be forfeited if CritMitS has not been notified immediately of the claims raised, the requested powers of litigation have not been transferred to CritMitS, or CritMitS has not been supported by the customer to the best of the customer's ability in any litigation.

## 11 Termination of the Engagement / Contract

- 11.1 The contract shall end upon performance of the agreed services, expiry of the agreed term, or by termination.
- 11.2 An open-ended engagement may be terminated by either party at any time. The termination must be made in writing.
- 11.3 In the event of termination by the customer, CritMitS shall be entitled to charge for the services and expenses rendered so far.  
In case of a fixed term engagement or agreed upon notice period, CritMitS is entitled to bill the services and expenses rendered up to date as well as the estimated expenditures until the next possible date of termination or until the end of the project.
- 11.4 In the event of termination by CritMitS, CritMitS finishes those activities which are reasonable and do not allow any delay in order to avoid damage to the customer.
- 11.5 Termination of the contract at an inopportune time causes full indemnification.
- 11.6 Contracts for project work are binding after signing or receiving the order confirmation. While the project work is unfinished, the customer can withdraw from the contract in exchange for compensation for the work already performed and the anticipated expenditure until termination.
- 11.7 Either party may terminate the contractual relationship with immediate effect if the other party becomes insolvent, files an application for a judicial or extrajudicial moratorium, an emergency moratorium or a deferment of bankruptcy within the meaning of Art. 725a Swiss Code of Obligation, falls into bankruptcy, initiates judicial or out-of-court proceedings to settle debts, or enters into other contracts with its creditors due to impending insolvency, or if other comparable acts of non-Swiss or foreign law exist or are imminent.
- 11.8 In the event that the customer fails to meet his contractual obligations despite two reminders, if the customer is in arrears with payments or if for other important reasons CritMitS' claim appears to be in risk, CritMitS is entitled to suspend the provision of services until payment has been made or a respective guarantee from a Swiss bank has been provided.

## **12 Force Majeure**

- 12.1 If a party is unable to fulfil its contractual obligations despite all due diligence due to force majeure such as natural disasters of particular intensity, warlike events, strikes, unforeseen official restrictions, etc., the fulfilment of the contract or the date for the fulfilment of the contract shall be postponed in accordance with the occurrence of the event.

## **13 Applicable law**

- 13.1 Swiss law shall apply to the engagement/contract.
- 13.2 If any individual clauses should be invalid or lose their validity due to circumstances occurring at a later date, the validity of the remaining clauses shall remain unaffected. The invalid clause shall be replaced by a clause that comes closest to what the contracting parties would have wanted, if they had considered the relevant point. The same applies to any gaps in these GTC.
- 13.3 In all other respects, the contractual relationship shall be governed exclusively by Swiss law, excluding the right of collision and international agreements (such as the Vienna Convention on Contracts for the International Sale of Goods).

## **14 Place of Jurisdiction**

- 14.1 Exclusive place of jurisdiction is Zurich.