

# General Terms and Conditions HPC-Gridware (06/2024)

## 1 General, scope of application

- 1.1 The General Terms and Conditions (hereinafter referred to as "GTC") of HPC-Gridware GmbH (hereinafter referred to as "HPC-Gridware") <https://www.hpc-gridware.com/terms-conditions/> consist of these General Terms and Conditions and the supplementary Special Terms and Conditions (hereinafter referred to as "STC") of the various business areas (in particular "STC Software" <https://www.hpc-gridware.com/terms-and-conditions-software> and "STC SLA" <https://www.hpc-gridware.com/terms-and-conditions-sla>). In the following, the abbreviation "GTC" is used for the Framework GTC and the STC in their entirety.
- 1.2 These GTC govern business transactions with commercial customers (hereinafter referred to as "entrepreneurs" or "customers"). Entrepreneurs within the meaning of these GTC are natural or legal persons or partnerships with legal capacity who are acting in the exercise of their commercial or independent professional activity when concluding the legal transaction.
- 1.3 If the contract is concluded, the contract is concluded with the following company:  
**HPC-Gridware GmbH**  
Johanna-Kinkel-Str. 1  
93479 Regensburg  
Germany
- 1.4 All legal relationships, deliveries and services of HPC-Gridware shall be governed exclusively by these GTC in the version valid at the time of conclusion of the contract. Other general terms and conditions not originating from HPC-Gridware, in particular the customer's general terms and conditions, shall not become part of the contract even if they have not been expressly objected to.
- 1.5 These GTC shall also apply to future business relationships with entrepreneurs without the need for a renewed express reference.
- 1.6 The binding contractual language is exclusively German, even if these GTC are or have been translated into other languages.
- 1.7 HPC-Gridware is also entitled to amend these GTC within the existing contractual relationships with effect for the future, insofar as these amendments become necessary as a result of a subsequent disruption to the basis of the transaction and/or the equivalence relationship and/or a subsequent contractual loophole due to changed circumstances (for example due to the ineffectiveness of provisions due to a change in legislation or case law) and are reasonable for the customer. The changes shall become effective if HPC-Gridware draws attention to the changes, the customer is able to take note of the changes and does not object to them within six weeks of receipt of the notification of change. If no objection is made within six weeks of receipt of the notification and the utilization of the services and/or services is continued after expiry of the objection period, the changes shall be deemed to have been effectively agreed from the expiry of the deadline. In the event of an objection, the contract shall be continued under the previous conditions. In the event of an objection, however, both parties are entitled to terminate the contract with a notice period of two weeks. HPC-Gridware shall draw the customer's attention to the aforementioned deadlines and the legal consequences of their expiry in the event of failure to exercise the right of objection whenever changes are announced.

## 2 Conclusion of contract, contract fulfillment

- 2.1 The presentation of HPC-Gridware's services does not constitute a binding offer. Rather, it is a non-binding invitation to customers to submit a binding offer (hereinafter referred to as "order").
- 2.2 By placing an order, the customer makes a binding contractual offer. If HPC-Gridware confirms receipt of the order, this does not constitute a binding acceptance of the order by HPC-Gridware. The confirmation of receipt can be combined with a declaration of acceptance.
- 2.3 Orders are only binding for HPC-Gridware if HPC-Gridware confirms them or fulfills them by executing the order. HPC-Gridware is entitled to accept the contractual offer contained in the order within seven working days (excluding Saturdays, Sundays and public holidays) of receipt.

- 2.4 If HPC-Gridware provides services or performances free of charge, these can be canceled or changed at any time with a notice period of two weeks. This does not give rise to a claim for reimbursement or compensation.
- 2.5 HPC-Gridware reserves the right to use carefully selected and supervised vicarious agents in the fulfillment of contractual obligations in whole or in part. In this case, these vicarious agents shall not become contractual partners of the customer.

## 3 Co-operation

- 3.1 The parties shall work together in a spirit of trust and shall inform each other immediately in the event of deviations from the agreed procedure or doubts about the correctness of the other party's procedure. This does not establish a corporate relationship between HPC-Gridware and the customer.
- 3.2 If the customer recognizes that his own information and requirements are incorrect, incomplete, ambiguous or impracticable, he must inform HPC-Gridware immediately of this and the consequences that he recognizes.
- 3.3 If the customer recognizes that his own information and requirements are incorrect, incomplete, ambiguous or impracticable, he must inform HPC-Gridware immediately of this and the consequences that he recognizes. The parties shall nominate contact persons and their deputies who are responsible for and competent to manage the implementation of the contractual relationship for the contracting party nominating them and who can make binding decisions. The parties recognize that only these named contact persons can make binding decisions. The contact persons shall communicate at regular intervals about progress and obstacles in the execution of the contract in order to be able to intervene in the execution of the contract if necessary.
- 3.4 The parties must notify each other immediately of any changes in the named persons. Until such notification is received, the previously named contact persons and/or their deputies shall be deemed authorized to make and receive declarations within the scope of their previous power of representation.

## 4 Obligations of the customer to co-operate

- 4.1 The customer is obliged to support and cooperate with HPC-Gridware in the fulfillment of its contractual obligations. This includes, in particular, the timely provision of information, content, data material, hardware and software, insofar as this is required for the customer's co-operation. The Customer shall instruct HPC-Gridware in detail regarding the services to be provided by HPC-Gridware, unless otherwise agreed.
- 4.2 The customer shall provide the required number of its own employees with the necessary expertise and specialist knowledge to fulfill the contractual relationship.
- 4.3 If the customer has undertaken to provide HPC-Gridware with materials (image, sound, text or similar) within the framework of the fulfillment of the contract, the customer must provide these immediately and in a common, directly usable, preferably digital format. If it is necessary to convert the material provided by the customer into another format, the customer shall bear the costs incurred for this. The customer shall ensure that HPC-Gridware obtains the rights required to use these materials.
- 4.4 If HPC-Gridware's activities require physical or digital entry, access and/or access, the customer must make this possible.
- 4.5 The customer shall provide assistance at his own expense.
- 4.6 The customer's obligation to co-operate is a primary obligation.
- 4.7 The customer shall be liable for third parties who work for HPC-Gridware in the customer's area of activity at the customer's instigation or with the customer's acquiescence in the same way as for vicarious agents. HPC-Gridware is not responsible to the customer if HPC-Gridware is unable to fulfill its obligations to the customer in whole or in part or in good time due to the behavior of one of the aforementioned third parties.

## 5 Dates, force majeure

- 5.1 Information on dates for the provision of services by HPC-Gridware are to be understood as estimated dates and are non-binding, unless a binding date has been expressly stated in writing by HPC-Gridware. HPC-Gridware can only promise dates for the provision of services by the contact person.
- 5.2 The parties agree that the following events in particular shall constitute force majeure:
  - 5.2.1 War, mobilization, unrest, civil war, acts of terrorism;
  - 5.2.2 Industrial action, strike, lockout;
  - 5.2.3 Official orders;
  - 5.2.4 General disruptions to telecommunications, internet or energy supply;
  - 5.2.5 Natural disasters, in particular earthquakes, floods, storms, severe weather, forest fires and volcanic eruptions;
  - 5.2.6 COVID-19 infections (business closure, quarantine, isolation) or other similar infection events;
  - 5.2.7 Attacks by third parties on the IT systems of HPC-Gridware, in particular by computer viruses, ransomware or other attacks, insofar as these occur despite compliance with protective measures and the usual care.
- 5.3 HPC-Gridware shall not be responsible for delays in performance due to force majeure and shall be entitled to postpone the provision of the affected services for the duration of the hindrance plus a reasonable start-up period. HPC-Gridware shall notify the customer of delays in performance due to force majeure. The same applies to delays in performance due to circumstances for which the customer is responsible (e.g. failure to provide co-operation services on time, delays caused by the customer or third parties attributable to the customer, etc.).

## **6 Changes of performance**

- 6.1 If the Customer wishes to change the contractually agreed scope of the services to be provided by HPC-Gridware, he shall express this change request to HPC-Gridware in text form. The further procedure shall be governed by the following provisions. HPC-Gridware may, at its own discretion, dispense with the procedure set out in sections 6.2 to 6.5 in the case of change requests that can be checked quickly and are likely to be implemented within 8 working hours.
- 6.2 HPC-Gridware shall examine what effects the desired change will have, in particular with regard to remuneration, additional costs and deadlines. If HPC-Gridware recognizes that services to be provided cannot be performed or can only be performed with a delay due to the review, HPC-Gridware shall inform the customer of this and inform the customer that the change request can only be reviewed if the affected services are postponed for an indefinite period of time. If the customer agrees to this postponement, HPC-Gridware will examine the change request. The customer is entitled to withdraw his change request at any time; the initiated change procedure then ends.
- 6.3 After reviewing the change request, HPC-Gridware will explain to the customer the effects of the change request on the agreements made. The presentation shall contain either a proposal for the implementation of the change request or information as to why the change request cannot be implemented.
- 6.4 The contracting parties shall immediately agree on the content of a proposal for the implementation of the amendment request and attach the result of a successful vote to the text of the agreement to which the amendment relates as a supplementary agreement.
- 6.5 If no agreement is reached or if the amendment procedure ends for any other reason, the original scope of services shall remain unchanged. The same applies in the event that the customer does not agree to a postponement of the services for the further performance of the inspection in accordance with Section 6.2.
- 6.6 The dates affected by the change procedure shall be postponed as necessary, taking into account the duration of the review, the duration of the vote on the change proposal and, if applicable, the duration of the change requests to be executed plus a reasonable start-up period. HPC-Gridware will inform the customer of the new procedure.

- 6.7 The customer shall bear the costs incurred as a result of the change request. This includes in particular the examination of the change request, the preparation of a change proposal and any downtime. In the event that an agreement has been reached between the parties on the basis of time spent, the expenses shall be charged in accordance with this, otherwise in accordance with HPC-Gridware's usual remuneration.

## **7 Remuneration, expenses**

- 7.1 HPC-Gridware is generally remunerated on the basis of time and material expenditure, which is invoiced on a monthly basis. Unless otherwise agreed, HPC-Gridware's applicable remuneration rates shall be decisive for the remuneration of expenditure.
- 7.2 The remuneration agreement based on time and material expenditure shall also apply to future business relationships with customers who are not consumers, without the need for a new express reference.
- 7.3 Quotations, estimates or budget plans prepared by HPC-Gridware are non-binding. If the customer has been given a cost estimate or an estimate of the time and materials required, invoicing shall be based on the actual time and materials used. If it is foreseeable that the estimated time and material expenditure will be exceeded, HPC-Gridware will inform the customer immediately.
- 7.4 The customer shall bear all expenses, in particular travel and accommodation costs, expenses and claims for remuneration and license costs of third parties incurred in the context of the execution of the contract, against proof.
- 7.5 Unless otherwise agreed, 50% of traveling time is deemed to be billable time spent. When traveling by car, the individual kilometer rate shall be deemed to have been agreed. When traveling by train, first class is deemed to be agreed.
- 7.6 HPC-Gridware may charge an expense allowance of 15% for the processing of orders with third parties whose costs are charged directly to the customer.
- 7.7 If the parties have not reached an agreement on the remuneration of a service provided by HPC-Gridware, the provision of which the customer could only expect in return for remuneration, the customer shall pay the usual remuneration for this service. In case of doubt, the remuneration rates demanded by HPC-Gridware for its services shall be deemed customary.
- 7.8 The client's suggestions and instructions, whether for design, technical or other reasons, and his other co-operation shall not affect the remuneration arrangements.
- 7.9 In the case of dispatch, the remuneration shall be subject to an appropriate flat-rate shipping charge of at least six euros.
- 7.10 All payments are subject to the applicable statutory value added tax and are to be made free to HPC-Gridware's paying agent.

## **8 Rights**

- 8.1 Orders placed with HPC-Gridware for media design, database and software development and/or conception are always copyright contracts, which as such are aimed at the granting of rights of use to work performances. HPC-Gridware expressly reserves all copyrights, rights of use and/or ancillary copyrights and other industrial property rights to the services provided and other work results.
- 8.2 The application of the provisions of the German Copyright Act (UrhG) is also agreed between the parties in the event that the services provided by HPC-Gridware do not reach the level of creativity required under Section 2 UrhG, even when preparing the offer.
- 8.3 Unless otherwise agreed, HPC-Gridware grants the customer the non-exclusive, nationally limited right to use the services provided in accordance with the contract and limited to the respective type of use. The right of use is limited to the agreed period. In the case of continuing obligations, these rights are only granted for their duration. In both cases, the right of use automatically reverts to HPC-Gridware at the end of the contract without the need for an express declaration.
- 8.4 Any use beyond that described in Section 8.3 or otherwise agreed is not permitted, notwithstanding Section 8.5. In particular, the Customer is prohibited from granting sub-licenses and/or processing, reproducing, leasing or otherwise exploiting or transferring the services without the consent of HPC-Gridware.

- 8.5 Any use other than the contractually agreed use requires the express consent of HPC-Gridware in text form. Consent for any use other than the contractually agreed use, in particular for editing, multiple use (e.g. for another medium or product) or repetition (e.g. subsequent editions), may be made dependent on additional remuneration.
- 8.6 The rights of use shall not be granted until the remuneration has been paid in full. Until payment has been made in full, the customer is only permitted to use the services provided on a revocable basis. HPC-Gridware may revoke and/or discontinue the use of such services for which the customer is in default of payment for the duration of the default.
- 8.7 Suggestions and instructions from the client, whether for design, technical or other reasons, and any other co-operation on the part of the client shall not constitute a joint copyright, unless this has been expressly agreed.
- 8.8 In the context of the pre-contractual offer preparation, HPC-Gridware expressly reserves all rights, in particular property rights and copyrights to offers, cost estimates, drafts, mock-ups, designs, drawings, graphics, initial assessments and requirements analyses as well as all other documents and records (hereinafter: offer documents). If no corresponding contract is concluded between the parties, the Offer Documents must be returned to HPC-Gridware immediately or, if they are available in digital form, deleted permanently and HPC-Gridware must confirm this deletion without being asked to do so. The offer documents may not be disclosed to third parties at any time without the consent of HPC-Gridware. The offer documents are expressly subject to confidentiality in accordance with Section 16 and/or an additional confidentiality agreement.

## **9 Infringements, exemption from liability**

- 9.1 The customer shall indemnify HPC-Gridware against all claims asserted by third parties against HPC-Gridware due to culpable infringement of their rights and/or legal interests by the customer. This also applies if only HPC-Gridware acts externally and the customer has only acted culpably in the internal relationship with HPC-Gridware.
- 9.2 The customer shall bear the costs of HPC-Gridware's necessary legal defense, including all court and legal fees at the statutory rate. This does not apply if the customer is not responsible for the infringement.
- 9.3 In the event of a claim by a third party, the customer is obliged to provide HPC-Gridware immediately, completely and truthfully with all information, in particular previous correspondence, which is necessary for the examination of the claims and a defense.
- 9.4 In the event of infringements of rights, HPC-Gridware may, at its own discretion, make changes to the affected service which, while safeguarding the interests of the customer, ensure that an infringement no longer exists or acquire the necessary rights of use for the customer.
- 9.5 If the customer cannot be reached, HPC-Gridware may initially suspend or switch off the affected service in order to rectify the infringement in the short term.

## **10 Warranty**

- 10.1 Claims for defects shall be governed by the statutory provisions within the statutory periods, unless otherwise stated in the following provisions of this section.
- 10.2 For entrepreneurs, the warranty period is one year from acceptance of the work or from delivery of the goods or from provision of the service. This does not apply if the law prescribes longer periods in accordance with § 438 Para. 1 No. 2 BGB (buildings or items for buildings) and § 634a Para. 1 No. 2 BGB (construction defects).
- 10.3 An insignificant impairment of the function of the software shall not be deemed a material defect if this cannot be expected after appropriate objective consideration. Only deviations from the specification that can be proven and reproduced by the customer shall be deemed to be a material defect in the software. However, a material defect does not exist if it does not occur in the last version of the software provided to the customer and its use is reasonable for the customer.

- 10.4 In the event of only a minor breach of contract, in particular in the case of only insignificant defects, the entrepreneur shall not be entitled to withdraw from the contract. If HPC-Gridware is not responsible for the breach of duty resulting from a defect, the contractor is not entitled to withdraw from the contract. Entrepreneurs may only withdraw from the contract due to a breach of duty that does not consist of a defect in the work if HPC-Gridware is responsible for this breach of duty.
- 10.5 HPC-Gridware shall, at the discretion of HPC-Gridware, initially provide subsequent fulfillment for defects in the goods by remedying the defect or delivering a defect-free item.

## **11 Liability**

- 11.1 HPC-Gridware shall only be liable for its own fault and the fault of its legal representatives, executives or other vicarious agents in accordance with the following provisions.
- 11.2 HPC-Gridware shall be liable without limitation for damage caused intentionally or through gross negligence by HPC-Gridware or by legal representatives, executives or simple vicarious agents of HPC-Gridware, as well as in the case of fraudulent intent and in the event of culpable injury to life, limb or health (personal injury). HPC-Gridware also has unlimited liability under the Product Liability Act.
- 11.3 In the event of a slightly negligent breach of an obligation, the fulfillment of which may be relied upon and the fulfillment of which is essential for the proper performance of the contract (cardinal obligation), the obligation to pay compensation shall be limited to such damage as must typically be expected to occur within the scope of the present contractual relationship (foreseeable damage typical for the contract). Otherwise, liability for slightly negligent damage is excluded.
- 11.4 HPC-Gridware shall only be liable for the services and performances provided free of charge by HPC-Gridware (including the retrieval of free content) insofar as the damage has arisen due to the contractual use of the free content and/or services and/or performances, and only in the event of intent (including fraudulent intent) and gross negligence, as well as in the event of personal injury and in accordance with the Product Liability Act.
- 11.5 HPC-Gridware is not liable for damage, downtime or data loss caused by faults in telephone lines, servers and other equipment for which it is not responsible. Furthermore, HPC-Gridware is not liable for damage, downtime or data loss caused by force majeure.
- 11.6 Users are generally responsible for backing up their own data. In particular, HPC-Gridware does not carry out backups and is not responsible for the accidental loss of data.

## **12 Statute of limitations**

Claims by HPC-Gridware against contractors for remuneration shall lapse after five years at the earliest.

## **13 Retention of title**

- 13.1 HPC-Gridware retains title to goods, works and/or all rights to licenses and other services (hereinafter referred to as "reserved goods") as security for the payment claim against the customer until the payment has been settled in full.
- 13.2 If the customer is a merchant, HPC-Gridware retains ownership of goods, works and/or all rights to licenses and other services until all claims arising from the current business relationship have been settled in full.
- 13.3 The customer is authorized to resell the reserved goods in the ordinary course of business. He hereby assigns to HPC-Gridware all claims including all ancillary rights in the amount of the invoice amount which accrue to him from the resale to a third party; HPC-Gridware accepts the assignment. After the assignment, the customer shall continue to be authorized to collect the claim. However, HPC-Gridware reserves the right to collect the claim itself as soon as the customer does not fulfill his payment obligations and is in default of payment. This authorization of resale is subject to the condition that the customer either receives payment from his customer in the amount of HPC-Gridware's claim or agrees a corresponding retention of title with the customer.

- 13.4 The customer is authorized to resell the reserved goods in the ordinary course of business. He hereby assigns to HPC-Gridware all claims including all ancillary rights in the amount of the invoice amount which accrue to him from the resale to a third party; HPC-Gridware accepts the assignment. After the assignment, the customer shall continue to be authorized to collect the claim. However, HPC-Gridware reserves the right to collect the claim itself as soon as the customer does not fulfill his payment obligations and is in default of payment. This authorization of resale is subject to the condition that the customer either receives payment from his customer in the amount of HPC-Gridware's claim or agrees a corresponding retention of title with the customer.
- 13.5 If goods subject to retention of title are combined by the Customer with the property of a third party, the Customer hereby assigns to HPC-Gridware the claims against the third party arising from the combination, together with all ancillary rights, in the amount of the value of the goods subject to retention of title (invoice amount); HPC-Gridware accepts the assignment.
- 13.6 Pledging or transfer by way of security of the goods (co-)owned by HPC-Gridware is not permitted. In the event of seizures or other interventions by third parties in the goods subject to retention of title, the Customer shall immediately draw attention to HPC-Gridware's ownership and inform HPC-Gridware immediately in text form, handing over all documents necessary for the objection in particular.
- 13.7 The right to resell, use or install the goods subject to retention of title shall expire upon application for the opening of insolvency proceedings, cessation of payments or implementation of out-of-court settlement proceedings.
- 13.8 The customer is obliged to treat and store the reserved goods with care. In particular, he shall be obliged to insure them adequately and at replacement value at his own expense against damage caused by fire, water, natural hazards, damage to property and theft. If maintenance and inspection work is required, the customer must carry this out regularly and in good time at his own expense.
- 13.9 Until full payment of the remuneration, the customer is only authorized to use the reserved goods on a revocable basis. HPC-Gridware may, after prior warning, revoke and/or suspend the use of the goods subject to retention of title for the duration of the delay if the customer is in arrears with payment.
- 13.10 If services are canceled in accordance with Section 13.9, HPC-Gridware can make the reactivation of the service dependent on a reactivation fee of EUR 60.00.
- 13.11 HPC-Gridware is obliged to release the securities to which it is entitled at the request of the customer if their value exceeds the claims to be secured by more than 20 per cent. HPC-Gridware shall be entitled to choose between various security interests for the release.
- 13.12 The assertion of the retention of title does not constitute a cancellation of the contract, unless HPC-Gridware expressly declares such a cancellation.

#### **14 Delivery**

- 14.1 HPC-Gridware assumes no procurement risk and shall only be liable for its own fault and the fault of its legal representatives, executives or other vicarious agents in accordance with the following provisions with regard to timely delivery.
- 14.2 Information on delivery dates is to be understood as estimated delivery times and is non-binding unless a binding delivery date has been expressly stated in writing by HPC-Gridware. Delivery dates can only be confirmed by the contact person at HPC-Gridware.
- 14.3 HPC-Gridware is authorized to make partial deliveries and/or provide partial services if these are reasonable for the customer. In the case of final partial deliveries and/or partial services where complete delivery and/or service is no longer possible, the remuneration shall be reduced accordingly.
- 14.4 All deliveries are ex works or ex warehouse.
- 14.5 Dispatch and transport shall be at the customer's risk. The risk shall pass to the customer at the latest as soon as the consignment has been handed over to the person carrying out the transport.

- 14.6 The risk of accidental loss or accidental deterioration shall pass to the customer upon notification of readiness for dispatch to the customer if dispatch is delayed for reasons for which the customer is responsible. The customer shall bear the costs for storage of the goods after the transfer of risk. Further claims remain unaffected by this.
- 14.7 If ordered goods cannot be delivered because HPC-Gridware, through no fault of its own and with due diligence, is not supplied by the supplier despite its contractual obligation, both parties shall be entitled to withdraw from the contract. In this case, the customer shall be informed immediately that the ordered goods are no longer available. In the event of cancellation by either party, HPC-Gridware shall reimburse the customer immediately for any consideration already paid. HPC-Gridware shall not be liable for damages in this case.
- 14.8 When downloading and sending data via the Internet, the risk of loss and alteration of the data is transferred to the customer when the first network interface is crossed.
- 14.9 HPC-Gridware is not responsible for delays in delivery due to force majeure (e.g. strike, lockout, official orders, general disruptions in telecommunications, etc.) and circumstances within the customer's area of responsibility (e.g. failure to provide co-operation services on time, delays by the customer or third parties attributable to him, etc.) and HPC-Gridware is entitled to postpone delivery for the duration of the hindrance plus a reasonable start-up time. HPC-Gridware shall notify the customer of delays in delivery due to force majeure.
- 14.10 The limitations of liability set out in this section shall not apply if HPC-Gridware can be accused of willful intent or negligence, nor in the event of personal injury attributable to HPC-Gridware or in the event of fraudulent intent. The provisions of the Product Liability Act also remain unaffected by this.

#### **15 Export clause**

- 15.1 The (further) sale of the goods and services may be subject to German, EU or US export control law and, if applicable, the export control law of other countries. A (further) sale to embargoed countries and/or to restricted persons and/or to persons who may use the goods and services for weapons, nuclear technology or military purposes is subject to authorization.
- 15.2 It is the customer's responsibility to check conformity with export control legislation and, if necessary, to establish such conformity.
- 15.3 HPC-Gridware is entitled to refuse fulfillment of the contract if fulfillment of the contract would violate export regulations. In this case, the customer must be informed immediately and given the opportunity to establish legal conformity. If legal conformity is still not achieved, HPC-Gridware is entitled to withdraw from the contract. In this case, HPC-Gridware shall reimburse the customer immediately for any consideration already paid. HPC-Gridware is not liable for damages in this case. The latter shall not apply if HPC-Gridware can be accused of intent or negligence, nor in the case of personal injury attributable to HPC-Gridware or in the case of fraudulent intent.

#### **16 Secrecy**

- 16.1 In the course of the joint cooperation between the contracting parties, confidential information and documents in each other's area of expertise may be disclosed. The parties therefore enter into the following agreement for the purpose of preventing the disclosure of this confidential information and documents to unauthorized third parties.
- 16.2 The parties undertake not to make the confidential information and documents of the other contracting party disclosed in connection with the joint co-operation, in whatever form, accessible to third parties, unless they are intended to be made accessible to third parties. Third parties shall not include auxiliary persons such as freelancers, subcontractors or professionals engaged for the performance of the contractual relationship who are bound to secrecy by law.
- 16.3 The parties agree that the obligations provided for in these GTC constitute reasonable confidentiality measures under the circumstances within the meaning of § 2 No. 1 lit. b) GeschGehG.

- 16.4 The provisions of this section shall continue to apply for a period of six years after fulfilment, termination or cancellation of this agreement. Insofar as trade secrets within the meaning of the German Trade Secrets Protection Act (GeschGehG) are concerned, it is agreed that they shall apply for an unlimited period of time.
- 16.5 If a contracting party so requests, the documents handed over by it, such as strategy papers, briefing documents, etc., must be returned to it after termination of the contractual relationship or demonstrably destroyed, unless the other contracting party can assert a legitimate interest in these documents.

## **17 Software**

Our Special Terms and Conditions for Software (STC Software) also apply to our software services. <https://www.hpc-gridware.com/terms-and-conditions-software>

## **18 SLA**

Our Special Terms and Conditions of Contract SLA (STC SLA) also apply to our services in the area of Service Level Agreements. <https://www.hpc-gridware.com/terms-and-conditions-SLA>

## **19 Prohibition of assignment and set-off**

- 19.1 The assignment of claims against HPC-Gridware to third parties is excluded if the customer is an entrepreneur. § Section 354a HGB remains unaffected by this.
- 19.2 The customer may not offset counterclaims unless these have been legally established by judgment or court order or remain undisputed by HPC-Gridware. This shall not apply if the counterclaim and the offset principal claim are in a contractual mutual exchange relationship or are synallagmatically linked.

## **20 Reference citation**

HPC-Gridware may name the customer as a reference customer on its website or in other media. HPC-Gridware may also reproduce, distribute, publicly reproduce or make publicly accessible the services provided for demonstration and/or advertising purposes and refer to them, unless the customer has asserted a conflicting legitimate interest in text form.

## **21 Final provisions**

- 21.1 These GTC and all contracts and/or legal relationships arising with customers are subject exclusively to German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 21.2 In relation to entrepreneurs, the place of fulfillment for all contractual and legal relationships is the registered office of HPC-Gridware. This also applies to subsequent fulfillment.
- 21.3 If the parties are merchants within the meaning of the German Commercial Code, special funds under public law or legal entities under public law, the registered office of HPC-Gridware shall be the exclusive place of jurisdiction for all claims arising from the legal relationship with the customer. This also applies to customers who have no general place of jurisdiction in the European Union and to customers who have moved their domicile or usual place of residence to a country outside the European Union after concluding a contract. Irrespective of this, however, HPC-Gridware is also entitled to sue the customer at his general place of jurisdiction.
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