

General terms and conditions

This Agreement has been executed in German with an English translation. The parties hereto agree that the German version shall be the authentic one and shall prevail for all matters of construction and interpretation.

1. Scope

Services and quotations of our company are provided exclusively on the basis of the Terms and Conditions herein; terms and conditions on the part of any Contractor that contradict or deviate from our Terms and Conditions shall not be honored unless such are agreed upon in writing. Any deviation from this requirement must itself be in writing. In the event that a contract is made via the Internet, the requirement of written form shall be fulfilled only via secure signatures in the sense of the Austrian Signature Act (BGBl 190/99). Actions on our part toward fulfillment of a contract shall not be construed as concurrence with any contractual terms deviating from these Terms and Conditions. These Terms and Conditions serve as a framework agreement for all other legal transactions between us and a contracting partner.

2. Contract conclusion

Our quotations are nonbinding. A contract shall be construed as concluded when a written order is confirmed by us or is actually fulfilled by us. If a quotation is submitted to us, then the submitting Contractor is bound to such quotation for a commensurate period of at least three weeks from our receipt of the quotation.

3. Services, contract conclusion

3.1. Potential objects of a contract include:

- preparation of organizational concepts
- global and detailed analyses
- production of custom software
- delivery of (standard) library software
- acquisition of rights of utilization of software products
- acquisition of utilization rights
- assistance in startup (support during transition)
- consultation per telephone
- software maintenance
- production of storage media containing software programs
- other services

3.2. The preparation of individual organizational concepts and programs shall be based on the type and scope of the complete and binding information, documentation and aids provided by the Client. The Client shall also provide an adequate amount of practice-oriented test data and testing possibilities in a timely fashion, during normal working hours, and at his expense. If the Client is already working on the test facility in regular operation, then the Client bears full responsibility for backing up all existing data.

3.3 The foundation for the production of custom software is a written Requirements Specification which either the Client provides or the Contractor compiles for remuneration on the basis of documents and information provided by the Client. This Requirements Specification shall be checked by the Client for correctness and

completeness and requires the approval of the Client. Modification requirements that arise later can lead to separate deadline and price agreements. If the Contractor is to provide source code and development documentation, this must be agreed upon explicitly.

3.4. Custom software or program adaptations require a performance acceptance test for the respective software package at most four weeks after its completion. Completion can be assumed when the Contractor notifies the Client of such and requests a date for the performance acceptance test. Such testing shall be confirmed by the Client in a protocol (testing for correctness and completeness of the software based on the Requirements Specification accepted by the Contractor by means of the test data provided by the Client as specified in Item 3.2). If the Client neglects to conduct a performance acceptance test within four weeks, then the delivered software shall be considered as accepted with the end of such period. On utilization of the software by the Client in regular operation, the Software counts as accepted in any case. Any deficiencies that arise (deviations from the written Requirements Specification) shall be reported to the Contractor and adequately documented by the Client; the Contractor shall strive to correct such deficiencies as quickly as possible. If there are significant deficiencies (i.e., deployment for regular operation is prevented or regular operation cannot be continued) that have been reported in writing, then a new performance acceptance test is required after correction of the deficiencies.

3.5. The Contractor is free to subcontract all or part of an order to third parties (subcontract).

3.6. By ordering (standard) library software, the Client confirms his knowledge of the scope of such software.

3.7. If the course of work on the order in accordance with the Requirements Specification reveals that it is technically or legally impossible, then the Contractor is obliged to report this at once to the Client. If the Client cannot arrange the prerequisites for completion, then the Contractor reserves the right to refuse further completion. If completion is hindered by conditions that are in the sphere of influence of the Client or if the Client refuses the Product and Services, then the Contractor retains the right to remuneration. Furthermore, in the event of fault on the part of the Client, the Client shall be obliged to compensate for damages to the Contractor, in particular lost profit, independently of actual damages, in the amount of 30% of the yet unbilled share of the overall value of the order. A reduction of this entitlement on the part of the Contractor due to contributory fault in accordance with § 1304 ABGB [Austrian civil law] is precluded.

3.8. Shipment of storage media, documentation and technical specifications shall be at the expense and risk of the Client. Additional training and explanations requested by the Client shall be billed separately. Insurance shall be arranged at the request of the Client only.

4. Prices, taxes and fees

4.1. All price specifications are in euro (€) without applicable value-added tax. Prices apply only for the present order. The cited prices are ex works of the Contractor. The costs of storage media (e.g., magnetic tapes, magnetic discs, floppy disks, streamer tapes, magnetic tape cassettes) as well as any contract fees shall be billed separately.

4.2. For (standard) library software, list prices on the day of delivery shall apply. All other services (organizational consulting, programming, training, support during transition, consultation per telephone, etc.) shall be billed based on actual time at the applicable or agreed hourly prices on the day that the services are delivered. Deviations from the anticipated time underlying the contract price that are not the fault of the Contractor shall be billed on the basis of actual time invested.

4.3. Travel expenses and flat rates for food and accommodations shall be billed to the Client separately, insofar as these cannot be deducted from taxes by the Contractor currently or after any increase in the deduction amount according to the regulations of [Austrian] income tax law. Travel time shall be construed as work time.

5. Delivery

5.1. The Contractor shall strive to meet the deadlines for the arranged delivery dates. Unless otherwise explicitly agreed (Item 1), delivery deadlines are nonbinding.

5.2. The targeted delivery dates can be met only if the Client provides all necessary works and documents in completed form by the deadline specified by the Contractor, in particular the Requirements Definition accepted by the Client in accordance with Item 3.3., and the Client meets his collaboration obligation to the required degree. Delivery delays and cost increases caused by incorrect, incomplete or retroactively changed specifications and information or provided documents are not ascribed to the Contractor and cannot lead to delay on the part of the Contractor; resulting additional costs shall be borne by the Client. Furthermore, the Client is obliged to compensate for any damages incurred by the Contractor, in particular lost profits, regardless of any fault on the part of the Client.

5.3. For orders that encompass multiple units or programs, the Contractor reserves the right to make partial deliveries and to submit partial bills.

6. Payment

6.1. Bills submitted by the Contractor to the Client are to be paid at latest 14 days after receipt of the bill by the Client and without deductions or bank fees. For partial bills, the same payment conditions apply analogously as for a complete order.

6.2. For orders that encompass multiple units (e.g., software and/or training, incremental realization), the Contractor reserves the right to submit bills on delivery of each individual unit or service.

6.3. Adherence to agreed payment deadlines [on the part of the Client] serves as an important condition for completion of delivery or contract fulfillment by the Contractor. Non-adherence to agreed payment deadlines [on the part of the Client] entitles the Contractor to terminate work in progress and to withdraw from the contract. On delay of payment by the Client, irrespective of further claims to damages, the Contractor is entitled to interest in the amount of 4% over the prime interest rate. All associated damages on the part of the Contractor, in particular lost profits, shall be compensated by the Client. **If installments or partial payments are arranged, then on nonpayment of two successive installments or partial payments, all outstanding partial payments of the Client become due immediately and securities become due.**

6.4. **Levying of additional charges or withholding of payment shall be permissible only if the claim against the Contractor has been recognized [by us] or awarded in a legally binding court decision. Likewise the Client has no right to withhold – whether via a plea of unfulfilled contract (§ 1052 ABGB [Austrian civil law]) or via refusal to turn over material goods – in order to assert a claim.**

7. Intellectual property rights and utilization

7.1. Copyrights as well as rights to trademarks, brand names and know-how (including, in particular, unprotected inventions, commercial experience and trade secrets) that are revealed in the realm of the collaboration remain the exclusive property of the Contractor or his licensees. After payment of the agreed remuneration, the Client shall be awarded only the right to utilize the software for his own purposes, exclusively on the hardware specified in the contract, and to the extent of the number of purchased licenses for simultaneous utilization on multiple work stations.

The Agreement awards only utilization rights for the respective work. In particular, any dissemination and any exploitation beyond his own purposes on the part of the Client are excluded. Collaboration on the part of the Client in the production of the software does not entitle the Client to any rights of utilization extending beyond those specified in the Agreement. On violations of the intellectual property of the Contractor, in particular copyrights and rights to trademarks, know-how, commercial inventions and trade secrets of the Contractor full amends shall be made. The Contractor retains all rights to his products and services, including the associated materials, even if the Client changes such within the constraints of the respective contract or combines such with his own programs or those of a third party. On such changes or combinations as well as on production of program copies required for contractual utilization, the Client shall attach a reference to the Contractor.

The Client shall neither modify nor remove brand names, statements of ownership or copyright notices of the Contractor. This likewise applies to all accompanying materials.

The Contractor shall indemnify the Client with respect to all claims of third parties against the Contractor with respect to violation of copyright of developed and transferred programs in their contractual version, however only insofar as the Contractor has precipitated such violation of the rights of third parties deliberately or with gross negligence. The Client guarantees that he is authorized to utilize and transfer the software or accompanying materials that the Client makes available to the Contractor for the purpose of fulfilling the Contractor's services and indemnifies the Contractor against all claims of third parties.

7.2. The Client is entitled to make copies [of the software] for the purpose of archiving and data backup under the condition that the software contain no express prohibition by the licensor or third parties and that all copyright and ownership notices are transferred onto these copies without modification.

7.3. If the assurance of interoperability of the respective software requires the disclosure of the interfaces, then the Client shall request such from the Contractor in return for remuneration. If the Contractor does not meet this requirement and a decompilation is conducted in accordance with copyright laws, then the results are to be used exclusively for establishing interoperability.

8. Right of withdrawal

8.1. In the event of failure to meet an agreed delivery deadline due to sole fault or unlawful action on the part of the Contractor, the Client reserves the right to withdraw from the respective contract by means of registered letter if significant parts of the contracted goods and services are not delivered within a commensurate grace period and the Client himself bears no blame. In any case, the prerequisite for withdrawal from the contract is blame on the part of the Contractor for the delay.

8.2. Force majeure, labor conflicts, natural catastrophes, transport blockages and other conditions beyond the control of the Contractor relieve the Contractor of the duty of delivery on deadline or permit him an adjustment of the agreed deadline. Regardless of whether the hindrance blocking delivery by the Contractor continues, the obligation to deliver can be extended by not more than six months.

8.3. Cancellation by the Client is possible only with the written approval of the Contractor. If the Contractor agrees to cancellation, then he is entitled to levy a cancellation fee of 30% of the contract value of the overall project that has not yet been billed, in addition to the already delivered goods and services and incurred costs.

9. Warranty, maintenance, modifications

9.1. **The Contractor guarantees that his goods and services are free of significant errors which affect the usability or reduce the value thereof and that the goods and services fulfill the contracted requirements. If the technical specifications, requirements definitions and other documentation compiled in the course of the fulfillment of the contract provide for the services of a third party, then such provision shall encompass only the commitment to enlist the services of said third party [and not a guarantee of such enlistment]. Warranty obligation for custom software begins with performance acceptance testing as regulated in Item 3.4. Warranty obligation applies only with respect to reproducible deficiencies and only if such are reported in writing immediately upon their detection, at latest within one week. The Contractor can fulfill his warranty obligation via exchange, correction within a commensurate time period, or a price reduction. The duty to correct a deficiency ceases to apply if the Client does not enable the Contractor to take all measures necessary for analysis and correction of deficiencies. The maximum time period for assertion of guarantee claims is four months. Damage claims against the Contractor in accordance with § 933b ABGB [Austrian civil law] are excluded.**

9.2. Corrections and extensions that prove necessary up to the time of transfer of the contracted goods and services and that are due to organizational and programming deficiencies that are the responsibility of the Contractor shall be conducted at no cost by the Contractor.

9.3. Costs for help, error diagnoses, and corrections of errors and disruptions that are the responsibility of the Client as well as other corrections, modifications and extensions shall be conducted by the Contractor on a remuneration basis. This also applies to the correction of deficiencies if program modifications, extensions or other interventions have been done by the Contractor himself or by third parties.

9.4. The Contractor assumes no warranty obligation for errors, disruptions or damages due to improper operation, changed operating system components, interfaces and parameters, the use of unsuitable organizational media and storage media, insofar as such are prescribed, abnormal operating conditions (especially deviations from the installation and storage conditions) or transport damages.

9.5. The Contractor assumes absolutely no warranty obligation for programs that are modified after delivery by the Client's own programmers or by third parties.

9.6. If the object of a contract is the modification or extension of existing programs, then the warranty is restricted to the modification or extension. This does not revive warranty for the original program.

10. Compensation of damages

The Contractor is liable for damages, insofar as deliberate action or gross negligence is proven against him, in the realm of legal regulations. The damaged party must prove minor or gross negligence. The period of limitation for damage claims on the part of the Client is six months from detection of the damage and the damaging party. The period of limitation begins even if the damage has not yet occurred. These provisions for damage claims apply even if the claim asserts damages due to deficiencies, consequential damages and collateral damages. This provision also encompasses damage claims in accordance with § 33 DSG [Austrian Privacy Act].

11. Loyalty

The contracting partners commit themselves to mutual loyalty. The contracting partners shall refrain from any recruitment or employment, including via third parties, of employees of the other contracting partner who worked on the implementation of orders for the duration of the contract and for twelve months after termination of the contract. A contracting partner who violates this provision is obligated to pay a flat-rate damage claim in the amount of the annual salary of such employee.

12. Privacy protection, nondisclosure

The Contractor shall bind his employees to adherence to provisions in accordance with § 15 of the Austrian Privacy Act. The contracting parties oblige themselves to nondisclosure with respect to third parties of any knowledge, documents, project definitions and business processes of the contract partners that became known to them in the course of the contract relationship as well as the achieved results – including beyond the duration of the contract – unless such have already become generally known in some other way.

However, the Contractor is entitled to engage in general publicity with the respective research results so as to make known the activities of the Contractor in general and specifically for potential markets. This also applies to the utilization of results for general publications, teaching and acquisition purposes. The Client may be named as a reference in presentations.

13. Place of performance

The place of performance for goods and services shall be the company seat of the Contractor, if no other provisions are made in the contract.

14. Errata

A contract between the Contractor and the Client cannot be disputed on the basis of errors.

15. Retention of ownership

Until full payment of the purchase price has been made for goods or services, such goods and services delivered by the Contractor remain the property of the Contractor. Retention of ownership on the part of a contracting partner shall not be recognized. Goods and services delivered to the Contractor bear liability for all open claims of the Contractor.

16. Forfeiture agreement

On improper fulfillment of a contract, the Contractor forfeits the rights derived from the contract. The goods and services already delivered by the Contractor shall also be construed as forfeited.

17. Severance

Should any individual provision of the Agreement be found to be illegal or unenforceable, this shall not invalidate the remaining provisions of the Agreement. In such a case the Partners to the Agreement shall cooperate to replace any invalid provision with a valid and enforceable covenant whose content comes as close as possible to the original intent.

18. Jurisdiction and consumer protection

Where not specifically otherwise contractually agreed, exclusively those legal provisions applicable in accordance with Austrian commercial law shall apply, even if the contract is executed outside Austria. In the event of disputes, the partners agree to exclusive jurisdiction of the competent court with jurisdiction over the corporate location of the Contractor.

For sales to consumers in the sense of Austria's Consumer Protection Act, these provisions apply only insofar as the Consumer Protection Act does not require other provisions.