

# **GENERAL TERMS AND CONDITIONS OF HR PULS GMBH**

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## **1. scope of application and consent**

1.1 HR Puls GmbH (hereinafter referred to as HRpuls) provides a web-based Software-as-a-Service (SaaS) solution for various HR applications. The focus of the applications is on recruitment, HR management and performance. In addition, services for consulting and technical development are offered.

1.2 Every natural and legal person or partnership that has concluded a contract with HRpuls is referred to as client. By using the offer, the client agrees to the application of the General Terms and Conditions (hereinafter referred to as GTC) and the data protection provisions of HRpuls.

1.3 Contract conditions deviating from these GTC are only valid if they have been expressly accepted in writing by HRpuls. In this case they only apply to the respective individual transaction. The remaining contractual provisions, such as written individual contracts or framework contracts, take precedence over these GTC in the event of contradictions. HRpuls reserves the right to change the GTC at any time. Changes will be announced to the client in writing or by e-mail 6 weeks before the change takes effect. Should the client be disadvantaged by the change, he is entitled to terminate the contract by the effective date of the changes. The right of termination expires with the entry into force of the change. The current and valid version will be published on the Internet at [www.hrpuls.de](http://www.hrpuls.de)

## **2. contractual basis**

2.1 The use of the products and services of HRpuls requires a contractual basis. For this purpose, the contractor receives individual contracts with annexes and signs his consent.

2.2 HRpuls is responsible to the client for the careful and contractual provision of the agreed service and provides the services specified in the individual contracts.

2.3 HRpuls may involve third parties (in particular subcontractors) and employees of third parties in the performance of its obligations.

2.4 Unless otherwise agreed, services shall be rendered on the premises of HRpuls. Meetings, implementation of the software and trainings can take place on the premises of the client.

## **3. obligations of the client**

3.1 The obligation of the client to cooperate is limited without agreement of further services by HRpuls or partners of HRpuls to the provision of necessary data for the commissioning, as well as the notification of a changed payment by users or order of additional licenses.

3.2 The client shall provide HRpuls with all necessary cooperation, information, data and documents required by HRpuls for the fulfilment of the contractual obligations. The client shall ensure that all necessary data, documents and personnel are provided in order to enable the contractual services of HRpuls or the acceptance at the agreed time.

3.3 Should the cooperation of the client be necessary, HRpuls will announce this at an early stage. If HRpuls is hindered or completely excluded during the execution of the contractual services or during the execution of the acceptance by the client, the project plan for the provision of services changes at the expense of the client. The project plan will be adapted by HRpuls taking into account the available resources.

3.4 If tasks have to be carried out twice due to the client's non- or untimely cooperation, HRpuls is entitled to charge for this work additionally after prior notification.

3.5 The client appoints to HRpuls a representative authorized to carry out binding decisions and instructions as well as a deputy.

3.6 The client is obliged to notify HRpuls immediately of any additional licenses used. HRpuls is entitled to carry out tests at any time.

3.7 The client must pay the fees agreed in the individual contracts for the services provided by HRpuls in due time. All amounts are net amounts. Services requested by the client whose prices have not been specifically agreed will be invoiced by HRpuls on a time and material basis at the respectively valid standard rates. A settlement of claims by the client is only permissible with the consent of HRpuls.

3.8 The client undertakes to pay the invoiced amount at the latest by the defined term of payment. Within the payment period, the client may raise objections to the invoice in writing. Thereafter, the invoice shall be deemed accepted without reservation. If the customer does not meet his payment obligation within the payment period, the invoice shall be deemed to have been accepted without reservation.

#### **4. prices**

4.1 The current and binding prices are available at HRpuls. HRpuls increases the prices for the services offered to compensate for personnel and other cost increases at most annually, but for the first time twelve months after conclusion of the contract. The increase in prices shall be calculated on the basis of the increase in the official index for "Cost of Living".

4.2 The Contractor shall notify the Client of these price increases in writing or by e-mail. The price increases shall not apply to the periods for which the Customer has already made payments. If the price increase amounts to more than 3% of the previous price, the client is entitled to terminate the contract in its entirety with a notice period of 3 months to the end of a calendar month. If he makes use of this right of termination, the non-increased prices shall be charged until the termination becomes effective.

#### **5. rights of use and copyrights**

5.1 The client receives the non-exclusive, non-transferable right to use the services of HRpuls agreed according to individual contracts for the contractually agreed term. Content and scope of this right result from the individual contracts.

5.2 In order to use the SaaS solution, the client receives the non-exclusive, non-transferable right to access the application via telecommunication and to use the functionalities in accordance with the contract via a browser.

5.3 If products of third parties are part of the services of HRpuls, the client recognizes additional associated terms of use and license of these third parties and grants them the right to assert these terms of use and license directly against the client.

5.4 If the contractual use of the application is impaired by third party property rights through no fault of HRpuls, HRpuls is entitled to refuse the services affected by this. HRpuls will inform the client immediately and allow him access to his data in an appropriate manner.

5.5 HRpuls is entitled to publish its copyright claims in a free design by stating the copyright symbol, the linked company name, company logos and the year date in the application and in documents generated by the application.

5.6 The rights to the stored data, in particular personal data, belong exclusively to the client. Upon termination of the contract, HRpuls will provide the client with its current database on suitable data carriers and in a readable format.

5.7 All other rights not expressly granted remain irrevocably with HRpuls. In particular, the client is not permitted to grant sublicenses or to transfer the rights to third parties without the consent of HRpuls. In particular, the client is not permitted to reproduce, sell or temporarily transfer the application or parts thereof, especially not to rent or lend them.

5.8 Third parties are subsidiaries, locations, representations or other units of the Customer which are not added at a later date, provided that they do not violate the rights of use specified in the individual contracts, or further products are used for the operation.

5.9 The customer has no claim to the source code of the software. Client acknowledges the intellectual property of HRpuls and of any third parties, as well as the services provided by HRpuls and will not do anything to impair their value. He will prevent an unauthorized use within the scope of his possibilities. This applies beyond the termination of the contracts.

## **6 Confidentiality, data protection and data security**

6.1 HRpuls assures that all facts which become known in connection with the activity for the client, in particular information about company and business secrets as well as information about the client's client are kept secret according to legal regulations and are used exclusively for the implementation, operation and support of the software.

6.2 The client also undertakes to treat confidentially all business, technical and scientific know-how acquired by HRpuls in connection with the performance of the contract and to make it available to third parties only with the express consent of HRpuls. Furthermore, the client undertakes not to apply for any industrial property rights.

6.3 The obligation to maintain secrecy shall cease to apply insofar as it:

- were demonstrably known to the informed contractual partner prior to the notification,
- were known or generally available to the public prior to the notification,
- become known or generally accessible to the public after notification without the cooperation or fault of the informed contractual partner,
- essentially correspond to information which is disclosed or made available to the informed contractual partner at any time by an authorised third party.

6.4 The obligation to maintain secrecy shall end 10 years after termination of the contract, unless statutory provisions provide for a longer obligation to maintain secrecy.

6.5 Both parties shall observe the applicable provisions of data protection law, in particular those applicable in Germany, and shall oblige their employees employed in connection with the contract to maintain data secrecy in accordance with DS-GVO and BDSG-neu, unless they are already under a general obligation to do so.

6.6 The provisions on data protection and order data processing shall be regulated in a contract signed by the Customer and HRpuls and separately identified.

## **7. terms of payment**

7.1 The terms of payment are applicable to all agreements between HRpuls and the client, regardless of the form of the agreement (e.g. e-mail).

7.2 License costs are fixed prices and apply to the contractually agreed rights of use. License costs will be invoiced after the order has been placed.

7.3 Services such as configuration or technical adaptations with an order volume of more than EUR 10,000.00 are due 50% after conclusion of the contract and 50% after provision of the system. Services with an order volume of up to EUR 10,000.00 will be invoiced in full after the order has been placed. Individually commissioned services such as workshops, consulting or technical adaptations will be charged at 100% after service provision.

7.4 Fees for maintenance & support are invoiced annually in advance from the time of system provision, depending on the agreement or offer.

7.5 Invoices shall be issued within 30 days of the start of the contract.

7.6 Orders are usually placed at the time the contract is signed or the order is placed. If HRpuls starts work before the contract has been signed with the consent of the client, the day of the written placing of the order by the client shall be regarded as the date of placing the order.

7.7 The provision of the software for the acceptance test in accordance with the project specification shall be deemed to be the provision notification.

7.8 Change requests of the customer after acceptance shall be invoiced as a whole irrespective of the order value and shall be payable together with the notification of the change requests.

7.9 Additional licenses for the user extension and its running costs shall be invoiced upon notification by the Customer.

7.10 Invoiced amounts are due 7 days after the invoice date.

## **8. delay**

8.1 If the client defaults on payment of the invoice within a period of more than two months, HRpuls is entitled to block or suspend all services for the client. The usage-independent fees, such as the complete fees for the operation of the system, are also owed for blocked or discontinued services.

8.2 Furthermore, HRpuls is entitled to terminate the contract after setting a reasonable grace period and its fruitless expiration without observing a period of notice and to demand an immediately payable lump-sum compensation in the amount of one quarter of the remaining annual prices up to the expiration of the regular contract period.

8.3 The amount of damages shall be set higher or lower if HRpuls proves higher damages or the client proves lower damages.

8.4 HRpuls reserves the right to assert further claims due to delayed payment.

## **9 Liability and limitation of liability**

9.1 HRpuls is liable for damages, if intent or gross negligence is proven, within the scope of the legal regulations. Liability for slight negligence is excluded.

9.2 The compensation of consequential damages and financial losses, savings not achieved, loss of interest and damages from claims of third parties against the contractor is excluded in any case, as far as legally permissible.

9.3 HRpuls is not liable for services provided by third parties, respectively for contents retrievable from third parties. For such services and contents HRpuls can neither give an assurance nor assume liability or warranty. This also includes the internet connection to the servers of HRpuls, or other internet providers that are not in the sphere of influence of HRpuls.

## **10 Acceptance, acceptance, inspection and notification of defects**

10.1 The client is obliged to accept all services of HRpuls immediately after their provision and to check them for defects. All defects must be reported in writing immediately, but no later than 10 days after their discovery by the client.

10.2 Individual adaptations to the software must be accepted by the client. HRpuls is entitled to a written acceptance declaration if this is reasonable for the client. Acceptance of the adapted software shall take place after HRpuls has notified the client that the software is ready for use. If the client omits the acceptance for another reason than because of a defect, which makes the use of the software impossible or considerably more difficult, although HRpuls has notified the completion, the contractual performance of HRpuls is considered as accepted 10 days after the aforementioned notification. The service shall be deemed accepted without further ado as soon as the client uses the software operationally or commercially or allows it to be used.

10.3 The client has to check the software immediately after notification of provision and inform HRpuls of the defects. When testing the software, it is tested whether the provided system corresponds to the functionalities defined in the specification. All deviations or errors detected in the process are recorded as defects in a test protocol, taking into account any subsequently agreed changes. The test protocol shall be drawn up jointly by representatives of both contracting parties.

10.4 The parties agree in the test protocol how and within what time the defects are to be remedied. Unless otherwise agreed, the repair of these defects shall commence as soon as possible.

10.5 The Services shall be deemed accepted even without a declaration of acceptance if no significant defects have been notified in writing within 10 days of the notification of provision of the respective Services for acceptance.

10.6 The software services shall also be deemed to have been accepted upon expiry of a period of 10 days after notification of readiness for acceptance if agreement has been reached within the framework of the acceptance procedure, after receipt of the refusal to accept, that no significant defects exist. Otherwise, the services shall be deemed accepted from the point in time at which HRpuls has proven the elimination of all errors listed in the list.

10.7 HRpuls has the right to demand the acceptance of delimitable and acceptable partial results if these serve as a basis for further project activities and work results.

## **11. warranty**

11.1 HRpuls guarantees that the services agreed within the scope of the individual contracts are adhered to.

11.2 These contractual guarantees do not apply in case of incidents or circumstances for which the client is responsible as well as in case of force majeure. Circumstances of force majeure include war, strikes, riots, cardinal legal changes, storms, floods and other natural disasters as well as other circumstances for which the contractor is not responsible. Each contracting party shall inform the other contracting party immediately and in writing of the occurrence of a case of force majeure.

11.3 HRpuls does not guarantee that software created or delivered by it can be used uninterruptedly and error-free in all combinations desired by the client, with any data, infrastructures and programs.

11.4 HRpuls guarantees that the services provided comply with the contractually agreed specifications, assurances and characteristics.

11.5 If there is a defect covered by the warranty, the client is entitled to have it remedied. In any case, the client must first demand rectification of the defect. If the defect to be repaired cannot be repaired after two attempts at reworking, the client can demand the return of the amounts paid for the defective service or demand a proportional reduction of the total amount. The claim to substitute performance of the entire service is excluded.

11.6 A notice of defects must be asserted by the client no later than 10 days after becoming aware of the defect. The warranty period begins with acceptance by the client. Warranty claims expire within 12 months.

11.7 The obligation of HRpuls to remedy defects is necessary if the service provided is not of a quality customary in the industry or does not correspond to the scope of services agreed in writing between the parties and the effort required to remedy the defect is in any case proportional.

11.8 If it is not clearly established after an appropriate examination that a fault or a defective performance is due to negligence or omission on the part of HRpuls, the client is obligated to pay the costs.

## **12. general daily rates and expenses**

12.1 For all services which are to be charged individually according to time expenditure, the daily rates according to the offer shall apply. The daily rates are based on an 8-hour day. Individual hours shall be charged as shares of one day. For project work on weekends or general holidays, which is expressly requested by the client, a surcharge of 50% will be charged.

12.2 Consulting days and workshops will be charged per day according to the statement of costs, plus travel expenses.

12.3 Travel expenses are all additional expenses directly caused by the business trip. This includes travel expenses, additional board and lodging expenses and proven or credible ancillary costs. The accounting of travel expenses such as: Flight costs (economy class), train costs (2nd class) as well as rental car and taxi costs, as well as overnight stays and expenses are charged according to receipts. Driving kilometres by car will be charged at EUR 0.30 per kilometre driven.

### **13. commencement and term of the contract, termination**

13.1 The contract comes into force with its signature by both parties and has a minimum term of 12 months.

13.2 The contractual relationship can be terminated by both parties at the earliest at the end of the minimum term with a notice period of 3 calendar months. Otherwise, the contract is tacitly extended by 12 months and can then be terminated with a notice period of 3 calendar months to the end of the contract.

13.3 The right to terminate the contract for good cause remains unaffected.

13.4 All cancellations must be made in writing.

### **14. consequences of termination**

14.1 If the Client withdraws from an individual contract or terminates such a contract extraordinarily, this shall not automatically result in the withdrawal or termination of other individual contracts, unless these are dependent on the terminated individual contract.

14.2 Due to the temporary limited right of use in hosting, the client has the right to obtain all data on the server of HRpuls in the property of the client in database-capable format upon termination of the agreement.

14.3 Should HRpuls or a legal successor of HRpuls no longer be able to provide the services agreed in this contract, the client is entitled to receive the source code of the program free of charge in human readable electronic form (not compiled).

### **15. further regulations**

15.1 The Contracts (including these GTC) shall each replace all previous agreements, correspondences, declarations, negotiations or agreements between the parties regarding the subject matter of the respective Contracts, unless expressly referred to in the respective Contracts. This shall also apply to offers, tenders or specifications.

15.2 Amendments and supplements to agreements must be made in writing to be valid. This also applies in particular to changes to the written form requirement itself.

15.3 E-mail shall also be deemed to be the agreed written form.

15.4 Should individual or several provisions of the respective contracts (including these General Terms and Conditions) be or become invalid or ineffective, or show a loophole, the validity of the remaining provisions shall remain unaffected thereby. The invalid or ineffective provisions shall be interpreted or replaced in such a way that they correspond as closely as possible to the intended purpose of the agreement. The same shall apply in the event of a contractual gap. This contract is subject to German law. The exclusive place of jurisdiction is Hamburg.

HR Puls GmbH

Hamburg, December 2018

