

## General Terms and Conditions of Heyde (Switzerland) AG

of September 1<sup>st</sup>, 2023

### 1 Scope

- 1.1 These general terms and conditions ("GTC") apply to all products and services supplied by Heyde (Switzerland) AG ("Heyde") for the customer.
- 1.2 By submitting an order for products or services from Heyde, the customer declares that he accepts these GTCs.
- 1.3 To the extent not expressly agreed upon in writing, differing terms of contract do not apply. For licenses as well as support and maintenance services for third-party products, though, the terms of license and maintenance agreements of the product manufacturer, available at the manufacturer's website (e.g. for Qlik at [www.qlik.com/product-terms](http://www.qlik.com/product-terms)) always apply and take precedence over these GTCs when they conflict. The manufacturer shall be a third-party beneficiary of the contract between Heyde and the customer and shall be entitled to directly enforce the provisions thereof against the customer.
- 1.4 Unless otherwise stated, offers of Heyde are valid for 30 days. With the acceptance of the offer by the customer, the contract is bindingly concluded. The customer may also accept an offer implicitly, e.g. by paying the fee or by using the offered services.

### 2 Fees

- 2.1 The fees the customer must pay is stated on the offer; all price indications are understood without VAT. To the extent that no other modes of payment are agreed on, Heyde will bill the fees as follows:
  - 2.1.1 Maintenance fees and recurring license fees: annually in advance;
  - 2.1.2 One-time license fees and services: 50% on order, 50% on delivery;
  - 2.1.3 Hardware and cabling-systems: 100% on order.
- 2.2 Invoices are due and payable within 10 days of the billing date. If the payment deadline passes without action, the customer is automatically in default without any dunning being necessary.

### 3 Scope of performance

- 3.1 Heyde will perform the services described in the offer. Services not explicitly mentioned in the offer are not included in the scope of performance and will be billed separately based on time & material. Documents belonging to the offer (illustrations, prospectuses, etc.) are only relevant, if Heyde expressly identifies them as binding.
- 3.2 Heyde will fulfil its contractual obligations diligently and professionally according to the contractual description of services.
- 3.3 Heyde may use sub-contractors.

### 4 Delivery and installation of products

- 4.1 Delivery deadlines stated in the offer are only non-binding target dates. If Heyde does not meet a delivery deadline, the customer may, at the earliest 20 days after the expiration of the deadline, send a written dunning notice to Heyde that sets a reasonable grace period. Withdrawal from the contract before the expiration of such grace period is excluded.
- 4.2 The delivery location is stated in the offer. Heyde bears the risk of loss and damage to the products until they reach the delivery location.
- 4.3 The customer is responsible for having a suitable set-up location and for the installation. If the customer commissions Heyde with the installation and initial instruction, this will be billed on a time & material basis according to Heyde's current fee schedule for support services.

### 5 Evaluation and implementation of products

- 5.1 The evaluation of products (especially dimensioning of hardware and evaluation of the scope function of the software) as well as the definition of the services ordered from Heyde are the sole responsibility of the customer.
- 5.2 The use of the products and their use for a certain purpose is entirely the concern of the customer and at his own responsibility.
- 5.3 There is no right to return any products listed in the offer, especially not software.

### 6 Customer's general obligations to cooperate

- 6.1 The customer will make sure that all required obligations to cooperate are performed promptly, in the required scope and at no cost to Heyde.
- 6.2 The customer will communicate all required specifications needed for fulfilment of contract to Heyde in a timely fashion. He will provide Heyde with the office spaces and IT-equipment needed to perform the services and will make competent contact persons available. If Heyde was not expressly commissioned with data back-up, this is the sole responsibility of the customer.
- 6.3 Any other obligations to cooperate on the part of the customer will be specified in detail in the contract document.
- 6.4 If the customer does not fulfil the required obligation to cooperate or does not fulfil it promptly or the agreed-upon fashion, he is responsible for the resulting consequences (e.g. delays, added costs, etc.).

### 7 Warranty

#### a) Third-party products

- 7.1 For third-party products (all hardware and third-party software, which is delivered by Heyde separately or integrated into its own services or products, including any Open-Source-Software), the warranty is determined exclusively

by the warranties granted by the specific manufacturer/supplier. This applies to the scope of performance, the warranty period, the preconditions for claiming the warranty and all other rights of the customer.

- 7.2 With respect to Heyde, these warranty rights for third-party products only consists in Heyde claiming the warranty against the manufacturer/supplier or grantor of license in the name of the customer. If the manufacturer/supplier or grantor of license does not voluntarily meet his warranty obligation, Heyde assigns the warranty rights for legal enforcement to the customer.

#### b) Heyde's own products

- 7.3 Heyde warrants that its products and services, when used according to the contract, will show the promised qualities and not have any defects that make them useless or considerably restrict their use.
- 7.4 If a defect becomes apparent, the customer can, at Heyde's choice, demand only remediation of the defect or a replacement.
- 7.5 If two attempts at remediation or replacement deliveries fail due to the same defect, the customer can:
  - 7.5.1 Continue to demand fulfilment, or
  - 7.6 Demand an appropriate reduction in price or
  - 7.7 Withdraw from the contract if there is a significant defect as defined in clause 7.8.
- 7.8 Significant defects exist if the products do not demonstrate the promised qualities when used according to the contract or are so afflicted with defects that they are useless to the customer.
- 7.9 The warranty is void if the customer modifies the hardware or software himself or has them modified by third parties and cannot demonstrate that the defects reported were neither wholly nor partly caused by such modifications and that the remediation of the defect is not made more difficult by the modifications. Additionally, the warranty is void to the extent that the customer does not properly fulfil his obligations to cooperate according to section 6.
- 7.10 Notice of defects must be given within 10 days of discovery of the defect with a comprehensible description of the symptoms of the defect. The customer's warranty claims are void to the extent that a defect is not reported in a timely fashion.
- 7.11 The customer's warranty rights expire after six months of acceptance of the services or installation, respectively receipt by the customer if installation has been waived.
- 7.12 *Joint provisions*  
All of the warranty rights and rights in case of defects not expressly stated above are excluded to the extent legally permissible.

### 8 Warranty of title

- 8.1 Heyde warrants that it does not infringe on any legally protected rights of third parties with its products and services.
- 8.2 To the extent that a product or a service or part thereof is or could in Heyde's opinion become the object of a legal action for infringement of intellectual property rights, Heyde may, at its discretion, either obtain for the customer the right to use the object free of liability for any infringement of intellectual property rights, replace the product with an other product which fulfils the essential contractual properties, modify the product so that it does not violate any intellectual property rights anymore or, if none of the above options can be realized at a reasonable cost, (i) in case of sales contracts or licenses granted against payment of a one-time fee, recover the product and refund the fee minus the amortization based on a five-year linear depreciation schedule, respectively (ii) in case of ongoing contracts, terminate such contracts with immediate effect and reimburse fees paid in advance for the period after the termination date.
- 8.3 Should third parties bring claims against the customer for infringement of intellectual property rights they allegedly hold, Heyde will defend against the claim at its own cost and assume any costs and payments of compensation imposed by a legally enforceable court ruling, if the customer (i) immediately informs Heyde in writing of the claim brought and (ii) authorizes Heyde to conduct the defense including concluding a settlement and supports Heyde in a reasonable and appropriate scope and (iii) the third party's claim is based on the fact that the intended use of the unaltered product or service infringes an intellectual property right existing in Switzerland or constitutes unfair competition.

### 9 Liability

- 9.1 Heyde's liability – on whatever legal basis - is limited per order to a maximum of 20% of the fee agreed upon under such order (in case of recurring fees of one yearly fee) for Heyde's own services (i.e. excluding fees for third party products), but at most to CHF 20'000.
- 9.2 Any liability for indirect damages and consecutive damages (especially for lost profits, loss of data and third-party claims) is excluded.
- 9.3 The liability exclusions in this section 9 do not apply (i) to bodily injuries, (ii) to the extent that Heyde acted intentionally or through gross negligence and (iii) to the extent mandatory provisions of law prohibit it.

## 10 Intellectual Property Rights

- 10.1 Heyde holds the rights to the work results developed specifically for the customer. Against payment of the fee, the customer receives an unlimited and geographically unrestricted, non-exclusive right to use and modify these work results for customer's own purposes.
- 10.2 With regard to software manufactured by Heyde and to scripts, parameterizations and add-ons to standard software created by Heyde, which were not developed specifically for the customer in the meaning of clause 10.1, the customer receives against payment of the fee a non-transferable, non-exclusive right of use for customer's own purposes. The right of use may be subject to further restrictions with regard to duration, geographical scope or type of use, as set forth in the offer.
- 10.3 With regard to third-party software, the customer receives against payment of the fee the non-transferable and non-exclusive right granted by the software manufacturer to use the software programs listed in the offer according to the manufacturer's licensing provisions for customer's own purposes. The content and scope of the right of use of the programs is entirely determined by the license provisions of the software manufacturer. Claims against Heyde in connection with the use of the software are excluded to the extent permitted by law.
- 10.4 Every sharing of copies of the software, scripts, parameterizations or add-ons with or disclosure thereof to third parties not expressly allowed by the licensing provisions is prohibited. Should an infringement occur, the customer owes Heyde a contractual penalty in the amount of twenty times the (in case of recurring fees yearly) license fee. In addition, the customer shall fully indemnify Heyde against all damages and claims deriving from the unauthorized sharing or disclosure. In this regard, the customer acknowledges that the scripts, parameterizations and add-ons contain valuable know-how and business secrets of Heyde.
- 10.5 License agreements under which recurring license fees are due (Subscriptions) are concluded for a fixed contractual term which is specified in the license terms or the offer. In the absence of such an agreement, the fixed term is three years. Thereafter, the license agreement will automatically renew for the same fixed term, unless it is terminated by one of the contracting parties with a notice period of three months to the end of the then-current fixed term. Heyde's right to terminate the contract for cause in case of breach of the license terms by the customer is reserved. Changes in the software manufacturer's list prices since the last determination of the license fees entitle Heyde to a corresponding adjustment of the recurring license fees as of the renewal date. This also includes any surcharges according to the manufacturer's price list for contract renewals whose duration is shorter than the originally agreed fixed contractual term.
- 10.6 The grant of licenses against a recurring fee may include maintenance and support services if and to the extent agreed between the parties, in which case the rules set forth in sections 12.1 through 12.10 apply for such services.
- 10.7 Software programs can be subject to Open Source licensing conditions or contain Open Source software.

## 11 Special provisions for the provision of works

- 11.1 In the case of services provided by Heyde under a work contract, a joint inspection will occur before acceptance.
- 11.2 Heyde will invite the customer to the inspection in a timely fashion by reporting readiness for acceptance. A protocol of the inspection and its results will be established and signed by both parties. If nothing else is agreed to, acceptance must take place within 10 days of Heyde's reporting readiness for acceptance. If the customer delays acceptance beyond this deadline and no defect is reported in writing within this period, acceptance is deemed completed. Likewise, the acceptance is deemed completed if the customer begins regular operation or modifies the delivered products.
- 11.3 If the inspection reveals insignificant defects, the acceptance will be granted nonetheless upon the conclusion of the inspection. Heyde will remedy the defects identified and notify the customer of their correction.
- 11.4 If, in the course of the inspection, significant defects as defined in clause 7.8 are discovered, the acceptance will be delayed. Heyde will remediate the defects that have been identified and invite the customer to a second inspection. If the acceptance cannot be completed a second time because of the same defect, the customer can assert his warranty rights under clause 7.5 (continued fulfilment, price reduction or, if there are significant defects, withdrawal from contract).
- 11.5 Defects which were not recognizable at the time of acceptance in spite of due diligence must be reported in writing to Heyde within ten days of their discovery.

## 12 Special provisions for maintenance and support services

- 12.1 The provisions of this section apply whenever Heyde performs maintenance or support services for the customer.
- 12.2 Heyde will perform the maintenance and support services with due diligence. However, Heyde cannot guarantee that the supported products can be used uninterruptedly and without faults.
- 12.3 Maintenance will be performed by Heyde on workdays during regular business hours.

- 12.4 For scripts, parameterization and add-ons to standard software created by Heyde (e.g. Qlik, Jedox, Infoniga ONE 200), maintenance consists of the delivery of bugfixes as well as establishing release compatibility with respect to the relevant standard software. Adjustments owing to updates or upgrades of other associated systems and programs (e.g. source systems for data) are not included in the maintenance and will be billed separately on a time & material basis.
- 12.5 Support and maintenance services for third-party products are as a rule wholly or partly performed by the manufacturer. If the manufacturer ceases or limits its maintenance services and thus renders the performance of maintenance services for the customer unreasonably difficult or expensive for Heyde, Heyde is in the same scope relieved from its contractual obligations to the customer.
- 12.6 The customer will spontaneously provide Heyde with the information Heyde needs for providing support and maintenance services. Ideally, this will be done in the form of a system documentation constantly updated by the customer. The documentation will especially include and describe the customer's hardware and software environments, ways in which and purposes for which the various applications are used, the data models used and the interfaces. The customer is aware that Heyde's support and maintenance services can be hindered and delayed if Heyde does not get access to such documentation or if it is not kept up-to-date. Heyde is ready to assist the customer in drafting the system documentation upon request and against a separate fee.
- 12.7 The customer is also aware that Heyde emphatically recommends that the customer provide a test system in his environment, in order to avoid negative impacts on the customer's production environment to the greatest extent possible. In spite of using all due caution, Heyde cannot exclude the risk that its work - e.g. uploading an update - might lead to disruptions or even shutdowns of the production system, whereby this risk can be considerably reduced by first carrying out tests on a test system the customer provides.
- 12.8 The maintenance fee covers Heyde's on-call readiness for maintenance. Actual support calls carried out by Heyde will be billed additionally and at Heyde's current hourly rates.
- 12.9 To the extent that there is a valid maintenance contract, the customer will be given access to new releases of the software - and, if provided for in the contract document, even new versions of the software - free of charge. A release is a new iteration of the software which corrects errors or contains minor technical improvements. A version is a new iteration of the software which, unlike a release, contains an expansion of its functionality or significant technical improvement. If the delivery of new versions is not agreed on as included in the maintenance, Heyde can make the delivery of new versions subject to a separate fee.
- 12.10 If the maintenance fees are not paid wholly or in part for more than 30 days after coming due, Heyde is entitled at its own discretion to suspend maintenance for the customer, wholly or in part and with immediate effect, without further notice, and the services are deemed forfeit. Restarting the suspended maintenance depends on the customer paying the entire overdue maintenance fees for the relevant software including those that would have been due starting from the date when service was suspended, always conditioned on the restoration of service beginning within 12 months after the last contract extension. Restoration after this date is entirely at Heyde's discretion.
- 12.11 Maintenance contracts are concluded for a fixed contractual term which is specified in the maintenance terms or the offer. In the absence of such an agreement, the fixed term is one year. Thereafter, the maintenance contract will automatically renew for the same fixed term, unless it is terminated by one of the contracting parties with a notice period of three months to the end of the then-current fixed term. Changes in the software manufacturer's list prices since the last determination of the maintenance fees entitle Heyde to a corresponding adjustment of the recurring maintenance fees as of the renewal date. This also includes any surcharges according to the manufacturer's price list for contract renewals whose duration is shorter than the originally agreed fixed contractual term.

## 13 Confidentiality

- 13.1 Each party shall keep strictly confidential the data, information, applications, methods and confidential know-how of the other party of which it becomes aware and which are not generally known to the public, and shall not disclose them to third parties without the prior written consent of the other party, unless it is obliged to do so by law. The parties shall use the information they receive only for the performance of the contract. They shall oblige their employees in writing to observe confidentiality.
- 13.2 This obligation to maintain confidentiality shall remain in force even after termination of the contract for as long as the confidential character of an information exists.

## 14 Data protection

- 14.1 Both parties undertake to comply with the Swiss Data Protection Act (together with the associated implementing provisions: "DPA").
- 14.2 Heyde shall act as processor for the customer. Heyde shall treat personal data transmitted or made accessible to it by the customer within the scope

of the contractual services ("Personal Data") confidentially within the meaning of clause 13 and shall process them only for the performance of the contract and only in accordance with the documented, lawful instructions of customer. Heyde shall point out to the customer if, in its view, an instruction violates the DPA.

- 14.3 Heyde may only transfer the processing to a third party with the prior consent of the customer. This consent is deemed to be given to the suppliers and subcontractors listed in the offer.
- 14.4 The technical and organizational measures (TOM) taken by Heyde to ensure data security (confidentiality, availability and integrity of the data as well as traceability of the processing) are described in the internal guideline of Heyde of the same name which will be disclosed to the customer upon request. Heyde can adapt the TOM at any time, whereby the level of protection can only be increased and not decreased. If the customer requires further security measures, these shall be agreed upon in writing and may lead to an increase of the fees.
- 14.5 Upon request, Heyde will provide the customer with all necessary information to prove the compliance with the data security. The customer has the right to verify Heyde's compliance with the legal and contractual obligations in connection with data protection at its own expense by means of an audit carried out by the customer itself or by a qualified third party bound by a written confidentiality undertaking towards Heyde. Audits have to be announced at least 10 working days in advance, are limited to a maximum of one working day and can take place at most once per contractual year. The expenses of Heyde in connection with the audit are to be remunerated by the customer on a time and material basis.
- 14.6 Heyde will immediately inform the customer about a detected data protection breach. Heyde will inform the customer as far as possible about the type and extent of the data protection breach, the data concerned as well as the measures taken and, if necessary, make suggestions for further measures to be taken. Apart from that, the customer is responsible for fulfilling the notification and other obligations due to the data protection breach. The notification of a data protection breach by Heyde does not constitute an acknowledgement of any fault or liability by Heyde.
- 14.7 All inquiries of data subjects will be forwarded by Heyde to the customer who is responsible for answering them. Upon request of the customer and against separate remuneration on a time and material basis, Heyde will support the customer in this respect.
- 14.8 After the termination of the contract, Heyde will delete all Personal Data, subject to statutory or other retention obligations.
- 14.9 The customer guarantees as data controller that the Personal Data have been collected lawfully and in compliance with all applicable legal provisions and that the transfer of the Personal Data to Heyde for processing in accordance with the contract and all instructions given to Heyde with regard to the processing of the Personal Data are lawful and do not infringe any rights of third parties. The customer is in particular responsible for obtaining the necessary consents of the data subjects. If and as far as the customer acts itself as a processor for its end customers, it hereby gives the above guarantees also for its end customers.
- 14.10 Further obligations of Heyde can be conclusively defined in a separate data processing agreement (DPA).

## **15 Re-export**

- 15.1 The products delivered, including the technologies embodied in them, are subject to the applicable Swiss export control regulations in as well as those of other countries. Additionally, the re-export of certain products is prohibited under a legal duty of Heyde towards the Section for Import and Export. The customer is obligated to heed these provisions and contractually transfer them to the purchaser if the product is re-sold.

## **16 Miscellaneous**

- 16.1 Agreements between the parties are only valid if they are made in writing. The use of DocuSign is considered equivalent to written form.
- 16.2 To the extent nothing else is agreed upon, the place of fulfilment is Zurich.

## **17 Applicable law and court of jurisdiction**

- 17.1 All agreements and contracts with Heyde are subject to Swiss law excluding international private law and the United Nations Convention on the International Sale of Goods from April 11<sup>th</sup>, 1980 ("Vienna Convention on Sale of Goods").
- 17.2 The sole court of jurisdiction for all disputes is Zurich.