

General Terms and Conditions of SEQIS GmbH (as of March 2022)

Disclaimer: The following translation of the General Terms and Conditions of SEQIS GmbH into the English language has been made with great care, yet it is merely a service for your convenience and has no legal binding force. Upon conclusion of a contract, only the original German version of the General Terms and Conditions of SEQIS GmbH is binding, which you can access at: <https://www.seqis.com/de/agb>

1. Scope of Contract and Validity

1.1. All offers and contracts for services ("Services") of SEQIS GmbH ("SEQIS") shall be governed exclusively by these General Terms and Conditions ("GTC"). Any deviating (business, purchasing) terms and conditions of the contracting party ("Customer") are hereby expressly rejected; such terms and conditions shall only be binding for SEQIS if they have been agreed upon in writing and signed.

1.2. If specific terms and conditions for the Services offered by SEQIS are set forth in the offer of SEQIS, the provisions in the offer shall prevail.

2. Contract Language

Contractual and business language is German.

3. Offer, Conclusion of Contract, Subject Matter of Performance

3.1. SEQIS' offers are non-binding.

3.2. A contract shall only be concluded when SEQIS has sent a written order confirmation after receipt of the Customer's written order.

3.3. All contracts shall bind SEQIS only to the extent offered in writing in the offer including these GTC. Any terms and conditions deviating from this, in particular in the order, shall not become part of the contract.

3.4. Amendments to the contract must be in writing and signed by the Customer and SEQIS. In this case SEQIS shall be entitled to make corresponding price adjustments.

3.5. SEQIS shall be entitled to mandate cooperation partners for the provision of Services.

4. Cooperation Obligations of the Customer

4.1. SEQIS is only able to provide the agreed Services, if the Customer ensures that all necessary cooperation obligations are fulfilled in a timely manner and free of charge and that all organizational prerequisites are met in the Customer's operation during the entire period in which SEQIS provides the Services. Compliance with the cooperation obligations is therefore a primary performance obligation on the part of the Customer.

4.2. This includes in particular the following cooperation obligations:

1. provision of all information, documents, data, access and resources, in particular this shall be done as soon as possible upon request of SEQIS;
2. provision of information about all processes and circumstances which are of importance for the performance of the contract;
3. provision of all necessary work equipment and premises in sufficient quantity on site;
4. provision of competent employees to the extent required;
5. make sure that all Services can be performed without any negative impact on the IT systems of the Customer;
6. responsibility for the data backup at the Customer site.

4.3. SEQIS assumes the correctness and completeness of the information provided by the Customer and shall in particular not be obliged to verify the legality of the use of information provided by the Customer to SEQIS. Should claims be asserted against SEQIS by third parties in connection with the use of such information, the Customer shall indemnify and hold SEQIS harmless.

4.4. If the performance of the contract is prevented or delayed due to circumstances within the Customer's sphere of influence, SEQIS shall be entitled to the agreed remuneration irrespective thereof.

5. Prices, Taxes and Fees

5.1. All prices are in Euro excl. value added tax and shall only apply to the individual contract.

5.2. The remuneration stated in the offer of SEQIS shall be only an estimate. SEQIS' Services shall be invoiced on a time & material basis according to actual spent hours at the rates specified in SEQIS' offer.

5.3. Travel costs and travel expenses as well as daily and overnight allowances will be invoiced separately to the Customer according to the respective valid rates. Travel times are charged as working time.

6. Performance Deadlines and Dates; Default

6.1. SEQIS is anxious to meet performance deadlines and dates, however these are non-binding.

6.2. Performance deadlines and dates shall only be binding if they have been explicitly agreed upon in writing by SEQIS and the Customer. The time of performance of the Services is decisive for compliance with the performance date or deadline.

6.3. Performance deadlines and dates can only be met if the Customer and third parties fulfill their cooperation obligations on time and, provided that no circumstances occur, which are beyond SEQIS' sphere of responsibility, which make SEQIS' performance difficult or impossible. Such circumstances as well as performance delays and cost increases due to incorrect, incomplete or subsequently changed data and information or documents provided by Customer, are not attributable to SEQIS and cannot lead to default on the part of SEQIS. Any additional costs in this respect shall be borne by the Customer. If SEQIS has to interrupt the performance of Services without SEQIS being responsible for this, SEQIS shall be entitled to charge an appropriate fee for the interruption period.

6.4. If SEQIS anticipates circumstances that could prevent SEQIS from performing on time or in the agreed quality, SEQIS shall notify the Customer.

6.5. In the event that SEQIS fails to meet explicitly agreed performance dates or deadlines or the content, quality or number of Services due to circumstances for which SEQIS is solely responsible, the statutory provisions regarding default shall apply. The same shall apply in the event that the Customer is in default with his cooperation obligations.

7. Invoicing and Payment

7.1. Invoicing shall take place after Services have been rendered or monthly in case of a contract term of more than one month.

7.2. Invoices issued by SEQIS including value added tax shall be payable within 14 days from the date of invoice without any deductions and free of charges.

7.3. SEQIS retains title to all Services rendered until full payment of the remuneration including interest and other claims has been made.

7.4. In the event of default by the Customer with due payments SEQIS shall have the right to refuse performance.

7.5. If the Customer's financial situation is unfavorable from SEQIS' point of view or if the Customer is in default of payment, SEQIS shall be entitled,

1. to postpone the fulfillment of its own obligations, including those Services to be rendered to Customer under different contracts, regardless of their type, until full payment has been made, and to interrupt or cease the performance of Services;
2. to make due the entire price or remuneration still outstanding (loss of term);
3. to claim securities also for claims not yet due from all contracts at SEQIS' discretion;
4. to charge default interest as of the due date in the amount of the usual bank rate for overdrafts, however, at least 12% interest p.a;
5. to withdraw from the contract if a reasonable period of grace is not observed.

7.6. The Customer shall not be entitled to set off any claim it may have against SEQIS against SEQIS' claim or to assign or pledge such claim to third parties (prohibition of set-off and assignment).

7.7. The Customer shall have no right of retention in favor of any claims against SEQIS. The Customer shall not be entitled to withhold payments due to alleged warranty claims or other claims for defects.

7.8. The Customer shall be obligated to reimburse SEQIS for any interest and costs incurred as a result of its default in payment as well as any damages incurred.

8. Grant of Use Rights

8.1. The Customer shall be granted the non-exclusive right to use the results of the Services in a temporally, factually and geographically unrestricted manner after delivery or - if agreed upon after acceptance - and full payment, provided that SEQIS owns any copyrights and can grant the Customer any copyrights thereto, respectively.

8.2. In principle SEQIS shall have and retain all property rights and exclusive intellectual property rights to all concepts and methods and shall be entitled to provide comparable Services to other customers. The aforesaid shall even apply in the event that SEQIS grants the Customer the exclusive use rights to the results and elaborations of SEQIS.

9. Right of Withdrawal

9.1 SEQIS shall be entitled to withdraw from the contract concluded with the Customer:

1.
 - a) in the event of repeated or serious breach of the contract or these GTC;
 - b) in the event of a deterioration of the Customer's financial situation;
 - c) in case of acquisition of the Customer by a competitor of SEQIS;
 - d) in the event of the opening of insolvency proceedings against the Customer until the expiry of six months after opening of insolvency proceedings within the meaning of Section 25a IO (Insolvency Regime);
2. due to the opening of insolvency proceedings and the existence of a good cause, in particular
 - a) the causes for termination specified under Sub-Section 1 a) or c) of this provision;
 - b) in the event of non-continuation of the business of the Customer in the insolvency proceedings;

- c) in case of default of the Customer in the performance of obligations which have become due after opening of the insolvency proceedings;
- d) in the event of a breach by the Customer of ancillary obligations agreed in the contract or the GTC;
- e) if the termination of the contract is essential for SEQIS to avoid personal or economic disadvantages.

9.2 In the event that insolvency proceedings are started against the Customer, SEQIS reserves the right to change the terms of payment or performance, in particular to switch to concurrent performance.

9.3 Force majeure, labor disputes, natural disasters and transport blockades, epidemics and pandemics as well as other circumstances beyond the control of SEQIS shall release SEQIS from its obligation to perform or allow SEQIS to reschedule any performance dates and deadlines.

9.4 Withdrawal from the contract by the Customer is subject to the written consent of SEQIS. If SEQIS agrees to a withdrawal, SEQIS shall have the right to charge the remuneration for the Services rendered and costs incurred and in addition an amount of 30% of the offer value not yet invoiced.

10. Warranty

10.1. SEQIS warrants that the Services are performed

1. state of the art compliant and
2. in accordance with an appropriate standard of care and quality.;

10.2. SEQIS shall not be responsible for success in the provision of the Services in the sense of a contract for work and services („Werkvertrag“). An acceptance of the Services shall be not required unless explicitly agreed in writing.

10.3. The warranty shall be excluded if the Customer himself or a third party have interfered with the Services provided by SEQIS.

10.4. Customer shall be obligated to notify SEQIS without delay of any defects occurring within the warranty period and to describe the nature of the respective defect, its effects and the circumstances under which it occurs. Claims for defects shall only be valid if the reported defect is reproducible or can be shown by machine-generated output.

10.5. SEQIS shall be entitled to examine alleged defects at any time and repeatedly, otherwise any warranty claims of the Customer shall lapse. If the notice of defect is unjustified, the Customer shall bear the costs for examination, support and remedy of defects.

10.6. In the event of justified warranty claims, SEQIS undertakes, at its discretion, to remedy defects in the Services either by improvement or replacement within a reasonable period of time. If two attempts at improvement or replacement fail, the Customer may rescind from the contract, except in the case of minor defects.

10.7. Notwithstanding the above-mentioned periods, claims under the warranty for Services shall lapse in any case after one year from the date of their performance.

10.8. The statutory presumption of defects under § 924 ABGB shall not be applicable. The burden of proving the existence of a defect at the time of handover or, if agreed in writing, at the time of acceptance, shall therefore be on the Customer in any case.

10.9. SEQIS shall not be liable for consequential damages due to a defect on the grounds of liability for damages.

10.10. Notices of defects and any improvements or replacements by SEQIS shall not interrupt the warranty and statutory periods.

11. Liability

11.1. SEQIS shall not be liable in case of slight negligence. In the event of gross negligence, SEQIS' liability shall be limited to the offer value to the extent permitted by law. In case of intent and wanton negligence (krass grobe Fahrlässigkeit) SEQIS shall be liable in accordance with the statutory provisions.

11.2. In any case, SEQIS shall not be liable for consequential damages, indirect damages, loss of profit, costs associated with an interruption of operations, loss of data or claims by third parties, etc.

11.3. Insofar as the liability of SEQIS is excluded or limited, this shall also apply to the personal liability of employees of SEQIS as well as third parties acting on behalf of SEQIS.

11.4. The Customer's claims for damages shall lapse in accordance with the statutory provisions, however, no later than one year after knowledge of damage and damaging party.

12. Non-Solicitation

The Customer shall refrain from any solicitation and employment, of employees of SEQIS, also via third parties, during the term of the Agreement and 12 months after termination of the Agreement; otherwise SEQIS shall have a claim for a lump-sum compensation in the amount of one annual salary of the person concerned.

13. Data Protection, Confidentiality

13.1. The Customer and SEQIS undertake to keep confidential all matters which come to the Parties' knowledge in connection with the performance of the contract. Both contracting parties undertake to impose the confidentiality obligation on their employees and vicarious agents.

13.2. The confidentiality obligation shall remain binding for one (1) year after termination or expiry of the contract. The aforesaid shall not apply in case of a legal obligation to disclose information.

13.3. SEQIS' data protection declaration, available at www.SEQIS.com/de/rechtliche-hinweise, provides information on the data protection obligations according to Art. 13 and 14 GDPR.

14. Place of Performance

Unless otherwise agreed in writing, the registered office of SEQIS, Neusiedler Straße 36, A-2340 Mödling shall be the place of performance.

15. Miscellaneous

15.1. If any provision of a contract should be or become wholly or partially void, ineffective or unenforceable, the validity, effectiveness and enforceability of the other provisions of the contract shall not be affected thereby. The contracting partners shall cooperate to replace any such invalid, ineffective or unenforceable provision by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of the invalid, ineffective or unenforceable provision as regards subject-matter, extent, time, place and scope.

15.2. The Customer grants SEQIS the right to name the Customer as a reference.

15.3. The contract concluded between the Customer and SEQIS and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with the laws of Austria without giving effect to the rules of the private international law and the United Nations Convention on Contracts for the International Sale of Goods.

15.4. Any such disputes shall be subject to the exclusive jurisdiction of the competent court for the registered office of SEQIS.

15.5. Any act or omission of SEQIS may not be construed as a waiver of claims by the Customer, unless SEQIS explicitly declares such waiver in writing.

15.6. Important notifications shall be made in writing, by fax or by e-mail and shall be addressed to the contact person named in SEQIS' offer. In addition, notices from the Customer which are directed to notices of defects, setting of a grace period due to delay, amendment or termination of the contract concluded with SEQIS shall only be legally effective if duly signed by the Customer.