General Terms and Conditions (GTC) of smart byte GmbH

1. Application and Scope

1.1. These General Terms and Conditions (GTC) govern the conclusion, content, and execution of contracts and orders between customers (hereinafter referred to as "Customer") and smart byte GmbH (hereinafter referred to as "smart byte"). This includes, in particular, the sale of hardware and software, IT consulting and project management, the commissioning and support of IT systems, as well as the provision of hosting and network services.

1.2. These GTC are an integral part of all contracts and orders between the Customer and smart byte. They also apply to all future relationships between the parties without the need for explicit confirmation. Deviations or additions to these GTC and concluded contracts require written form.

1.3. In case of contradictions between contracts or orders and these GTC, the provisions of the respective contract or order shall take precedence.

1.4. smart byte reserves the right to change these GTC at any time; the new version applies to all contracts concluded after their entry into force.

2. Conclusion of Contract

2.1. Offers from smart byte are valid for 30 days from the date of issuance unless otherwise stated.

2.2. The contract is concluded by written acceptance of the offer or by signing a separate contract. Orders that have not been separately offered will be billed based on actual effort according to smart byte's current standard rates.

2.3. Additional costs arising from subsequent changes to the order or contract shall be borne by the Customer according to smart byte's current price list.

2.4. If an order is terminated prematurely by the Customer, the services rendered up to that point will be charged regardless of the achieved result.

3. Services

3.1. smart byte performs the contractual obligations carefully and professionally according to the performance descriptions agreed in contracts and orders.

3.2. Services not expressly listed in the contract documents or offers are not included in the scope of services and will be charged separately based on effort.

3.3. Documents belonging to the offer (such as illustrations, brochures, etc.) are only binding if they are expressly designated as binding by smart byte. A work performance is only owed if it is expressly designated as a work in the contract or order.

3.4. smart byte is entitled to involve auxiliary persons, third parties (in particular subcontractors), or their employees to fulfil their obligations.

3.5. Dates for delivery, installation, and commissioning are non-binding unless expressly guaranteed.

4. Deliveries

4.1. Deadlines, especially delivery dates mentioned by smart byte, are only binding if they have been confirmed in writing as binding. Order changes invalidate agreed deadlines and dates unless otherwise agreed.

4.2. Operational disruptions, delayed delivery, or non-delivery by smart byte's contract partners, as well as events of force majeure, strikes, and other obstructive circumstances entitle smart byte to extend the delivery deadlines and/or to cancel the delivery obligation, excluding any claims for damages by the Customer.

4.3. Shipping of products by smart byte is at the Customer's expense and risk. Damaged shipments must be reported to the carrier immediately upon receipt of the goods.

4.4. Complaints about deliveries must be made in writing to smart byte within 5 working days of receipt of the goods, otherwise, the delivery is considered approved.

5. Hosting and Network Services

5.1. Hosting and network services commence on the start date confirmed by smart byte and have a minimum contract term of one year unless otherwise agreed. After this period, the contract can be terminated at the end of the following month.

5.2. If the contract is not terminated by either party, the term is automatically extended.

5.3. Hosting and network services are billed monthly or annually depending on the service. Invoicing occurs at the end of the month or the end of the year.

5.4. smart byte undertakes to ensure the availability of hosting and network services in accordance with the agreed Service Level Agreement (SLA). This availability refers to the calendar year and includes all services used by the Customer unless otherwise expressly agreed.

5.5. Times when IT systems and hosting and network services are unavailable due to announced maintenance work are not considered in the availability calculation. smart byte will inform the Customer about planned maintenance at least 48 hours in advance unless otherwise expressly agreed.

5.6. Unforeseeable events of force majeure, such as natural disasters, war, terrorist attacks, strikes, legal regulations, and other circumstances beyond smart byte's control led to an appropriate extension of the availability time and do not entitle the Customer to claims for damages.

5.7. In case of unannounced outages leading to availability below the SLA agreed target values, the Customer is entitled to a credit according to the hosting and network service contract.

5.8. The availability guarantee excludes:

- Failures and performance disruptions caused by actions or omissions of the Customer or their representatives.
- Failures due to problems in the Customer's infrastructure or internet connection.
- Failures due to attacks on the IT infrastructure, such as DDoS attacks, unless these could have been prevented by reasonable protective measures by smart byte.

5.9. smart byte undertakes to take all economically reasonable measures to restore the availability of hosting and network services as quickly as possible in the event of outages.

6. Customer's Duty to Cooperate

6.1. The Customer undertakes to provide all necessary cooperation services to enable the proper provision of hosting and network services by smart byte. This includes, in particular, the timely provision of all required information, data, and access.

6.2. The Customer ensures that their IT infrastructure meets the technical requirements necessary for using the hosting and network services. This includes, in particular, ensuring a stable and fast internet connection and using current and compatible hardware and software.

6.3. The Customer undertakes to inform smart byte immediately about all circumstances that could impair the provision of services. This includes, in particular, changes to the IT infrastructure, the use of new software, or changes in configuration.

6.4. The Customer is obliged to make regular backups of their data unless this is expressly agreed as part of the services provided by smart byte. In the event of data loss, it is the Customer's responsibility to restore the lost data from their backups.

6.5. The Customer must ensure that their systems and data are adequately protected against unauthorized access and cyberattacks. This includes, in particular, using current security software and regularly updating the systems.

6.6. The Customer undertakes to comply with all security policies and recommendations communicated to them by smart byte. This includes, in particular, regularly changing passwords and adhering to the policies for accessing hosting and network resources.

6.7. If the Customer fails to fulfil their cooperation obligations and this results in delays or additional efforts, smart byte reserves the right to charge the Customer for the resulting costs.

7. Prices and Payment Terms

7.1. The prices for the services and products offered by smart byte are based on the current price lists or individual offers. All prices are in Swiss Francs (CHF) and, unless otherwise stated, exclusive of statutory VAT.

7.2. Invoices are payable within 10 days of the invoice date without deduction unless otherwise agreed. The deduction of a discount requires a separate written agreement.

7.3. In case of the Customer's payment default, smart byte is entitled to charge default interest of 5% p.a. In addition, smart byte reserves the right to refuse to provide further services or to restrict or suspend services already provided until the outstanding amounts are fully paid. All reminder and collection costs arising from the payment default are at the Customer's expense.

7.4. The Customer is not entitled to withhold or offset payments due to complaints or counterclaims unless these counterclaims are undisputed or legally established.

7.5. If the Customer repeatedly fails to meet their payment obligations, smart byte is entitled to terminate the business relationship extraordinarily and without notice.

7.6. smart byte reserves the right to adjust prices. Price changes will be communicated to the Customer in a timely manner and do not apply to already concluded contracts and orders.

8. Liability

8.1. smart byte is liable for damages caused by intentional or grossly negligent behaviour within the framework of statutory provisions.

8.2. For slight negligence, smart byte is only liable for the violation of essential contractual obligations (cardinal obligations). In these cases, liability is limited to the typically foreseeable damage. Essential contractual obligations are those whose fulfilment is necessary to achieve the contract's purpose and on whose compliance the Customer regularly relies.

8.3. Liability for indirect damages and consequential damages, particularly lost profits, data loss, or third-party claims, is excluded unless these damages were caused intentionally or by gross negligence.

8.4. smart byte assumes no liability for damages caused by unauthorized access to the Customer's IT systems or hosting services, viruses, or other harmful components that could not have been prevented by reasonable protective measures by smart byte.

8.5. smart byte's liability is limited to the amount underlying the respective contract from which the damage arises.

8.6. Claims for injury to life, body, or health, as well as claims under the Product Liability Act, are excluded from the limitation of liability.

8.7. smart byte's liability is excluded or limited, this also applies to the personal liability of its employees, representatives, and vicarious agents.

8.8. The Customer undertakes to take appropriate measures to mitigate and avert damages. In particular, the Customer must make regular backups of important data and take appropriate security precautions.

9. Confidentiality and Data Protection

9.1. Both parties undertake to treat all confidential information received within the scope of the business relationship as strictly confidential and not to make it accessible to third parties or use it for purposes other than those contractually agreed without the express consent of the other party. Confidential information is information that is marked as such or is to be regarded as confidential based on the circumstances of its transmission.

9.2. The obligation to maintain confidentiality does not apply to information that

- was publicly known or accessible at the time of disclosure by the disclosing party;
- becomes publicly known or accessible without breach of the confidentiality obligation afterward;
- the receiving party legally obtains from third parties without being obliged to maintain confidentiality;
- must be disclosed due to legal regulations or official orders.

9.3. smart byte undertakes to comply with the statutory data protection regulations, particularly the General Data Protection Regulation (GDPR) and the Swiss Data Protection Act (DSG). The details of the collection, processing, and use of personal data are regulated in the **Privacy Policy**.

9.4. The Customer consents to the collection, processing, and use of their personal data by smart byte as necessary for fulfilling the contract. This includes, in particular, the use of data for billing purposes, providing contractual services, and customer care.

9.5. smart byte takes appropriate technical and organizational measures to ensure the security of the Customer's personal data and protect it against unauthorized access, loss, or misuse.

9.6. The Customer has the right to request information about the data stored about them at any time, to request its correction, deletion, or blocking, and to withdraw consent to data processing with effect for the future, provided there are no legal retention obligations.

9.7. Further information on data protection and the processing of personal data by smart byte is contained in the **Privacy Policy**, which is an integral part of these GTC.

10. Final Provisions

10.1. These GTC and all contracts between the Customer and smart byte are subject to Swiss law, excluding the UN Sales Convention (CISG). The exclusive place of jurisdiction for all disputes arising from or in connection with these GTC and the contracts is the seat of smart byte.

10.2. Should individual provisions of these GTC be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced by a provision that comes closest to the economic purpose of the invalid or unenforceable provision. The same applies in the event of a regulatory gap.

10.3. Amendments and additions to these GTC require written form. This also applies to the waiver of this written form requirement.

10.4. All communications within the scope of these GTC and the contracts must be in writing. Written communications must be addressed by letter or email to the last known address of the other party.

10.5. The Customer is not entitled to transfer rights and obligations from the contract to third parties without the prior written consent of smart byte.

10.6. The contract language is German. If these GTC or parts thereof are translated into another language, the German version shall prevail.

10.7. Individual agreements between the parties take precedence over these GTC if they are agreed in writing.