

**GENERAL TERMS AND CONDITIONS  
FOR CONSULTING SERVICES  
OF SIFo GMBH (SIFo)**

**AS OF OCTOBER 24, 2023**

**§ 1  
SCOPE**

- 1.1 These General Terms and Conditions (GTC) apply to all consulting services SIFo provides to its customers. SIFo does not recognize any conflicting or deviating terms and conditions of the customer unless SIFo has expressly and in writing agreed to their applicability. Deviations from these GTC can only be agreed upon in writing.
- 1.2 These GTC shall apply to all future business transactions between SIFo and the customer until new GTC are issued by SIFo, even if they are concluded without explicit reference to these GTC. The version valid at the time of contract conclusion shall be decisive.
- 1.3 SIFo reserves the right to amend these GTC from time to time with a reasonable notice period of at least four weeks. If the customer does not object within four weeks after the announcement of the amendments of these GTC, the amended GTC shall be deemed accepted. The announcement shall explicitly highlight the significance of the four-week period. If the customer objects to the amendment of the GTC, the contractual relationship shall continue based on the previous GTC; however, SIFo reserves the right to terminate the contract in accordance with the agreed termination periods.

**§ 2  
CONCLUSION OF CONTRACT**

- 2.1 A contract between SIFo and the customer is only concluded upon mutual signing of a written contract by authorized representatives of the parties. These GTC form an integral part of the contract.
- 2.2 The written contract shall specify the consulting services provided by SIFo, the commencement of service delivery, the contract duration, notice periods and the agreed remuneration or its calculation method.

- 2.3 By signing the written contract, the customer confirms that they have reviewed the subject matter of the contract and service description and that the agreed services meet their needs.
- 2.4 Assurances made by employees or contractors of SIFo are irrelevant unless confirmed in writing by authorized representatives of SIFo.
- 2.5 Obvious errors or mistakes in printing, calculation, writing, and calculations in the written contract are not binding to SIFo and do not entitle the customer to compensation.
- 2.6 Without prior written consent from SIFo, the customer is not entitled to transfer rights and obligations from a contract with SIFo to a third party.

### **§ 3 CONSULTING SERVICES**

- 3.1 SIFo offers its customers consulting services, especially in the field of quality management for medical devices. The scope of SIFo's consulting services are defined in the written contract.
- 3.2 The contract may include regular appointments for consulting services by SIFo ("Jour Fixe") that SIFo reserves for the customer. In addition, the customer may request individual consulting appointments with SIFo, specifying the desired time and duration. Without an appointment, SIFo strives to respond promptly to customer consulting inquiries.
- 3.3 SIFo provides consulting services orally unless a written report is agreed upon or the specific case of service provision requires the preparation of a written report.
- 3.4 Unless otherwise agreed in the written contract, SIFo provides its services remotely via telephone or video conference. Upon agreement, consulting appointments may also occur at the customer's premises or project location, with the customer bearing the associated travel costs (including travel, daily allowances and overnight expenses).
- 3.5 It is mutually agreed that SIFo provides its consulting services as part of a freelance service agreement and not as part of an employment contract. During service provision, SIFo acts independently and on its own responsibility. SIFo is not bound to a specific place of work or working hours and has the necessary tools for providing the required consultations. SIFo owes the customer proper consultation in the agreed field of expertise, in accordance with the state of technology, science, and legal requirements at the time of service provision. However, SIFo cannot guarantee or be liable for the

success of the customer's project for which the customer seeks consulting services from SIFo.

- 3.6 SIFo is not obligated to provide consulting services in person but may engage suitable subcontractors. If a subcontractor provides consulting services, the customer must confirm the hours worked by the subcontractor within five working days or raise substantiated objections. The customer's confirmation of the subcontractor's time sheet is deemed given if the customer does not raise objections within five working days of receiving the time sheet.

#### **§ 4**

#### **CONTRACT DURATION AND NOTICE PERIODS**

- 4.1 Contracts between the contracting parties shall be concluded for the contract period stated in the written contract. If no specific contract period is specified in the written contract, the contract shall be deemed to have been concluded for an indefinite period and may be terminated in writing by giving four weeks' notice to the last day of the month. If a specific contract period is stipulated, the contractual relationship shall be automatically extended by a further month in each case, unless the customer's project has already been completed and the customer does not reject the extension of the consultancy contract in writing at least one week before the agreed end of the contract.
- 4.2 Both parties have the option to terminate the contract with immediate effect for good cause. Good cause for SIFo includes, in particular:
- a) The customer's qualified default in payment, despite a reminder and a grace period of 14 days.
  - b) The customer's failure to cooperate in the provision of services by SIFo (see § 7) despite the setting of a reasonable grace period.
  - c) A breach of essential contractual provisions by the customer (especially non-solicitation clause § 8);
  - d) If there are justified concerns about the creditworthiness of the customer, over whom insolvency proceedings have not been opened, and the customer does not make advance payments or provide suitable security at SIFo's request and the customer's poor financial circumstances were not disclosed by the customer when the contract was concluded.

SIFo may, at its own discretion, instead of immediately terminating the contract, interrupt the ongoing service provision and request the customer to remedy the good cause for the termination of the contract within a reasonable period.

- 4.3 All cases of extraordinary termination for a reason attributable to the sphere of the customer shall not affect SIFo's claim to the fee for the

contract period up to the next possible termination date and shall also not affect the assertion of claims for damages. SIFo does not have to take into account what it has saved by terminating the contract prematurely or what it has acquired or could have acquired by using its capacities elsewhere.

## **§ 5**

### **AGREED DATES AND DEADLINES**

- 5.1 If dates or deadlines are agreed, SIFo shall endeavour to meet them. If SIFo cannot meet a date or deadline, it shall inform the customer.
- 5.2 Failure to meet deadlines or dates shall only entitle the customer to assert his legal rights if the customer sets SIFo a reasonable period of grace of at least 14 days. Any claims of warranty or damages shall only exist in the event of intent or gross negligence on the part of SIFo or its subcontractors.
- 5.3 Unavoidable or unforeseeable events do not give rise to any consequences of delay and lead to a corresponding extension of the deadline or postponement of the agreed date.

## **§ 6**

### **FEE AND PAYMENT**

- 6.1 Unless otherwise agreed in the written contract, consultancy services provided by SIFo shall be invoiced at the agreed hourly rate. In case of doubt, the agreed hourly rate shall be understood as a net amount. Billing units shall be started half hours.
- 6.2 Necessary cash expenses of SIFo (e.g., travel expenses) are not included in the agreed hourly rates and shall be invoiced separately.
- 6.3 All fees are indexed according to the Consumer Price Index 2020 published by Statistics Austria or a subsequent index. The base figure for the index calculation is the month of the conclusion of the contract. The respective index adjustment may be made annually in the month of conclusion of the contract. The non-assertion of the index adjustment does not mean a waiver of the assertion of price increases.
- 6.4 Unless expressly agreed otherwise in the contract, a monthly minimum hourly quota of 50% of the monthly consultancy scope agreed upon in the contract is deemed to be agreed. SIFo shall invoice its consultancy services according to the consultancy hours provided, but at least according to this minimum hourly quota. Unused

consulting hours of the minimum hourly quota expire and cannot be carried over to the following month.

- 6.5 SIFo is entitled to invoice its services on a monthly basis.
- 6.6 SIFo shall issue a proper invoice to the customer.
- 6.7 SIFo is entitled to send invoices to the customer also in electronic form. The customer expressly agrees to receiving invoices in electronic form.
- 6.8 Invoices are due for payment without any deductions within 14 days of the invoice date. Upon expiry of the payment period, the customer shall automatically be in default of payment without a reminder. Customers must raise justified objections to the invoice within one month; otherwise, the invoice shall be deemed to have been accepted. In the event that installments have been agreed upon, default of even a single installment payment shall result in a lapse of the installment agreement.
- 6.9 If the customer is in default of payment, SIFo is entitled to charge statutory interest. If the payment deadline is exceeded, SIFo reserves the right to charge reminder fees of EUR 40.00 net for reminders and all costs incurred for collection steps by third parties (lawyer's fees or costs of collection agencies) according to the applicable lawyer's tariff or according to the provisions of the Collection Fees Ordinance.
- 6.10 Compliance with the agreed payment deadlines is an essential condition for the fulfilment of the contract by SIFo. Non-compliance with the agreed payments entitles SIFo to stop the current service provision within 14 days after written notice and to withdraw from the contract (see also § 4.2).
- 6.11 Until payment has been made in full, any permission or right to use works granted to customer shall be limited until the payment deadline. The customer must obtain any extension of the deadline from SIFo before the deadline expires. The expiry of the limited permission or right to use works granted due to late payment of all claims existing at the time of delivery or arising later from this contractual relationship shall not affect the customer's full payment obligation.
- 6.12 Payments can only be made directly to SIFo with debt-discharging effect. If several claims against the customer are outstanding, payments by the customer shall be credited against the oldest claim

in each case. The set-off shall always be made first against any costs, then against the interest and finally against the main claim.

- 6.13 The customer shall only have a right of set-off in the event of SIFo's inability to pay and in the event of claims that have been acknowledged in writing or have become res judicata.

## **§ 7**

### **COOPERATION OF CUSTOMER IN THE CONSULTATION**

- 7.1 SIFo requires all relevant information and documents from the customer to be able to provide sound advice. The customer undertakes to provide the information and documents available to him in good time and without special request and to answer SIFo's questions, insofar as this is necessary for the purposeful execution of the advice.
- 7.2 SIFo may use the information received, without checking it, as the basis for its advice, provided that an error on the part of the customer or misinformation on the part of the customer is not evident to SIFo. Warranty claims and claims for damages are excluded if the customer has not provided SIFo with all the information required for the advice.

## **§ 8**

### **NON-SOLICITATION AGREEMENT**

- 8.1 The customer is prohibited from soliciting employees or subcontractors or entering into a direct service agreement with employees or subcontractors of SIFo. This obligation shall apply for the period of performance and shall continue for a period of one year after the end of the contract.
- 8.2 This non-solicitation clause also applies to offers by the customer to hire an employee of SIFo or to directly commission subcontractors of SIFo.
- 8.3 In the event of a breach of this contractual non-solicitation clause, the customer shall be obliged to provide comprehensive information and to provide comprehensive accounts of any infringement, in particular to hand over copies of all contracts or contract offers that violate the provision.
- 8.4 In the event of a breach of this contractual non-solicitation clause, the customer shall pay a contractual penalty of EUR 25,000.00, irrespective of fault. The contractual penalty is independent of the actual occurrence of damage. This does not exclude the assertion of a claim for damages exceeding the amount of the contractual penalty. The

contractual penalty shall be due upon the occurrence of the event for which it was agreed.

## **§ 9**

### **PROTECTION OF INTELLECTUAL PROPERTY**

- 9.1 The customer shall be granted an unlimited permission to use the works produced by SIFo or its subcontractors in the course of the consultancy contract (in particular reports, analyses, expert opinions, calculations, organization charts, etc.). In the absence of an agreement to the contrary, a permission granted to the customer to use SIFo's copyrighted works shall only extend to the scope and purpose covered by the contractual relationship. Permissions to use works in favor of the customer shall only be granted for a limited period of time with the payment term until the agreed remuneration has been paid in full and shall only be deemed to have been granted definitively after full payment of the remuneration agreed for this purpose.
- 9.2 Without express consent, the customer is not entitled to reproduce, distribute, or make the works of SIFo available to third parties. A breach of these provisions by the customer entitles SIFo to immediately terminate the contractual relationship prematurely and to assert other legal claims, in particular for injunctive relief and/or damages.

## **§ 10**

### **WARRANTY**

- 10.1 SIFo warrants that the consultancy services it provides comply with the agreed service description and can be used for the agreed purpose. Consultancy services are provided in accordance with the state of the art, science, and legal situation at the time the service is provided. However, SIFo cannot guarantee the success of customer's project for which the customer seeks consultancy.
- 10.2 Regardless of fault, SIFo is entitled and obliged to rectify any inaccuracies and defects in its consultancy services that become known within the framework of the legal warranty. SIFo shall inform the customer of this without delay.
- 10.3 The warranty period is six months. The customer must submit any complaints to SIFo in writing within 14 days after the service has been provided and give reasons for the complaint. The complaint must contain a specified description of the alleged defects in as much detail as possible. The customer shall only be entitled to a reduction in payment or cancellation if SIFo does not remedy the defect after one month or, in the case of more complex defects, within a reasonable

period beyond this. A presumption of defectiveness according to § 924 ABGB is excluded.

- 10.4 Defects in a part of the service provided do not entitle the customer to complain about the remaining services.
- 10.5 SIFo may refuse to rectify its services if the customer has not fulfilled its payment obligations to the extent that corresponds to the defect-free part of the services provided.

## **§ 11**

### **LIABILITY AND COMPENSATION**

- 11.1 Claims for damages in cases of slight negligence are excluded by mutual agreement; this does not apply to personal injury. Consequential damages and lost profits and unrealized efficiency gains are excluded from liability. The customer's right to warranty remains unaffected in accordance with § 10.
- 11.2 The customer must in each case provide evidence that the damage is attributable to fault on the part of SIFo.
- 11.3 Claims for damages by the customer can only be asserted in court within six months of knowledge of the damage and the damaging party, but at the latest within three years of the event giving rise to the claim.
- 11.4 SIFo is not liable for damages incurred by the customer due to the disregard of measures advised by SIFo.
- 11.5 Insofar as SIFo's liability is excluded or limited, this also applies to the personal liability of SIFo's employees and subcontractors.

## **§ 12**

### **CONFIDENTIALITY**

- 12.1 SIFo promises the customer confidentiality about all matters that become known to it in connection with its work for the customer and are not intended for the public. SIFo will ensure that this confidentiality obligation is also fulfilled by its employees and subcontractors and will impose corresponding confidentiality obligations on them. The obligation to maintain confidentiality extends beyond the end of the contractual relationship.
- 12.2 However, this contractual obligation of confidentiality does not apply in the context of legal proceedings or towards a professional party representative who is obliged to maintain confidentiality, in particular

in a judicial or out-of-court dispute with the customer (e.g., fee lawsuit), provided this is necessary to protect SIFo's rights.

- 12.3 Without prejudice to this obligation of confidentiality, SIFo is entitled, until revoked in writing, to include the customer and, if necessary, a short description of the service provided to him in the customer's reference list and to use this information for advertising and presentation purposes in any fair form of art, especially on the Internet.
- 12.4 SIFo will take all reasonable and state-of-the-art measures to protect the customer's data stored by it. If a third party illegally succeeds in gaining control of data stored by SIFo or reusing it, SIFo is only liable to the customer in the event of intentional or grossly negligent behavior.

### **§ 13 DATA PROTECTION**

You can find our privacy policy at the following link:  
<https://sifo-medical.com/en/privacy-policy>

### **§ 14 FINAL PROVISIONS**

- 14.1 All agreements which contain an amendment, supplement, or concretization of these GTC, as well as special assurances and arrangements, must be made in writing. This shall also apply to any agreement to waive this formal requirement. If they are declared by employees or subcontractors of SIFo, they shall only be binding if organs of SIFo with power of representation give their written consent to this. All notifications and declarations by the customer concerning this contractual relationship must be made in writing.
- 14.2 The contractual relationship between SIFo and the customer is governed by the law of the Republic of Austria, excluding the UN Convention on Contracts for the International Sale of Goods (= "UN Convention on Contracts for the International Sale of Goods" / "CISG" / "Vienna Convention on Contracts for the International Sale of Goods"), and excluding the conflict-of-law rules of private international law and Rome I. All disputes arising from the contractual relationship between SIFo and the customer shall be settled in writing.
- 14.3 Any dispute between the Parties in connection with this Agreement, which the Parties fails to resolve within 30 days from notice thereof from the notifying Party, shall be submitted to arbitration in Austria under the auspices of the Vienna International Arbitration Centre ("VIAC") in accordance with the International Chamber of Commerce's

Rules of Arbitration (“ICC Arbitration Rules”) and the arbitration shall be conducted in the English language. The costs of any arbitration carried out pursuant to this paragraph shall be borne by the Party which VIAC ruled against. Unless otherwise agreed between the Parties, the Parties agree not to commence any court proceedings in relation to the dispute until they have exhausted the arbitration channels of this clause and such arbitration has either terminated or failed. Nothing in this clause shall however prejudice either party from its rights and remedies under the Agreement or at law.

- 14.4 Should individual provisions of these GTC be or become invalid in whole or in part, the validity of the remaining provisions shall remain unaffected. In this case, the invalid provision shall be replaced by a legally valid provision that corresponds to the economic purpose of the invalid provision or the presumed intention of the contracting parties or comes closest to it. The same shall apply if a provision should prove to be unenforceable for practical reasons.

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