

General Terms and Conditions

Software Competence Center Hagenberg GmbH
Softwarepark 21, A-4232 Hagenberg, Austria
Commercial register number 184145b, Provincial Court of Linz

1. Scope

Services and offers of Software Competence Center Hagenberg GmbH [hereinafter SCCH GmbH] are provided exclusively on the basis of these General Terms and Conditions; any terms and conditions of the customer [hereinafter Partner] that are contrary to or deviate from these General Terms and Conditions shall not be recognized unless such recognition is agreed expressly in writing. Any verbal agreements shall be construed as non-binding. Likewise any waiver of said requirement of written form shall itself be required in writing. The requirement of written form shall be deemed as met by e-mail upon confirmation of said e-mail by the respective contract Partner (recipient). These General Terms and Conditions shall apply as the framework agreement for all further legal transactions between the contracting parties. With the awarding of a contract, the Partner expressly acknowledges these terms and conditions and contract sections.

2. Contract conclusion

Offers made by SCCH GmbH are non-binding and subject to change. A Contract shall be considered as concluded only upon either written confirmation by SCCH GmbH or actual fulfillment of said Contract. For any offers submitted to SCCH GmbH, a supplier or contractor shall be bound to his offer for a reasonable period of time from receipt of the offer, but in any case at least three weeks.

3. Performance of services, acceptance test

3.1. SCCH GmbH performs a Contract based on the nature and scope of binding information, documents and resources provided by the Partner. The commissioning Partner bears all responsibility for the correctness and completeness of such information, documents, etc. The commissioning Partner shall also provide practice-oriented test data and testing possibilities in adequate measure and on time during normal working hours and at the Partner's own expense. The commissioning Partner is obliged to work cooperatively to a normal and reasonable measure. Both SCCH and the Partner are obliged to mutual exchange of information and coordination. If the system that the Partner provides for testing is already in real operation, then the Partner bears sole responsibility for backup of his data. SCCH GmbH shall not be liable for damages ensuing from test operation, and in particular not for any loss of earnings or profits.

3.2. The basis for services provided by SCCH GmbH shall be the service description (insofar as such has been prepared), which is either prepared by SCCH GmbH against billing of costs and based on the documents and information provided by the Partner, or is provided by the Partner; this is complemented by agreements between the contracting parties that are retained in writing in whatever form (e-mails, file memoranda, protocols, etc.) and brought to the attention of the respective other contracting party before performance of services (hereinafter collectively the Requirements Definition). If it is prepared by SCCH GmbH, said Requirements Definition must be checked by the Partner for correctness and completeness and annotated with his approval. Such approval is

implicitly granted if the Partner fails to return the Requirements Definition with his written approval within two weeks to SCCH GmbH. Later requests for modifications require a separate agreement. If SCCH GmbH is to provide the source code and/or development documentation to the Partner, this must be agreed separately and explicitly between the contracting partners. SCCH GmbH retains the right to separately negotiate due dates and/or prices.

3.3. Custom software and/or program adaptations require an acceptance test for the respective program package at the latest four weeks after completion thereof. Such completion shall be assumed when SCCH GmbH requests that the Partner schedule a date for the acceptance test or SCCH GmbH delivers the product (the custom software or program adaptation) to the Partner. Acceptance and thus the proper and correct performance of services by SCCH GmbH (based on the Requirements Definition, Item 3.2), including any modifications that were undertaken, and on the provided test data (see Item 3.1) shall be confirmed by the Partner in a protocol. Should the Partner allow four weeks to elapse without accepting the Software, then the delivered Software shall be construed as accepted from the day of completion in the sense of this provision. On use of the Software in real operation by the Partner, the Software shall in any case be construed as accepted with the start of such usage if this occurs before the time of actual completion.

3.4. Any occurring deficiencies (deviations from the Requirements Definition) are to be reported by the Partner, along with adequate documentation, to SCCH GmbH without delay – at the latest within three workdays from the time of detection – in writing and verifiably (e.g., delivery by courier), unless SCCH GmbH's obligation to mitigate damage requires another form of notification (especially regarding imminent danger). In the event of properly reported significant deficiencies that do not allow the start or continuation of real operation, after correction of said deficiencies a renewed acceptance test is required in the sense of Item 3.3.

3.5. The selection of suited staff members to handle the commissioned contract and the determination of work modalities shall be at the discretion of SCCH GmbH.

3.6. SCCH GmbH retains the right to commission third parties with the performance of a commissioned contract or parts thereof (subcontracting).

3.7. On ordering of standard library software, the placement of the order shall confirm the Partner's knowledge of the scope of features of the ordered software.

3.8. Should the course of work reveal that performance of the contract in accordance with the Requirements Definition proves factually or legally impossible, or should said performance be impaired by conditions that are beyond the control of SCCH GmbH (e.g., because the conditions are within the sphere of influence of the Partner, because the Partner rejects operational implementation or due to force majeure), then SCCH GmbH is obliged to report such to the Partner without delay inasmuch as the Partner is not already aware of the situation. The Partner thereupon is obliged where possible to restore a situation that facilitates performance of the contract. Should the Partner fail to meet this obligation or fail to do so within a period of four weeks, SCCH GmbH is entitled to refuse further performance and to withdraw from the contract without a period of notice. Even in the event of withdrawal from a contract, SCCH GmbH retains its entitlement to actually due payment. Regardless of actual damages, the Partner is obliged to pay to SCCH GmbH the amount of 30% of the overall contract value that has not yet been invoiced, as flat-rate damage compensation. In addition, the Partner is obliged in any case to compensate SCCH GmbH for actual damages, explicitly including loss of profit. A reduction of the claim by SCCH GmbH due to contributory negligence in accordance with §1304 of Austrian Civil Law is explicitly precluded.

3.9. Shipment of program storage devices, documentation and Requirements Definition components shall be at the risk and expense of the Partner. Furthermore, training and explanations requested by the Partner shall be invoiced separately. Insurance shall be procured only at the request of the Partner.

4. Prices, taxes and fees

- 4.1. All prices and hourly rates are in euro without value-added tax and apply only to the respective commissioned Contract.
- 4.2. Flat rates apply from the headquarters of SCCH GmbH exclusively to costs, charges and fees in Items 4.3, 4.4 and 4.5.
- 4.3. The costs of program data storage media (e.g., magnetic tapes, CDs, DVDs) shall be billed separately to the Partner.
- 4.4. Travel expenses along with daily allowances and overnight accommodations shall be billed separately to the Partner. Travel time shall count as work time.
- 4.5. Any contract fees shall be paid by the Partner, who shall indemnify SCCH GmbH in this respect.
- 4.6. For standard library software – unless otherwise explicitly agreed – the list prices on the day of delivery shall apply.
- 4.7. If no hourly rates are contractually agreed, then for all services (organizational consulting, programming, training, transition support, telephone help, etc.) the work time shall be billed with SCCH GmbH's normally applicable hourly rates on the day of performance of such services.
- 4.8. Deviations from any time investment based on flat-rate compensation that are not due to SCCH GmbH alone, e.g., additional time required due to inadequate or late cooperation on the part of the Partner, or services by SCCH GmbH that relate to the contract matter as such, but were not expressly contracted and cause additional overhead, shall be billed according to actual occurrence.
- 4.9. The quoted prices (including the flat rates) do not include hardware and software components and systems that are required specifically for a commissioned project and are not already among the standard equipment of SCCH GmbH. Such special equipment and systems are the responsibility of the commissioning Partner over the course of the project.

5. Delivery date

- 5.1. SCCH GmbH shall strive to meet all mutually agreed due dates for performance (completion). Delivery deadlines, unless otherwise contractually specified, are non-binding.
- 5.2. The targeted delivery dates can be met only if the Partner provides completely all necessary work and documentation, in particular the Requirements Definition in Item 3.2, by the deadlines specified by SCCH GmbH and fulfills his obligation to work cooperatively to the required extent. Delivery delays and increased costs due to [the Partner's failure to meet] these obligations or due to incorrectness, incompleteness or late modification of specifications and information and documentation provided by the Partner are not the responsibility of SCCH GmbH and thus cannot be construed as delay on the part of SCCH GmbH. Resulting cost increases are borne by the commissioning Partner. Furthermore, the Partner is bound to compensate any damages incurred by SCCH GmbH, in particular lost profits, regardless of fault on the part of the commissioning Partner.
- 5.3. SCCH GmbH is entitled to make partial deliveries and to serve partial invoices.

6. Payment

- 6.1. Invoices served by SCCH GmbH shall be paid within 14 days of receipt with no deductions and no fees. Payment conditions for the overall contract also apply analogously to partial invoicing.
- 6.2. SCCH GmbH is entitled to serve partial invoices, in particular in the form of monthly accounting.

6.3. Adherence to contracted payment dates serves as a significant condition for performance of contract by SCCH GmbH. If installments or partial payments are contracted, then on nonpayment of two successive installments or partial payments, all outstanding payments on the part of the Partner become due immediately and without billing or reminders by SCCH GmbH; promissory notes can likewise become due.

6.4. Delay of payment on the part of the Partner entitles SCCH GmbH to suspend ongoing work and after a grace period of 14 days to withdraw from the contract. In the event of SCCH GmbH's entitled withdrawal from the contract, the Partner owes SCCH GmbH the total amount of contracted payment. In addition, SCCH GmbH, notwithstanding additional damage claims, is entitled to interest on arrears in the amount of 10% above the prime interest rate annually. All damages to SCCH GmbH that are related to payment delay on the part of the Partner, including lost profits, are to be compensated by the Partner regardless of fault.

6.5. SCCH GmbH is entitled at any time and without limit to set off against claims by the Partner. Set-off on the part of the Partner is permissible only if the claim against SCCH GmbH is uncontested or has been established by final enforceable judgment. The Partner is not entitled to a right of retention, whether through objection to non-fulfillment or inadequate fulfillment of contract (§1052 of Austrian Civil Law) or through refusal to transfer a physical item for the purpose of asserting a claim.

7. Intellectual property and exploitation

7.1. All intellectual property rights, including copyright, trademarks, design rights, patent rights, utility model rights and know-how, as well as, in particular, all unprotected inventions, commercial experience, trade secrets, etc., regardless of when they are revealed to the contracting partner, remain the property of SCCH GmbH or any existing licensor. These Terms and Conditions do not grant either contracting party intellectual property rights of the other contracting party. The commissioning Partner is granted exclusively the right to use the contracted Software, after payment of the contracted remuneration, for the Partner's own purposes, only on the hardware specified in the contract, and in line with the number of purchased licenses.

7.2. The present Contract grants [the commissioning Partner] only utilization license for the contracted Software. In particular, distribution or exploitation by the commissioning Partner beyond the Partner's own utilization is forbidden, with the exception of transfer to an enterprise that is associated with the Partner in the sense of §228 of Austrian Enterprise Code and §15 of Austrian Corporate Code. Collaboration on the part of the commissioning Partner in the production of the Software does not entitle the Partner to any rights beyond the utilization prescribed in the present Contract. SCCH GmbH remains the owner of all rights to its products and services, including the respective accompanying materials, even if the commissioning Partner modifies such – regardless of whether such modification is within the scope permitted by the contract – or combines such with his own software or the software of a third party. In the event of such modification or combination as well as on creation of software copies necessary for contractual utilization, the commissioning Partner shall label such so as to reference SCCH GmbH.

7.3. The commissioning Partner is not entitled to either modify or remove any label, proprietary notice or copyright notice of SCCH GmbH. This applies likewise for all accompanying materials.

7.4. The commissioning Partner guarantees that he is entitled to utilization and exploitation, in particular to distribution, of the Software and accompanying material that he provides to SCCH GmbH for the purpose of performance of the latter's services, and shall indemnify SCCH GmbH against all claims by third parties.

7.5. The commissioning Partner is entitled to create copies of the Software for archiving and back-up purposes under the condition that the Software and any accompanying materials (instructions, packaging, etc.) contain no explicit prohibition of such copying by the licensor or any third party and that all copyright and unaltered proprietary notices be included with the copies.

7.6. Should it be necessary for the establishment of interoperability of the contracted custom Software to reveal the [Software] interfaces, then the commissioning Partner shall commission SCCH GmbH to do so for appropriate remuneration. If the commissioning Partner fails to commission SCCH GmbH, then the latter in any case shall invoice the appropriate remuneration in the sense of this provision. If SCCH GmbH rejects such commissioning, then reverse engineering shall occur only under adherence to the respective provisions of copyright law and the results shall be employed exclusively to establish interoperability.

7.7. On violation of intellectual property rights of SCCH GmbH, in particular of copyright, trademark rights, know-how, commercial inventions or trade secrets, the Partner shall provide full redress.

8. Right of withdrawal

8.1. In the case of delays that are ascribed alone to SCCH GmbH, the commissioning Partner is entitled to withdraw from the contract via verifiable delivery (e.g., per courier) if within an appropriate grace period significant parts of the contracted services are not delivered and the commissioning Partner himself is not at fault.

8.2. Force majeure, including natural catastrophes and fire as well as other circumstances outside the control of SCCH GmbH, shall release SCCH GmbH from its contractual obligation of delivery or permits SCCH GmbH to negotiate a new delivery deadline. In this case SCCH GmbH will notify the commissioning Partner without delay and in appropriate form concerning such an impediment to performance of services. Force majeure shall include monetary issues, trade policy and other judicial/administrative measures, embargos, strikes, lockouts, operational disruptions that are not the fault of SCCH GmbH, traffic obstacles, delays on import/customs and any other circumstances that, with no fault on the part of SCCH GmbH, significantly encumber or prevent timely delivery of goods and services. It is insignificant whether these circumstances occur at SCCH GmbH or at a supplier. Regardless of whether the force majeure impeding performance by SCCH GmbH continues to exist, the contractual obligation to deliver can be extended by at most six months. Thereafter the commissioning Partner is entitled to withdraw from the contract. However, the Partner is not entitled – on whatever legal basis – to make claims against SCCH GmbH. For all partial deliveries already made, SCCH GmbH is entitled to commensurate remuneration.

8.3. Cancellation on the part of the commissioning Partner is possible only with the written approval of SCCH GmbH. If SCCH GmbH agrees to cancellation, then SCCH GmbH is entitled to invoice a cancellation fee amounting to 30% of the contract value that has not been performed, in addition to invoicing the performed services and accrued costs.

9. Warranty, maintenance, modification

9.1. SCCH GmbH warrants that its services contain no significant errors that reduce their usability or their value and that these services meet the contracted requirements. Should the services of third parties be promised in the Requirements Definition or similar documents created in the course of performance of the contract, then such promise shall serve only as approval of the utilization of third-party services, and thus solely as the promise to endeavor to enlist the approval and the service of the third party.

9.2. For custom Software, the warranty obligation begins with the software acceptance test in Item 3.3. The warranty period is six months from the date of acceptance. Warranty obligation is limited to reproducible deficiencies. A claimed deficiency is to be reported without delay (within at most three workdays) via registered mail with specific description of the nature of the deficiency; otherwise the warranty is void. On delivery by a carrier (shipping firm, postal service, etc.), the delivered product must be checked without delay and any deficiencies must be noted in writing on the delivery papers; otherwise the warranty is void. Deficiencies shall be reported to SCCH GmbH without delay (within at most three workdays) with specific descriptions and complete documentation (including delivery papers) via verifiable delivery (e.g., by courier).

9.3. Correctable deficiencies shall be corrected, at the discretion of SCCH GmbH, either by improvement or via a substitute delivery within a reasonable time span. In any case, improvements and exchange have priority over price reduction and rescission. Even on justified notification of deficiencies, SCCH GmbH's obligation to remedy deficiencies is voided if the commissioning Partner fails to enable SCCH GmbH to conduct all measures toward investigation and rectification of deficiencies. Damage claims against SCCH GmbH in accordance with §933b of Austrian Civil Law are precluded.

9.4. The warranty is void in the following cases:

- a) In the event of errors, disruptions or damage due to improper or inappropriate operation of the Software or improper or inappropriate handling of materials; non-adherence to installation, operation or maintenance instructions; the use of any components, interfaces and parameters; the use of unsuitable operating materials, organizational measures or storage media; abnormal operating conditions (in particular, deviations from the installation, operating and storage conditions); inappropriate transport or improper maintenance;
- b) On use of standard library software, for damage to such libraries and for damage that results from these or their utilization;
- c) In the event of customary minor deviations from the Requirements Definition (including any mutually agreed modifications) that technically could not be avoided or only at additional expense;
- d) For Software that the commissioning Partner or third parties subsequently modified or enhanced or in some other way intervened;
- e) For deficiencies that can be ascribed to the material provided by the commissioning Partner;
- f) For deficiencies that are attributable to the actions of third parties, to atmospheric discharge, voltage surges, natural phenomena and chemical influences.
- g) For foreign components that are delivered with the order.

9.5. Insofar as the subject of a contract is the modification or enhancement of existing software by SCCH GmbH, the warranty covers said modification or enhancement. The guarantee for the original software is not revived thereby.

9.6. Costs of support, error diagnosis and correction of errors and disruptions that are not or no longer covered by some warranty claim of the commissioning Partner, as well as of any other corrections, modifications and enhancements requested later by the commissioning Partner shall be invoiced by SCCH GmbH for commensurate remuneration.

9.7. For unjustified notifications of deficiencies, i.e., where no guarantee claim is involved, SCCH GmbH shall invoice ensuing costs and is entitled to commensurate remuneration.

10. Compensation of damages

10.1. In the realm of legal requirements, SCCH GmbH is liable for damages – except personal injury – only if intent or gross negligence can be proven. The burden of proof rests with the damaged party.

10.2. The statute of limitations for damage compensation claims by the commissioning Partner is six months from the date of detection of damages and identification of the injuring party. The statute of limitations begins before the damage has occurred.

10.3. Liability on the part of SCCH GmbH is restricted to the amount of the overall contract value. Compensation of consequential damages and pure financial losses as well as lost profit and interest are precluded. In addition, SCCH GmbH is not liable for damages ensuing from claims by third parties against the commissioning Partner or for unforeseeable damages. In cases covered in Item 9.4, SCCH GmbH bears absolutely no liability; likewise in the case of damage compensation claims in accordance with §33 of the Austrian Data Protection Act.

10.4 Product liability on the part of SCCH GmbH is limited to such cases where the Product Liability Act (Federal Law Gazette No. 99/1988, as amended) mandates liability. Any recourse claims that the Partner or third parties direct against SCCH GmbH in connection with product liability in the sense of the Product Liability Act are precluded unless the party claiming recourse can prove that the defect originated in the sphere of influence of SCCH GmbH and was caused by at least gross negligence.

10.5. If SCCH GmbH provides services in the realm of a research program, SCCH GmbH shall vest utmost care in such work as required for reasonable execution thereof and shall strive to achieve the targeted results. However, there is neither liability nor warranty for the achievement of the targeted results. Furthermore, SCCH GmbH shall be liable only in the case of intent and gross negligence. SCCH GmbH does not ensure that the targeted research results, assuming that such can be achieved, can be industrially and/or commercially exploited.

11. Loyalty

Both contracting partners are committed to mutual loyalty. Each contracting partner shall refrain from recruiting or employing staff of the other partner (including via third parties) who worked on performance of the contracts, and to do so for the lifetime of the contract and twelve months after its termination. The violating partner is obliged to pay a flat-rate damage compensation in the amount of the annual salary of the staff member.

12. Nondisclosure

12.1. The contracting parties oblige themselves to nondisclosure with respect to third parties regarding all confidential knowledge, documents, project definitions and business processes of the respective contractual partner that have become known to them in the course of the contractual relationship, as well as all results – including beyond the lifetime of the contract – unless such have already become generally known in some other way.

12.2. However, SCCH GmbH is entitled to employ, and in particular to publish, the research results acquired in the realm of this contractual relationship for marketing purposes in a form that publicizes the activities of SCCH GmbH in general and for a potential market in particular. This applies as well to the utilization of results for general publication, teaching and acquisition purposes. SCCH GmbH is entitled to reference the commissioning Partner by name for presentations, in offers and the like.

13. Place of performance

The place of performance for deliveries and services, unless otherwise explicitly agreed, shall be the offices of SCCH GmbH.

14. Error

Disputing the Contract concluded between SCCH GmbH and the commissioning Partner due to error is precluded.

15. Retention of ownership

Until full payment of the purchase price or full remuneration for services, SCCH GmbH's delivered products and services remain the property of SCCH GmbH. No retention of ownership on the part of the contracting Partner shall be recognized. The right of utilization of a work in the sense of Item 7.2 or any other rights expressly granted to the commissioning Partner to intellectual property of SCCH GmbH arise only upon full payment of the purchase price or full remuneration for services.

Objects delivered to SCCH GmbH serve as security for all open claims of SCCH GmbH.

16. Severability

Should any individual provision(s) of this Contract be found to be illegal or unenforceable, then the remaining provisions shall not be affected or impaired thereby. The contracting partners shall cooperate to find a new covenant that comes as close as possible to the illegal or unenforceable provision.

17. Final provisions

17.1. Insofar as no provision is agreed to the contrary, Austrian law shall apply between the contracting parties, under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and of conflict of laws standards, even if the Contract is performed outside Austria.

17.2. For any disputes, exclusively the jurisdiction of the competent courts at the headquarters of SCCH GmbH shall apply.

17.3. Regarding sales to consumers in the sense of the Consumer Protection Act, the above provisions apply insofar as the Consumer Protection Act does not mandate other provisions.

ADDENDUM: The authentic contract language is German in the context of the Austrian understanding of terminology. The English version is provided for convenience.