

General Terms and Conditions

The following terms and conditions of business represent the agreement between the two parties upon issuing of order:

Warranty:

PROFACTOR guarantees the performance of research activities based on state-of-the-art scientific knowledge and processes. In case of software products, PROFACTOR guarantees the compliance of software with the program documentation provided. However, we are unable to completely rule out software errors. All research results will be documented in writing or on a storage medium. To avoid loss of entitlements ensuing from deficiencies in the performance of this contract, Client is obligated to inspect (part) consignments from PROFACTOR without delay, and to inform PROFACTOR of any deficiencies by providing a detailed written description of said deficiencies. Client is not permitted to retain payment on account of minor defects, or to retain payment for one item due to a major defect of another item. No claims against warranty are possible while Client is in arrears; however, this shall not affect the start, term or termination of the warranty period.

Client is obliged to furnish proof to support claim of defective performance at time of performance. Client is obliged to assist PROFACTOR in ascertaining and remedying defects (by granting access to premises, relevant documents, etc.). Should Client not provide said assistance in remedying defects, despite a written reminder by PROFACTOR, all claims against warranty resulting from defective performance are voided.

Claims against warranty expire 6 months after effective acceptance of product by Client. PROFACTOR shall remedy defects by means of repair or substitute delivery, at PROFACTOR's discretion, within a reasonable period, and to the exclusion of all further claims. This applies to defects that are plausibly communicated to PROFACTOR by Client in writing within the warranty period. Should PROFACTOR be unable to ascertain or reproduce the claimed defect, Client shall bear all costs of inspection. In case of minor defects, PROFACTOR may, but is not obliged to, waive its right to repair or replace, and offer Client a reasonable discount; this applies in particularly to cases in which the effort involved in replacing a defective item or remedying a defect is viewed as unreasonable by PROFACTOR. In case of both minor and non-minor defects, PROFACTOR may opt to, but is not obliged to, take back goods to the exclusion of further claims, and to credit customer's account to amount of order. The original warranty period is not extended by repair or replacement.

Strict adherence to instructions for use provided in documentation is a pre-condition for warranty. All claims against warranty are voided should Client modify, rework, or extend programs or data.

In case of delay in remedying defect or replacing defective item caused by PROFACTOR, Client has the right to cancel contract with respect to the goods affected by said delay only, and to the exclusion of all other claims, after giving at least 6 weeks written notice. The cancellation shall become effective only if PROFACTOR fails to adhere to the extension explicitly set by notice. Minor defects do not constitute a right to cancel contract.

Delays:

In case of encumbrances to production and delivery beyond the influence of PROFACTOR such as force majeure, strikes, business disruptions or delays in delivery, cuts in or loss of working hours, transportation difficulties, or intervention by authorities, both parties agree to a reasonable extension of the dates and deadlines for performance.

In case of delay in delivery caused by PROFACTOR, Client has the right to cancel contract with respect to the goods affected by said delay only, and to the exclusion of all other claims, after giving at least 6 weeks written notice. The cancellation shall become effective only if PROFACTOR fails to adhere to the extension explicitly set by notice.

Client is not entitled to claim liquidated damages for delays.

Industrial property rights:

Unless explicitly agreed in writing to the contrary, PROFACTOR assigns to Client right of use, restricted to use within the Republic of Austria, of the works ensuing from services, work or inventions arising from or in connection with the contract, particularly to all works subject to copyright laws, and specifically to ideas, concepts, software, prototypes, etc for the duration of contract. The scope of this use of the works depends on the purpose of the contract in question.

When third party services are drawn upon, PROFACTOR undertakes to ensure that agreements are reached with third party to ensure that PROFACTOR owns the rights of use for the services within the sense of this item of the contract.

Modifications to services, works, and inventions, specifically to works as defined by copyright law, are only permitted with express approval of PROFACTOR and/or copyright holder.

The acquisition of any rights of use, or patent rights by Client, assumes full settlement of any amounts outstanding to PROFACTOR. PROFACTOR shall retain all rights of use, and/or patent rights up to this point. In case of delay in payment, PROFACTOR additionally reserves the right to prohibit any and all use of services rendered until all amounts outstanding to PROFACTOR have been settled in full.

Title retention:

PROFACTOR retains title until all amounts outstanding to PROFACTOR have been settled in full. In case of delay in payment, PROFACTOR reserves the right to repossess goods subject to retention. Repossession of goods subject to retention of title does not constitute a cancellation of contract. PROFACTOR will sell goods subject to retention of title freehand, and credit Client's account with amount received, less all costs incurred by repossession and reselling goods. Garnishment of goods subject to retention executed on request by PROFACTOR does not constitute a relinquishment of right of retention.

If Client has already disposed of goods subject to retention, all titles owned by Client from the sale or disposal to third parties, of said goods subject to retention shall be transferred to PROFACTOR. Client is obliged to disclose all details of purchaser, purchasing price, delivery date, location of goods, and to publish the cession of goods.

Should third parties attempt to gain possession of goods subject to retention by seizure, garnishment and the like, Client shall undertake to inform third party of PROFACTOR's right of retention, and to advise PROFACTOR immediately in writing. Client shall indemnify PROFACTOR against all expenditures incurred in refuting attempts to access goods subject to retention.

Subject to prior notice, PROFACTOR retains the right to cancel contract, and to repossess goods subject to retention, if Client is in default, or circumstances arise that endanger fulfilment of PROFACTOR's entitlements.

Price changes:

Prices and dates are quoted on the basis of cost/information available when initial offer was drafted. Should sustained changes in requirements occur during the term of the project, thus entailing research work above and beyond the scope of the offer, PROFACTOR retains the right:

- to extend the term of the project in mutual agreement with Client,
- to invoice Client for additional expenses.

Rights of use, exploitation rights, secrecy:

Unless an agreement to the contrary exists, PROFACTOR shall retain rights of use, and exploitation rights, except for right of immediate use within Client's enterprise.

Notwithstanding any agreement on rights of use and exploitation rights, PROFACTOR is entitled to generally advertise the research results in order to publicize PROFACTOR's activities in general, and more specifically to potential markets. This also applies to the use of results for general publication, teaching, and marketing purposes.

Client can be named as a reference in presentations.

Non-disclosure and exclusivity of research results are subject to separate written agreement.

Client explicitly declares that intermediate input provided by Client is not the industrial property of a third part or third parties.

PROFACTOR will undertake to avoid conflicts with existing industrial property rights. In case of infringement on third party industrial property rights, PROFACTOR shall only be liable to Client for any claims for compensation levied against Client in case of intent or gross negligence on part of PROFACTOR.

Both parties agree to a mutual exchange of information and to coordination between PROFACTOR and Client.

Place of performance, legal venue, applicable law:

Place of performance for all obligations subject to this agreement is PROFACTOR's company offices in Steyr, Austria.

The legal venue for any and all disputes arising from this agreement shall be the court of jurisdiction with competence over the subject matter at PROFACTOR's place of business. Austrian law applies. The United Nations Convention On Contracts For The International Sale Of Goods is herewith excluded.

Liability and damages:

Client is aware that services rendered by PROFACTOR represent a prototype not designed for serial use, but for the development of products for serial use.

Client shall use services rendered at Client's own risk. PROFACTOR thus provides no guarantee, and accepts no liability for the specific usability or exploitability of services rendered, nor for material defects, malfunction, etc. In case of material defect PROFACTOR provides warranty only when our supplier can be held liable to provide a replacement, and PROFACTOR could have been reasonably expected to exercise greater caution in detecting such defects.

Liability on the part of PROFACTOR is thus limited to damage proven to have been caused deliberately or by gross negligence on the part of PROFACTOR. Under no circumstances shall PROFACTOR accept liability for consequential damage, pecuniary loss, loss of profit, and third party damage. Compensation for damage is restricted to sum total of order.

Claims for compensation must be raised in a court of law within one year of performance. No liability will be assumed for claims arising, or raised after this deadline.

Amendments to contract and services:

Assurances by PROFACTOR or amendments to contract are subject to written confirmation by PROFACTOR. Wherever written form is stipulated, facsimile transmission shall be deemed to fulfil this stipulation.

Deliveries by PROFACTOR to Client shall be effected to the last known address or electronic address provided by Client. Client is obliged to advise PROFACTOR of change of address, in lieu of which deliveries to last known address shall be deemed to have been received by Client.

Should any part of this agreement be invalid for any reason, it is to be replaced with a corresponding text, which is valid and equivalent to the meaning intended by PROFACTOR. The rest of the agreement shall remain unaffected and valid.

Research bonus:

PROFACTOR reserves the right to claim the research bonus if the client sends no written information until the end of the current calendar year that he claims the research bonus himself.