

General Terms & Conditions for Industrial Clients

I Scope of application

1. These General Terms & Conditions apply solely to our field of activities. We therefore declare that we only conduct business on the basis of our General Terms & Conditions.
2. We do not recognise deviating General Terms & Conditions from other parties, unless we expressly agreed to accepting them in whole or in part. The other party shall note and agree to this exclusion clause.
3. Our General Terms & Conditions constitute an integral part of all the legal relations that we enter into, especially in the form of individual agreements. The individual agreements shall refer expressly to the existence of the General Terms & Conditions and specify that contracts are only concluded on the basis of our General Terms & Conditions, which can currently also be accessed on the internet.
4. In the event of individual provisions of the General Terms & Conditions becoming invalid or not applicable, the nearest, validity-maintaining and permissible content shall apply. The ineffectiveness of individual provisions shall not otherwise affect the effectiveness of the remaining provisions.

II Written form

All agreements concluded between the other party and ourselves shall only be deemed effective when made in writing and signed by the company (cf. IV (2) hereof). These formal requirements cannot be departed from by oral agreement. In the event of a defect of form, we reserve the right however to recognise the validity of the irregular agreement and in such cases also to take decisive action appropriate to the agreement in terms of form (curing the defect of form).

III Quotations

1. Unless agreed otherwise, our quotations are not binding and are without obligation.
2. Should business relations be established on the basis of a quotation submitted by ourselves and substantially overrunning the costs quoted prove unavoidable, we undertake to notify the other party of these circumstances in good time. Such notification is not necessary if the overrun is due to circumstances within the other party's sphere or is known to them. If, following notification, the other party does not respond or instruct us to the contrary, we shall interpret this circumstance as an indication that they have agreed to the additional costs.
3. Our quotations are based among other things on the purchase prices applicable to us on the date the quotation was calculated. We reserve the right to adjust our calculations in relation to any changes made to these prices, be they an increase or reduction for the other party.
4. A fee is payable for any quotations that constitute more than an initial rough estimate, especially offers involving preparatory work.

IV Formation and legal nature of individual agreements

1. Validity of our quotations and forwarding of notices

1. We reserve the right to cancel our offer by separate notice, even after having received acceptance of a quotation submitted by ourselves.
2. We are also entitled to send notifications to the other party by means of electronic mail (e-mail) or through comparable and equivalent communication channels, and the other party hereby gives its consent. Such notices are deemed to have been delivered when available to the recipient for retrieval.

2. Formation of an agreement

A binding agreement for us becomes legally effective when the management or any person named in the company register as being so authorised confirms its content in writing. From this point in time the contracting parties are liable to provide each other with the agreed services, and the prior correspondence is considered solely to have prepared the ground. Any amendments to an existing agreement shall also only be deemed effective when confirmed in writing.

3. Information, assistance and duty to warn

1. The other party undertakes to ensure that we also receive all the necessary documents for meeting the terms and carrying out the contract as soon as possible and in time, even if they are not expressly requested. Should the other party fail to provide any agreed or necessary assistance for carrying out the contract to any extent whatsoever, we are either entitled at our discretion, if the period we have allowed for making good the omission has elapsed, to stop work without further notification until the other party has provided the due assistance, whereby the other party shall assume the additional costs incurred, or withdraw from the agreement by sending notice to this effect (cf. VI (5) and (7) hereof).
2. We undertake to notify the other party immediately if any of the material they have provided is unsuitable, instructions or particulars are incorrect, or the desired project results prove technologically impossible as soon as such circumstances become apparent. As it is the other party's responsibility, we are not under obligation to test the material provided by the other party for defects in title. Unless we fail in our duty to warn the party, we are not liable for the unsuitability of the material to be processed, for its damage for this reason or for any incorrect instructions from the client. The other party is therefore obliged to pay for our work (cf. VI (2) hereof).
3. Unless agreed otherwise, we shall only accept instructions direct from the other party.

4. Legal nature of agreements

1. Unless we have undertaken to achieve results from the outset, i.e. to produce specific technological findings or specifications, but also in case of doubt, we are only liable to the other party for carrying out our work (research contract). In this case we undertake to make available for the duration of a specific period (cf. VII (1)

hereof) our expertise and research skills in accordance with the state of the art while exercising due scientific care in order to produce the desired results.

2. We undertake to make the results achieved that were the subject and aim of the research contract under the individual agreement (final results) available to the other party for the purpose of their own use (cf. XI hereof). If only partial results are available instead of final results, we are not obliged to hand them over if conclusions regarding our research methods could be drawn from them. It is our sole decision whether results consequently become void and the other party shall accept the procedure agreed here and our decision in view of the recognised sensitivity of partial results. The other party is not entitled to demand the handing over of research records or similar, of any kind whatsoever, as conclusions regarding our technology used, our work and research practices or our development methods could also be drawn. The other party is however entitled to request at any time as part of our duty to perform a comprehensible report regarding the work carried out and planned, and our research progress, while taking our interests detailed above into consideration.

3. In the case of a research contract, the client shall assume the economic risk of the viability of our work, the development risk and the risk of any technological impossibility emerging during our work, that is to say the entire research risk. This does not apply to the risk of emerging technological impossibility if it was irrefutably certain prior to the signing of the agreement that the desired results could not be achieved with the state of the art prevailing at the time of the contract.

V Warranty and indemnity

1. In so far as we have undertaken to achieve results, i.e. to produce specific technological findings or specifications from the outset, we are liable for the properties that we expressly pledged to provide in writing. Irrespective of the amount claimed in payment, these constitute the sole basis for the agreement and liability; there are not therefore any properties required by implication or generally associated with the matter. The warranty period is normally six months. Furthermore, we guarantee that we were not aware of any circumstances at the time the agreement was signed that would impede the extent of the agreed use by the other party (cf. XI hereof). This warranty of title is limited to cases of particularly blatant gross negligence and intent. Warranty over and above that is excluded. We are not liable for consequential loss. Unless otherwise agreed, we are not therefore liable for the usefulness or marketability of the results, and also not for the reliability of their use, even if we were aware of their intended use.

2. Regarding damage to property, we are liable for intent and particularly blatant cases of gross negligence. We are also liable for personal damage in the remaining cases of negligence. However, we shall not be liable for consequential damages, lost profit or savings not made, or for damages to third parties – in so far as these damages are already not redressible under the law – irrespective of the degree of negligence. We shall not be liable for the accidental loss of goods given to us or results produced, also for reasons of force majeure.

3. In the event of a research contract (cf. IV (4) hereof), we are liable for making our skills available properly while exercising due scientific care and applying the recognised standards of technology, and therefore for using our expertise and research skills to the best of our ability in order to produce the desired results. It is consequently our duty to warn the other party pursuant to IV (3.2) hereof.

4. Failure to provide the pledged properties shall be reported by the other party immediately in detail and in writing. The other party therefore undertakes to check the agreed properties fully and their performance immediately after receipt and in any case before passing on or transferring title to the object or results to third parties. The other party undertakes to inform us in full of the results of this test. Failure to respond or carry out a complete check shall be deemed as acceptance of the work and shall result in the loss of all claims for warranty and under a right of recourse. Defects that are not reported in this way shall be deemed not applicable.

5. In the event of our settling a warranty claim, we shall initially be entitled to offer repair or replacement at our option with the other party agreeing not to raise any objections, especially in relation to any considerable bother involved. If the repair or replacement involves any advantages over and above the rectification of the pure defect or improvements that would make sense at the time, even if not entirely necessary, the other party shall pay for the upgrades carried out in the course of the claim settlement on the basis of the relevant services and necessary additional development time. We are also entitled to demand remuneration for the work carried out during an improvement that would have been necessary in any case for rectifying the defects in the product. If a price reduction or conversion proves necessary, the other party shall give us the right to decide what remedy should be used. In the case of conversion, we are entitled to perform a partial conversion as long as parts of the service provided, distinct from the original intended purpose, are still of use to the other party according to objective criteria.

6. Damages must be claimed from us within two months of initially being noted, even if only the reason was noted, no later however than three years from the event giving rise to the claim, otherwise any claims on the part of the other party shall expire.

VI Termination of the contractual relationship

1. Unless agreed otherwise, the contractual relationship shall terminate when the agreed processing time elapses (cf. VII (1) hereof).
2. The contractual relationship shall prematurely terminate automatically, however, as soon as it proves technologically impossible to produce the desired results. A separate notice of withdrawal is not required, but we undertake to notify the other party immediately when this circumstance becomes apparent. Unless we have undertaken to produce specific results, the client shall pay us for our work up to this point in time in relation to the agreed total fee.
3. Premature withdrawal from the contractual relationship by sending notice (termination) before the agreed processing period has elapsed is not permissible, with the exception of the case described under VI (4) hereof, and is thus ineffective. If the other party nevertheless sends notice (cf. VI (5) hereof), we are entitled to sever the agreement prematurely.
4. Should we have estimated a processing period of over six months and be liable to make our skills available under the individual agreement (cf. IV (4.1) hereof),

and, if two thirds of the estimated time has elapsed without any progress being made, i.e. partial results being achieved, the other party is entitled to sever the contractual relationship by sending notice (termination) within a period of 30 days from notification of this circumstance. In this case, the client shall pay us for our work up to this point in time in relation to the agreed total fee.

5. The contracting parties are entitled to sever the contractual relationship prematurely for important reasons that make further cooperation unreasonable (extraordinary termination), especially if a company becomes bankrupt or a petition in bankruptcy is dismissed for insufficiency of assets;

if the other party fails to provide any agreed or necessary assistance, to any extent whatsoever, within the set time limit:

- if the other party gives impermissible notice
- if the agreed secrecy is not maintained or deadlines not observed, especially for payment after extending the original period.

6. We are not obliged in any case (cf. VI (2), (4) and (5) hereof) to hand over to the other party any partial results or research records regarding work completed to date, despite any existing claims for payment and irrespective of any claims for damages over and above that (cf. IV (4.2) hereof).

7. In the event of justified premature termination of the contractual relationship on our part, irrespective of whether the other party is at fault, we are entitled either to demand compensation for the concrete damage including the consequential loss we have suffered, or a lump sum in the form of a penalty amounting to 50 per cent of the total fee, the latter being irrespective of whether we have suffered or proved damage. The penalty amount agreed here shall be deemed the minimum compensation, and we reserve the right to claim damages over and above this amount. There is no right to reduce the penalty.

VII Time of performance

1. Unless otherwise agreed, entering into an agreement creates a continuous obligation, the length of which is individual, depends on the project and is based on our estimated processing period. At the end of the period, the other party is entitled under IV (2) hereof to the final results achieved.

2. Should we establish that the estimated processing time is not adequate and will have to be considerably exceeded, we undertake to notify the other party of this circumstance and discuss further course of action. If the other party does not respond to the notification or instruct us to the contrary, we shall interpret this as meaning that they have agreed to the extension and the additional costs involved.

3. If dates have been agreed as to when work is to begin or results to be produced, they are to be construed as a schedule without obligation solely for the purpose of giving the other party a rough idea of the time frame (cf. X 1.). The agreed dates are not however connected to any deadlines.

VIII Place of performance

The place of performance for all our services is the location of our premises in Villach. We provide the services ready for collection at the place of performance. The other party shall assume the risk of forwarding.

IX Times and terms of payment

1. Unless a payment schedule was agreed for our fee, we are entitled under these provisions to payments on account.

2. If a processing period was agreed, the agreed total fee (minus any deposits paid) shall be divided by the number of processing months and the resultant part payments transferred in advance by the first of every month, starting with the month after the agreement was signed.

3. In so far as we have undertaken to produce specific results, it is hereby agreed that the fee shall be paid in appropriate instalments at monthly intervals, depending on the work involved, to ensure that only a maximum of 30 per cent of the total amount due is still payable when the project is handed over. The remaining fee due shall be paid in full after we have rendered account no later than eight days prior to the agreed handover of the results (cf. also XII (1) hereof), except in the event of the results attained being inherently deficient and therefore completely useless.

X Debtor and creditor default

1. If we cannot keep to dates in the sense of a schedule (cf. VII (3) hereof), the other party cannot claim liability for this "delay" unless the schedule was estimated with gross negligence on our part, meaning that it was irrefutably certain, and therefore completely tenable scientifically, prior to the signing of the agreement that the specified deadlines could not be met. The other party recognises this agreement, especially in view of the fact that they are aware it is not reasonable to expect research contracts to be completed within a set time, unless otherwise expressly agreed, as a legal obligation.

2. In the event of default in payment, interest on arrears of 10 per cent above the Austrian National Bank's base lending rate effective on the due date is hereby agreed.

XI Industrial property law

The services rendered are our property and we retain title with all rights, especially under industrial property law. Unless agreed otherwise, the other party shall consequently be granted exclusive, unlimited, non-excluding and personal use of the results for their own purposes. This right of use or these (partial) results may not be transferred to third parties, even if only briefly for any legal reasons whatsoever, be it also in the course of winding up or realising the business, especially but not exclusively in the event of bankruptcy. If the other party has made results available to us for using in the course of our activities and third parties consequently assert claims against us, be it also on the grounds of our indirect use of these results only, the other party undertakes to examine and settle such claims immediately, and hold us safe and harmless.

XII Right of retention and reservation of title

1. We are entitled to delay handing over the results until our fee or other receivables due to us from the other party have been paid in full. A connection between the withheld results and the receivables is not required.

2. Until the fee due to us under the agreement has been paid in full, we shall retain title to the results, even in the event of their having already been handed over or rights to them granted. In addition to the independent, existing restraint on handing over the results (cf. XI hereof), this also gives rise to the restraint on using the results, in any way whatsoever, until payment is received in full.

3. In the event of the other party processing our privileged property without permission, we have the right to claim possession of the newly created products, and are entitled to satisfaction by using these products in any way whatsoever. We undertake however to surrender to the other party any proceeds over and above our receivables (including related costs incurred).

4. In the event of their passing our property onto third parties without permission, the other party shall assign to us immediately all receivables due from the handover, regardless of their continued payment obligation to us, up to the amount of our receivables under this agreement (including related costs incurred).

XIII Set-off exclusion

The other party is not entitled to set off any claims against our receivables unless they have been recognised by us in full.

XIV Secrecy and publication

From initial communication both parties and their employees undertake to maintain strict secrecy regarding information labelled confidential and made available to each other, and in any case to keep the results produced as a consequence of the contractual relationship secret. This agreement applies beyond the duration of the contractual relationship (cf. VI hereof), until such time as the said information or results have become public property or the other party waives the obligation to maintain secrecy. However, we are otherwise entitled to use and publish information received and results achieved in the course of our scientific activities.

XV Miscellaneous

The legal venue for all disputes arising from the contractual relationship is the competent court for our company's domicile. This agreement shall be governed in all respects by and construed according to the laws of Austria.