

## General terms and conditions for software development and provision of services within the scope of software projects

### 1 Remuneration

- 1.1 Consultancy services shall be provided for the remuneration agreed in the contract. Unless otherwise agreed, the services shall be provided on a time and material basis. One daily rate shall cover 8 hours of work per day. Any hours worked more or less than 8 hours shall be remunerated pro rata. The daily rates refer to work performed in the period from Monday to Friday between 8:00 a.m. and 6:00 p.m. Outside these hours, the relevant daily or hourly rate shall increase as follows:

	Period	Surcharge
<b>Business hours</b>	<b>Mon – Fri 8 a.m. – 6 p.m.</b>	
<b>Overtime 1</b>	<b>Mon – Fri 6 – 8 a.m., 6 – 10 p.m. Sat 8 a.m. – 2 p.m.</b>	<b>50%</b>
<b>Overtime 2</b>	<b>Mon – Fri 10 p.m. – 6 a.m. Sat 2 p.m. – 8 a.m. Sun 0-24h</b>	<b>100%</b>

These surcharges shall also be payable if a fixed price was agreed, provided that the work is performed during the periods indicated at the customer's explicit request.

- 1.2 Any work agreed to be performed outside the period from Monday to Friday between 8:00 a.m. and 6:00 p.m. shall only be performed by the contractor if performance of the work during these periods is permissible under the law.
- 1.3 When work is billed on a time basis, the contractor's employees will record their daily working hours in an activity report. Upon request, the customer shall be able to inspect these activity reports.
- 1.4 The services performed shall be billed monthly at the end of the month. If a fixed price is agreed, 30% of the fixed price will be charged upon placement of the order and 30% upon handover of a prototype to the customer. The remaining 40% shall be charged following completion of the works. In addition to the agreed remuneration, all travel expenses (mileage, flight and train tickets, taxi etc.), out-of-pocket expenses, and accommodation costs will be invoiced.
- 1.5 Travel and idle time shall be considered as working time.
- 1.6 Notwithstanding the provisions contained in the two previous paragraphs, a lump sum of € 100.- for travel expenses and travel times shall be charged for trips of up to 25 km on the road from the municipal border of Vienna.
- 1.7 All prices are stated exclusive of the sales tax applicable at the time of performance. If the sales tax rate is changed within the billing period, the periods with the respective different sales tax rates shall be considered as separate billing periods.
- 1.8 Stability of value is expressly agreed for hourly rates and daily rates. The measure for calculating the stability of value shall be the consumer price index of the of the agreement

for the current calendar year, which is published monthly by Statistics Austria or an index replacing it.

- 1.9 Unless agreed otherwise, invoices shall be payable without deduction two weeks after the date of the invoice.
- 1.10 The customer may only offset payments against their counterclaims if they are undisputed or have been established as final and absolute by a court of law.
- 1.11 In case of default in payment, 14% interest on arrears p.a. shall be charged on the net invoice amount plus reimbursement of expenses.

## **2 Execution, cooperation by the customer**

- 2.1 The customer has nominated the person named in the contract as technically competent contact person, who shall supply the customer with the necessary information at short notice, provide the documents required, nominate discussion partners, and make decisions, especially regarding the approval of milestones. The contractor shall be obliged to call in the contact person if and to the extent that the performance of the contract so requires. For their part, the contractor has nominated the person named in the contract as project manager who can arrange for coordination and make decisions. If the two nominated contact persons fail to mutually agree on a solution within two working days, the managing directors of the contracting parties shall be called in to find a solution.
- 2.2 To the extent that the contractor depends on the customer's cooperation to perform the contract, the latter shall provide the required cooperation to the best of their ability. If the customer fails to make a decision incumbent upon them regarding the more detailed definition of the project content within two working days upon being requested to do so by the contractor, the latter shall be authorised to take the relevant decision instead of the customer without granting any further period of grace.
- 2.3 If the contractor works at the customer's premises, the latter shall create all prerequisites within the sphere of their business operation without charge and in time, and shall maintain such conditions for the duration of such work. In particular, they shall provide the required cooperation in full, in perfect quality and in time and, to the extent required,
  - a) shall make available suitable workstations including telephone,
  - b) shall provide the required development environment including the required number of terminal devices and other resources during customary operating hours, and the access rules applicable within the business, all of this in operational condition,
  - c) shall take care of operating as well as system updates (operating systems and other software products used),and
  - d) shall obtain the required approvals, authorisations and access rights.
  - e) The customer shall inform the contractor about any limitations regarding certain operating times, especially about any restrictions of operating times, in due time.
- 2.4 If any delays and/or extra costs result from the customer failing to cooperate properly or in time, the contractor shall be entitled to demand changes of the schedule and of the agreed remuneration – without prejudice to any more far-reaching statutory rights.
- 2.5 The contractor shall determine, and be accountable for, the way the contract is performed and by whom. The customer shall have no managerial authority in this respect, but the contractor shall try to take account of the customer's requests. To the extent such requests are associated with extra costs, the contractor may demand that the agreed remuneration and schedules be adjusted.

- 2.6 The contractor may subcontract consultancy services to independent subcontractors selected by them. The obligations under this contract shall apply to any subcontractor and their personnel in the same way as they apply to the contractor's personnel.
- 2.7 The contractor will inform the customer about any foreseeable delays as soon as they are perceived by the contractor. The contractor shall inform the customer, in time, about any imminent risk of the completion date being exceeded, indicating the reasons.
- 2.8 If a cause for which the contractor is not accountable, especially strike or lockout (including at the location of a subcontractor) or lack of cooperation by the customer, negatively affects the performance of the contract, the contractor may claim a reasonable postponement of the production schedule.

### **3 Change of contractual performance**

- 3.1 Each contracting party may request changes to the agreed scope of supply and services from the other contracting party in writing. Following receipt of a change request, the recipient shall review the change in order to decide whether it is feasible and if so, under which conditions, and shall inform the requesting party about their consent or rejection in writing without delay, justifying their decision.
- 3.2 If a change request submitted by the customer requires a comprehensive review, the costs incurred may be charged by the contractor. Prior to performing any reviews that would have to be charged, the contractor will notify the customer that the review of the change request is subject to costs.
- 3.3 The contractual amendments of the terms and services agreed that are required to review and/or implement a change request shall be set down in a written addendum to the present contract.
- 3.4 The contractor shall continue the work in accordance with the existing contract without the corresponding changes for as long as the contracting parties fail to reach an agreement on the implementation of the changes.
- 3.5 If the customer requests additional services (in terms of quantity and/or quality) from the contractor during the performance and completion of this contract, the contractor shall be entitled to request extra remuneration for such extra services. If, within 14 days after receipt of a written request by the customer for additional services, the contractor fails to reject the provision of the additional services or to point out to the customer that extra remuneration and/or an extension of the period of performance will be associated with said additional services, the contractor shall be deemed to provide the additional service without any extra remuneration within the agreed period of performance.

### **4 Rights of use and ownership**

- 4.1 Work results within the meaning of this contract shall be, for instance, analyses, planning documents, programming material including documentation, reports, drawings and similar material, handed over to the customer in accordance with the agreed scope of supply and services in written, machine-readable and/or any other form of representation.
- 4.2 The services provided within the scope of software maintenance shall not be considered as work results within the meaning of this contract. The rights to the services provided within the scope of software maintenance shall be subject to the respective maintenance agreements.
- 4.3 Option 1 Licence: Against payment of the agreed remuneration, the contractor grants the customer the non-exclusive right to permanently use the work results for the customer's

internal applications and purposes. The customer will include the copyright notices contained in the work results, if applicable, in all copies and adaptations.

- a) Within their own company, the customer may make the software available for use by their employees and install the software on any number of servers. The customer is not permitted to install or use a copy of the software in other companies. The use of the software at subsidiaries shall require a separate agreement.
  - b) The software and the customer's applications developed using the software may only be used for the commercial operations of the customer within the customer's company and must not be marketed, sold or passed on by the customer.
  - c) The customer is entitled to make copies of the software as required for backup, archiving and restore. The reproduction of printed documentation is not permitted.
  - d) The customer is not entitled, either on their own or through third parties,
    - to decompile, disassemble or reverse-engineer the software without the contractor's consent, unless this is expressly provided for under the law (e.g. Section 40e of the Austrian copyright act [UrhG]);
    - to remove product identification labels or copyright notices;
    - to lease, loan or use the software for time-sharing or EDP service bureau purposes;
    - to use or reproduce the software in any other way than as explicitly provided for in this contract.
  - e) The customer may only pass on the original work results or copies thereof, whether in full, in part or after adaptation, to third parties if the customer transfers the present licence, the entire work results and the complete user documentation and does not retain any copies, and if the third party agrees to the provisions of this licence. The customer and the third party are obliged to notify the contractor of any such transfer in writing immediately, and the contractor is entitled to verify compliance with the customer's obligations to refrain from any further use at the customer's premises at any time.
- 4.4 Option 2 Licence with source code access: In addition to the rights under item 4.3, and against payment of an additional remuneration, the customer is provided with the source code of the work results and is granted the right to change and process the work results and to combine the same with other programs.
- 4.5 Option 3 Transfer of a comprehensive right of use (*Werknutzungsrecht*): In addition to the rights under items 4.3 and 4.4 and against payment of an additional remuneration, the customer is granted a comprehensive right, for all intents and purposes, to the work results (but not to the basic platform contained therein, which the contractor may continue to use and to which the customer is only granted the rights described in items 4.3 and 4.4, as well as the right to grant sub-licences), of any legal nature under current or future legislation whatsoever (in the Austrian, any foreign and/or international legal system), in particular all rights under the law of ownership and intellectual property law. This granting of rights shall be exclusive and accordingly excludes all others, hence also the contractor. Hence, the customer shall have, in particular, the irrevocable, exclusive (worldwide) right of use – unlimited in terms of time, content and place – to the work results, in particular publication, in full and/or in part, reproduction, circulation, processing, broadcasting, and physical representation, and any other form of use that is possible now or in future (irrespective of whether such use is known today), as well as the authorisation to exercise the rights described in Section 20 and Section 21 (1) UrhG. Moreover, the customer is also entitled, in particular, to transfer said rights to third parties in full or in part, to grant sub-licences or rights of use (*Werknutzungsrechte*) and/or limited licences (*Werknutzungsbewilligungen*). The provisions of Section 29 UrhG shall not apply.

## **5 Third-party work results**

- 5.1 To the extent provided for in the scope of supply and services, the customer may deliver third-party work results to the contractor or their subcontractors for adaptation or for other reconfigurations.
- 5.2 The customer shall ensure that the terms of use for third-party work results are not in conflict with processing within the scope of the foregoing item 5.1, as well as with exploitation and/or publication of the adapted version by the contractor.
- 5.3 The customer shall indemnify the contractor and their subcontractors with respect to any liability for third-party claims arising due to the unauthorised delivery for adaptation under item 5.1, unless it is a case of intent and gross negligence on the part of the contractor or their vicarious agents.

## **6 Inventions**

- 6.1 The following shall apply to inventions made or developed by any of the contracting parties during the period of performance and for which proprietary rights were registered:
  - a) Inventions by the customer's employees shall belong to the customer and those made by the contractor's employees shall belong to the contractor. The contracting parties, including their affiliated companies shall grant each other a non-exclusive, irrevocable, worldwide and royalty-free licence to such inventions and to any proprietary rights granted thereon.
  - b) Inventions made jointly by employees of the customer and of the contractor and the proprietary rights granted thereon shall belong to both contracting parties. Each contracting party is entitled to grant licences for such inventions to third parties or to transfer their rights without informing the other contracting party or making any payments to them.
- 6.2 Affiliated companies are those in a position to significantly influence the decisions of participating companies directly or indirectly, financially or in terms of personnel, through instructions given to the management or by exercising their voting rights.

## **7 No third-party rights**

- 7.1 The contractor warrants that the services provided by them and their subcontractors are free from any proprietary rights of third parties that exclude or restrict the contractual use of the software. If contractual use is impaired or prohibited on account of any infringements of proprietary rights being asserted, the contractor is obliged, at their discretion, to either change or replace the contractual services in such a way that they no longer fall under any third-party proprietary rights, while still complying with the provisions of the contract, or to obtain the right for the services to be used in line with the contract without restrictions and without any additional costs for the customer.
- 7.2 The contractor shall be entitled and obliged to conduct all legal disputes arising from such claims at their own expense.
- 7.3 The aforementioned rights shall be excluded if the infringement of proprietary rights is based on the fact that the customer has changed the contractual performance or is using the relevant service in a way that is not compliant with the agreed terms of use.
- 7.4 The customer undertakes to inform the contractor about any claim asserted against them in writing immediately. The customer shall not be entitled to acknowledge any claims without the prior written consent of the contractor.

## 8 Confidentiality, data protection

- 8.1 The contracting parties shall treat the respective other contracting party's important matters that are not generally known with the confidentiality usual in business dealings. However, the contracting parties may use any ideas, concepts, know-how, and methods relating to data processing without restrictions.
- 8.2 The contracting parties will process and use personal data of the respective other contracting party for contractually agreed purposes exclusively. In particular, they shall protect these data against unauthorised access and only pass them on with the consent of the other contracting party.

## 9 Duty of loyalty

The contracting parties agree to a mutual duty of loyalty. Both contracting parties shall refrain, in particular, from actively headhunting the other contracting party's employees. This headhunting ban shall apply for a period of 12 months after completion of the works under this contract. It also includes the obligation not to hire the respective other party's employees as freelancers, either directly or through third parties.

## 10 Acceptance of works performed (*Werkleistungen*)

- 10.1 If the parties have explicitly agreed that the consultancy services shall be provided as *Werkleistungen* (work performance), the contractor shall prove to the customer, at the deadline, that the works meet the performance features according to defined acceptance criteria. The customer shall provide the necessary test data and test scenarios, to the extent required for acceptance.
- 10.2 The services performed by the contractor shall be accepted by the customer, as soon as the contractor has demonstrated compliance with the deliveries and the contractually agreed performance according to the agreed acceptance criteria. Minor deviations within the meaning of item 10.3 shall not entitle the customer to refuse acceptance. The obligation to eliminate defects within the scope of warranty shall remain unaffected. As soon as any components or partial results are used in productive operations, they shall be deemed accepted. Upon acceptance, a protocol shall be prepared which is to be signed by both parties and confirms compliance with the acceptance criteria. A list of the faults found during acceptance shall be enclosed. The faults will be classified into categories. If the contractor is unable to remedy serious faults within the meaning of fault category 1 for reasons they are responsible for, and if they fail to do so within a reasonable period after completion of the agreed acceptance tests, the customer may withdraw from the contract in full or in part. In that case, the customer's payment obligation shall only apply in the amount of the benefit they can draw from the services provided. To the extent that partial acceptance procedures were performed, the services accepted shall not be considered for the reduction.
- 10.3 The following fault categories are agreed for acceptance:
- a) Category 1: Due to the fault, contractual use is not possible or unreasonably limited or impeded. The fault cannot be worked around by organisational or other means either.
  - b) Category 2: Proper use is not impaired in such a way that the acceptance test cannot be continued nevertheless. These faults shall be remedied, if possible, during the agreed



duration of the acceptance test or shall be worked around using a temporary solution in such a way that acceptance is possible.

- c) Category 3: Functionality and usability are restricted to a negligible extent only.
- 10.4 Final classification of a fault into one of the above-stated fault categories will be effected by mutual agreement between the contracting parties.
- 10.5 Any faults of categories 2 and 3 remaining after acceptance shall be remedied within the scope of warranty in accordance with a schedule to be prepared jointly by the parties.
- 10.6 Faults of category 1 are "serious deviations", faults in categories 2 and 3 are "negligible deviations".
- 10.7 The acceptance test cannot be extended nor acceptance be refused due to faults in devices and software programs of other manufacturers which are not part of the works to be performed (*Werkleistungen*) by the contractor under this contract. The same applies to faulty operation, unless the customer can prove that the contractor or their subcontractors are accountable for such faulty operation.

## 11 Warranty

- 11.1 There is no warranty claim for services.
- 11.2 In case of work performance (*Werkleistungen*), the contractor warrants that, upon delivery, the work results correspond to the respective documentation for such work results in all material respects. The contractor shall also warrant that the entire work results delivered to the customer under this contract will record, store, process, and display calendar data on or after 1 January 2000 in same way and in a basically similar way of functioning as it was recorded, stored, processed, and displayed prior to 31 December 1999. The customer is aware, however, that the work results may contain errors that may impair serviceability. Errors and defects that annihilate or considerably impair serviceability and which are reported by the customer within six months after acceptance of the work results shall be remedied by the contractor in such a way that the customer is provided with fixed and error-corrected versions of the work results free of charge, excluding any further claims, in particular excluding any claims for redhibition and price reduction. The customer may only claim the gratuitous transfer of the error-corrected work results against return of the defective work results. If any such intervention fails to sufficiently remedy the situation or in the contractor's opinion is not suitable, the contractor may reimburse the remuneration paid for any such work result in full or in part, in line with the impairment of use.
- 11.3 The customer shall lose all warranty claims and claims for damages if:
- a) the work results are not used in accordance with the documentation;
  - b) the work results or parts thereof were modified without the contractor's previous consent; or
  - c) if an error in the work results was caused by any defective device of the customer or any third-party software.

## 12 Liability

- 12.1 Claims for damages on the part of the customer, in particular due to culpa in contrahendo, default, defects, impossibility of performance, tort, consequential harm caused by a defect, shall be excluded, unless the customer proves that such damage was caused by the contractor or their vicarious agents intentionally or in a grossly negligent manner. The

data and the software programs must be backed up daily, otherwise the contractor cannot be held liable for any loss of data under any circumstances.

12.2 The foregoing liability rules shall not affect any liability of the contractor under the product liability act.

### **13 Miscellaneous**

13.1 There are no verbal ancillary agreements relating to the present contract. It contains the agreements made between the parties with respect to the subject matter of the contract in their entirety and shall replace all oral or written understandings previously made between the parties, if any. Supplements and amendments to this contract or any order shall be made in writing to be effective. Compliance with the written form requirement may only be waived in writing.

13.2 The parties agree that Austrian substantive law shall apply to the exclusion of the UN CISG.

13.3 Severability clause: The partial or complete invalidity of any provisions of this contract shall not affect the validity of the remaining provisions. The parties shall replace any invalid provisions by others that best possibly approximate the meaning of the invalid provision in economic terms and with legal effect.

13.4 The contractor shall be entitled to transfer this contract to any affiliate of the contractor. For the rest, every transfer shall require the consent of the respective other party.

**Baden, January 2023**