

Terms and Conditions Service Agreement

Professional Service Agreement

§ 1 Scope of this Agreement

These terms apply to services and support provided by TWAICE Technologies GmbH ("TWAICE") and together with the confirmed order form the Professional Service Agreement (Agreement) between TWAICE and the costumer.

These terms shall apply exclusively. Differing or contrary terms shall not apply except if expressly agreed upon in writing.

§ 2 Scope of the service

TWAICE shall provide consultancy and support services in connection with its Software as a Software-as-a-Service (SaaS) solution or the TWAICE Simulation Models.

The details of the extent of services are set out in the confirmed order.

Unless explicitly agreed otherwise in an order, the service is provided as consultancy and advisory services only, and shall not be considered a work contract engagement.

§ 3 Availability of the service

The service hours are from Monday to Friday between 9 and 17 o'clock, except on public holidays in Bavaria.

§ 4 Cooperation and duties of the parties

TWAICE shall determine the manner and means of performing and providing the service and shall use commercially reasonable efforts to provide the service in accordance with any agreed or estimated time schedules set forth in the order. Any estimates in an order are for informational purposes only and may change depending on the requirements of the project.

The parties agree that they shall cooperate with each other closely and efficiently, whereby the personnel, organisational, expert and technical responsibility of Costumer shall also be important, in particular to supply proper notes, documentation and information necessary for the provision of the services, to make available at its own cost all facilities, equipment and suitably qualified personnel for the cooperation, to the extent necessary for the provision of the services; and to fulfil the (cooperation) obligations on time, to carry out the (cooperation) activities on time and to give declarations in accordance with the time limits.

Customer shall nominate at least one experienced employee as its contact partner who will coordinate all activities related to the service.

If customer fails to perform the activities for which it is responsible, then the obligations of TWAICE which cannot be rendered without such activity or only by incurring disproportionate additional expenses, shall be suspended for the duration of such default. Additional expenses caused thereby shall be reimbursed by customer to TWAICE in addition to the agreed fees on the basis of the then current rates per man working day. This shall not affect any legal rights of TWAICE to terminate this Agreement.

§ 5 Fees, Invoicing

The fee owed by customer to TWAICE for the services hereunder is set forth in the order.

Services outside the agreed extent of Customer Support or subject matter of this Agreement shall be paid for by customer on the basis of the then current rates per man working day. Unless otherwise specified in the offer, the rate for a man working day is 1200 EUR.

TWAICE will invoice the fees to customer in accordance with the payment schedule set forth in the order. Invoices are payable without deduction within 14 days of the date of the invoice. If customer is in

default of payment, the outstanding amount shall bear interest at the rate of nine percent over the then current basic rate of interest. This shall not affect any more extensive rights.

All amounts stated in the order are excluding any applicable Value Added Tax. The current rate of statutory Value Added Tax shall be invoiced and paid in addition to all fees. TWAICE shall state the rate and amount of Value Added Tax separately on the invoice.

If a deduction or withholding is required by law, customer shall pay such additional amount and will ensure that the net amount received by TWAICE equals the full amount which TWAICE would have received had the deduction or withholding not been required.

§ 6 Warranty

If the service is to be qualified as work performance in individual cases and customer demands replacement performance because of a defect, TWAICE has the right to choose between the improvement, replacement delivery or replacement of services. If the defect is not cured within a first time limit and customer has set TWAICE a reasonable second time limit without success or if a reasonable number of attempts to remedy, replacement deliveries or replacement services are unsuccessful, then customer may, subject to the statutory prerequisites, terminate this Agreement or reduce the price and claim damages or reimbursement of costs. The remedying of the defect may also take place through the delivery or installation of a work-around.

Defects must be notified in writing with a comprehensible description of the error symptoms, as far as possible evidenced by written recordings, hard copies or other documents demonstrating the defects. The notification of the defect should enable the reproduction of the error.

Customer's rights in case of defects are limited to 12 months.

Customer shall inspect the delivered items without delay for any transport damage and other apparent defects preserve the appropriate evidence.

Any claims for damages in respect of defective services are subject to the limitations set forth under § 7.

§ 7 Liability, Damages

TWAICE shall be liable for losses under the terms of this Agreement only in accordance with the provisions set out under (a) to (e):

(a) TWAICE shall be unrestricted liable for losses caused intentionally or with gross negligence by TWAICE, its legal representatives or senior executives and for losses caused intentionally by other assistants in performance; in respect of gross negligence of other assistants in performance TWAICE's liability shall be as set forth by the provisions for simple negligence in (e) below.

(b) TWAICE shall be unrestricted liable for death, personal injury or damage to health caused by the intent or negligence of TWAICE, its legal representatives or assistants in performance.

(c) TWAICE shall be liable for losses arising from the lack of any warranted characteristics up to the amount which is covered by the purpose of the warranty and which was foreseeable for TWAICE at the time the warranty was given.

(d) Licensor shall be unrestricted liable in the event of product liability.

(e) TWAICE shall be liable for losses caused by the breach of its primary obligations by TWAICE, its legal representatives or assistants in performance. Primary obligations are such basic duties which form the essence of the Agreement, which were decisive for the conclusion of the Agreement and on the performance of which customer may rely. If TWAICE breaches its primary obligations through simple negligence, then its ensuing liability shall be limited to the amount which was foreseeable by TWAICE at the time the respective service was performed.

TWAICE shall be liable for loss of data only up to the amount of typical recovery costs which would have arisen had proper and regular data backup measures been taken.

Any more extensive liability of TWAICE is excluded on the merits.

§ 8 Confidentiality

The parties agree to keep all trade secrets (confidential information) which becomes known to them during the performance of this Agreement strictly confidential and agree only to use such information for the contractually agreed purposes. Trade secret means information which meets all of the following requirements:

- (a) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (b) it has commercial value because it is secret;
- (c) it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;

TWAICE agrees to allow only such of its employees, who are entrusted with the provision of services in the course of this contract, access to the confidential information of the customer. Both parties agree at the request of the other party to require their employees to sign an appropriate confidentiality declaration and to present this to the other party. The parties shall not seek to register intellectual property rights in respect of confidential information of the other party.

The acquisition of confidential information shall be considered lawful when the information is obtained by any of the following means:

- (a) independent discovery or creation;
- (b) observation, study, disassembly or testing of a product or object that has been made available to the public or that is lawfully in the possession of the acquirer of the information who is free from any legally valid duty to limit the acquisition of the information;
- (c) exercise of the right of workers or workers' representatives to information and consultation in accordance with Union law and national laws and practices;
- (d) any other practice which, under the circumstances, is in conformity with honest commercial practices.

The acquisition, use or disclosure of confidential information shall be considered lawful to the extent that such acquisition, use or disclosure is required or allowed by law.

The rights and obligations under § 8 shall not be affected by the termination of this Agreement. Both parties agree at the option of the other party to return or destroy the confidential information of the other party upon the termination of this Agreement, to the extent that such information still exists.

§ 9 Term and Termination

The Agreement shall have a term of 12 months and thereafter shall be automatically renewed in each case for a further period of 12 months unless either party gives notice at least 3 months prior to the end of the current contractual period.

The right of termination for cause shall remain unaffected.

Termination notices must be given in writing.

§ 10 Granting Of Rights

TWAICE grants to customer a non-exclusive right, unlimited in terms of time and place, to use all performance results that result from the provision of the service.

§ 11 Final Provisions

TWAICE has the right to engage subcontractors to provide the services under this Agreement.

The relationship of the parties is that of independent contractors. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, employment or any such similar relationship.

Amendments or additions to this Agreement must be made in written form to be effective. This shall also apply to amendments of this form requirement. Insofar as the written form is stipulated in this agreement for declarations, a declaration in text form is sufficient.

German law shall apply to the exclusion of conflict of laws provisions and the UN Convention on Contracts for the international sale of goods. Exclusive place of jurisdiction is Munich.

Should any provision of this Agreement be or become invalid, this shall not affect the validity of the remaining terms.