



GENERAL TERMS & CONDITIONS

TWAICE Technologies GmbH | March 2022

1. Application, Subject Matter

- 1.1. These general terms and conditions (hereinafter referred to as "**TCs**") govern the legal relationship between TWAICE Technologies GmbH, Joseph-Dollinger-Bogen 26, 80807 Munich ("**TWAICE**") and the customer. These TCs shall apply exclusively; deviating customer terms shall not apply except if TWAICE has expressly confirmed their application in writing.
- 1.2. These TCs shall also govern all future transactions between the parties unless explicitly agreed otherwise.
- 1.3. The services to be provided by TWAICE (the "**Services**") are set out in the customer proposal which has been agreed between the Parties (the "**Customer Proposal**"). The Customer Proposal has precedence over the terms of these TCs. Special terms for specific Services provided by TWAICE may apply in addition (and with precedence) to these TCs if the customer orders such Services and provided that reference is made to such special terms in the Customer Proposal.
- 1.4. The Customer Proposal signed and submitted by the customer to TWAICE shall constitute a binding offer to enter into an agreement with TWAICE on the provision of the Services identified in the Customer Proposal. TWAICE can accept such offer (and thereby establish a binding contract) by countersigning the Customer Proposal or providing the customer with a corresponding order confirmation.

2. Provision of Services and License

- 2.1 TWAICE will provide the Services as specified in the Customer Proposal partly with reference to Product Data Sheets. TWAICE shall be entitled to determine the manner and means of performing and providing the Services at its own reasonable discretion provided that the Services meet the requirements set out in the Customer Proposal and the Product Data Sheet. Unless specifically agreed otherwise in the Customer Proposal, the statutory terms for works contracts shall not apply to the Services and they shall not be subject to an acceptance procedure.
- 2.2 Unless agreed otherwise in the Customer Proposal, TWAICE Services are standard services which TWAICE makes available to numerous customers. TWAICE may from time to time improve, modify, extend and enhance the Services (while retaining their core functions as specified in the Customer Proposal or the Product Data Sheet). In that case, TWAICE will update the Product Data Sheet accordingly and will inform the Customer of such changes by providing appropriate release notes through the TWAICE Analytics Platform.
- 2.3 Where TWAICE as part of its Services makes software, data bases, concepts, documents, presentations, prototypes or other work results developed or provided by TWAICE or its subcontractors ("**TWAICE Materials**") available to the customer, TWAICE grants the customer (subject to the payment of the Service Charges) a non-exclusive, non-sublicensable, non-transferable, revocable and limited right to use such TWAICE Material strictly for the purpose of using the relevant TWAICE Service and for the term set out in 9. Any other rights of the customer in the TWAICE Materials are excluded. Nothing in these TCs shall limit or exclude TWAICE's right to use the TWAICE Materials or other materials developed, used or provided by TWAICE under these TCs for its own business purposes or for other customers.
- 2.4 In the provision of the Services (and without prejudice to sub-section 2.1 above), TWAICE may use open source software components which may be subject to specific open sources license terms. If legally required, TWAICE makes such license terms available at <https://twaice.com/open-source-licenses/>.
- 2.5 Dates and time periods set out in the Customer Proposal or communicated otherwise by TWAICE are non-binding estimates unless it is expressly stated in the Customer Proposal (or otherwise in text form) that they are binding.
- 2.6 TWAICE may temporarily suspend the customer's access to the Services if and in so far as TWAICE reasonably considers such suspension to be required to stop or reduce a material risk to the TWAICE platforms or systems (the "**TWAICE Systems**") or any customer systems or data. TWAICE will inform the customer of such suspension without undue delay and will release it as soon as the risk does no longer apply.

3. Customer Cooperation Obligations

- 3.1 The customer shall reasonably support TWAICE in the provision of the Services as further set out in the Product Data Sheet. In addition, the customer shall provide TWAICE with access to customer's information, data, systems, personnel and premises as reasonably required by TWAICE for the provision of the Services.

The customer shall make decisions and issue declarations relating to the Services within a reasonable time period after receipt of a corresponding request by TWAICE.

- 3.2 The customer shall ensure that data and other information it transmits to TWAICE (e.g. by uploading it in the TWAICE Systems) complies with the applicable laws and in particular does not infringe third party intellectual property rights or data privacy rights.
- 3.3 Where to use the Services the customer needs to connect to TWAICE Systems or platforms the customer is responsible for establishing and maintaining the data connection between the interface of the relevant TWAICE Systems to the internet and the customer's Systems.
- 3.4 The customer shall appoint an experienced employee as its project lead who shall coordinate and supervise all customer activities related to the Service.
- 3.5 If the 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 the customer to TWAICE on a time & material basis applying the rates set out in the Customer Proposal.

4. Service Charges, Terms of Payment

- 4.1 The customer shall pay the fees for the Services as set out in the Customer Proposal ("Service Charges"). All amounts stated in the Customer Proposal are exclusive of applicable VAT which the customer shall pay in addition to the Service Charges.
- 4.2 TWAICE will invoice recurring lump sum Service Charges in advance prior to the beginning of the time period to which they relate (e.g. a calendar month). Recurring charges depending on variable components (e.g. kWh/batteries/etc.) will be invoiced quarterly in arrears based on the integrated capacity into the TWAICE Analytics Platform. Capacity that is added or removed into the TWAICE Analytics Platform during a month will be charged in full for that month. Service Charges for time & material services will be invoiced monthly in arrears. Service Charges for projects or specific deliverables will be invoiced after the respective project or deliverable has been completed/delivered to the customer, unless the parties have agreed different payment terms in the Customer Proposal.
- 4.3 Expenses and disbursements shall be invoiced additionally in accordance with the principles set out in the Customer Proposal. Where Service Charges are invoiced on a time & material basis, TWAICE will charge units of 15 minutes; travel time shall be chargeable as working time.
- 4.4 Unless otherwise agreed in the Customer Proposal, invoices are due for payment within 30 days of receipt by the customer.

5. Defects

- 5.1 Services provided by TWAICE will essentially comply with the applicable Services description in the Customer Proposal and the Product Data Sheet. Insignificant deviations from such descriptions shall not constitute a defect. TWAICE does not warrant that the Services will in all aspects comply with general market standards; public statements, announcements, or advertisements by TWAICE or that they are fit for the purpose intended by the customer.
- 5.2 Without prejudice to any applicable statutory inspection and notification obligations, the customer shall notify TWAICE (in writing or text form) of any defects it has detected in the Services without undue delay and shall provide a comprehensive description of the defect and the applicable circumstances.
- 5.3 In case of defects in the Services TWAICE will in its sole discretion either remedy/correct the defect (if reasonable) or provide the affected Service (or part of the Service) again without defects and at no charge to the customer. If an attempted remedy has failed for the third time, the customer is entitled to reduce the Service Charge for the affected Service appropriately. The customer's right to claim damages in accordance with statutory law (and subject to the limitations in 6 below) shall remain unaffected. The customer's right to terminate the Services due to a defect shall only apply in the cases further set out in 9.2. The options set out in this § 5.3 shall be the customer's exclusive remedies in the event of a defect.
- 5.4 The customer's rights due to defects are excluded if the customer has modified the Services or has not used the Services in accordance with the requirements set out in the Product Data Sheet or otherwise agreed between the Parties, except if the customer proves that the defect was not caused by such modification or non-compliance.

- 5.5 TWAICE may charge the customer at the agreed rates for efforts and expenses incurred by TWAICE for the investigation or elimination of defects which were caused by the customer or its delegates.
- 5.6 The limitation period for claims based on defects shall be 12 months from the occurrence of the defect, or (if the Service is subject to an acceptance) from acceptance.
- 5.7 Where in the Product Data Sheet specific Services, modules or functionalities are identified as "Beta" or a "Beta Version", these are not yet fully developed and/or tested. All information on such beta modules or functionalities is non-binding and only reflects the then current development status. TWAICE does not commit that, or in which format, such modules or functionalities will remain or become part of the commercial standard version of the Services. Beta modules or functionalities are made available only for the purpose of providing the customer with an opportunity to test them and provide feedback. They are provided strictly "as is" and with no warranty or liability of TWAICE (except for willful misconduct).

6. Limitation of Liability

- 6.1 TWAICE shall be liable without limitation in accordance with the statutory provisions for damages resulting from injury to life, limb or health as well as for intent, gross negligence and - insofar as applicable - in accordance with the Product Liability Act (Produkthaftungsgesetz). Otherwise, TWAICE's liability shall be limited as set out below.
- 6.2 In cases of simple/normal negligence, TWAICE shall only be liable if essential contractual obligations ("cardinal obligations") are breached and in these cases TWAICE's liability shall be limited to the damages which were reasonably foreseeable. Any other liability of TWAICE for simple/normal negligence (subject to § 6 6.1) shall be excluded.
- 6.3 TWAICE's liability pursuant to § 6 6.2 shall be limited to a total maximum amount equal to 50% of the Service Charges the customer has paid to TWAICE for the Services during the 12 months period immediately preceding the damaging event. Except in the cases set out in § 6 6.1, TWAICE's liability for indirect and consequential damages (including loss of profit) shall be excluded entirely.
- 6.4 The limitations of liability set forth in this 6 shall apply to all claims for damages or compensation under or in relation to the Services irrespective of the legal grounds of such claims.
- 6.5 In cases where due to force majeure it is impossible or unreasonable for TWAICE to provide the Services TWAICE will notify the customer without undue delay and will take all reasonable steps to minimize the impact of the force majeure event. For the duration of the force majeure event and a reasonable start-up period, TWAICE shall be relieved from those obligations under these TCs whose performance is prevented or materially hindered by the force majeure event; applicable milestones and deadlines are adjusted accordingly. A force majeure event is any event beyond TWAICE's reasonable control whose impact TWAICE could not have prevented by applying reasonable diligence, including natural disasters, arson, war, pandemics, strikes, or lawful lockouts.

7. Confidentiality

- 7.1 Each party agrees that all information received from the other party under these TCs which is marked as confidential or from an objective perspective must be considered to be confidential, shall be maintained in confidence and shall not be disclosed to others. The receiving party agrees that without the prior written consent of the other party it will not use such information for any purpose other than the fulfillment of this contract.
- 7.2 Each party shall use no lesser standard of care to protect the confidentiality of information received from the other party than it uses to protect its own confidential information, and shall limit disclosure of such information to those of its group companies, personnel and consultants who have an actual need to know for purposes related to this contract and who have a written obligation to protect the confidentiality of such information.
- 7.3 Upon termination of the contract, each party will return to the other party such party's confidential information and data and will delete all copies of such information/data under its and its subcontractors' control (subject to applicable retention requirements).
- 7.4 TWAICE shall, subject to applicable mandatory data protection requirements, be entitled to retain technical data uploaded to the TWAICE Systems or otherwise provided by the customer or collected by TWAICE in the course of providing the Services. TWAICE may use such data in anonymized/pseudonymized format for its business purposes including to improve its artificial intelligence applications.

8. Data Protection

- 8.1 TWAICE will comply with all applicable data protection requirements.
- 8.2 Where TWAICE in providing the Services acts as a data processor pursuant to Art. 28 GDPR TWAICE and customer will enter into a data processing agreement in accordance with the requirements of Art. 28 GDPR.
- 8.3 TWAICE shall, subject to applicable mandatory data protection requirements, be entitled to retain and use all data uploaded by the Customer to the TWAICE Analytics Platform or otherwise provided or collected in the course of the TWAICE Services. Such data will be aggregated and anonymized/pseudonymized so that its original source will not be disclosed to third parties. TWAICE may use such anonymized/pseudonymized data to improve its artificial intelligence functionalities or any other aspects of the TWAICE Services, or for other business purposes.

9. Term and Termination

- 9.1 The contract between TWAICE and the customer enters into force upon TWAICE's acceptance of the Customer Proposal submitted by the customer. Unless agreed otherwise in the Customer Proposal or Part B of these TCs, the contract continues to apply for an indefinite period of time. It can be terminated by each party in writing (sec. 126 German Civil Code) with a notice period of six months to the end of a calendar quarter. Any ordinary termination is excluded during any minimum contract term the parties may have agreed in the Customer Proposal.
- 9.2 Each party's statutory right to terminate this contract for good cause with immediate effect shall remain unaffected. A breach of contract shall only entitle a party to terminate the contract for good cause if the other party has breached a material obligation and – provided that the breach is curable – has failed to cure the breach within a reasonable grace period of at least twenty working days from receipt of a corresponding written warning notice served by the terminating party.

10. Final Provisions

- 10.1 Collateral agreements and amendments to these TCs must be made in writing. This also applies to a waiver of this written form requirement. Where these TCs establish a written form requirement, text form shall be sufficient unless expressly provided otherwise (e.g. by reference to section 126 German Civil Code).
- 10.2 The customer may not assign to any third party any of its rights under the agreement in whole or in part without the prior written consent of TWAICE.
- 10.3 TWAICE shall be entitled to involve subcontractors in the provision of the Services.
- 10.4 Unless agreed otherwise in the Customer Proposal, the place of performance for Services shall be the business seat of TWAICE.
- 10.5 Offsetting and retention rights of the customer shall be excluded. This shall not apply if its corresponding counterclaims have been confirmed by a final court order or acknowledged by TWAICE in writing.
- 10.6 TWAICE shall be entitled to update and change these TCs from time to time. In this case, TWAICE will inform the customer of such changes with a notice period of at least six weeks before such changes become effective. If the customer does not object in writing to the changes within four weeks from receipt of the notice, the changes shall be deemed approved. If the customer objects to the changes the changes will not become effective between TWAICE and the customer, but TWAICE shall, within four weeks from receipt of the objection, be entitled to terminate this contract with a notice period of six weeks to the end of a month.
- 10.7 German law shall apply, excluding its conflict of laws rules and the UNCISG. The courts competent for Munich shall have exclusive jurisdiction over all matters relating to these TCs.
- 10.8 If any provision of these TCs should be invalid in whole or in part or if these TCs contain any omission, the effectiveness of the remaining provisions shall not be affected. The invalid or omitted provision shall be replaced with retroactive effect by an effective and enforceable provision which most closely legally and financially approximates to what the parties intended or would have intended if they had taken such invalidity into account when agreeing these TCs.