

General Terms and Conditions

1 General Conditions

- 1.1 These terms and conditions apply to all services of the Contractor, particularly research and development services as well as work and services.
- 1.2 In the case of contracts for work within the meaning of § 1165 ABGB, the Contractor is obligated to deliver a specific work or achieve a defined result. Acceptance of the work shall occur upon completion.
- 1.3 In the case of service contracts within the meaning of § 1151 ABGB, the Contractor is not obligated to deliver a specific result but undertakes to perform the agreed-upon activities with due professional care and in accordance with the recognized state of the art at the time of performance. Acceptance in the sense of a contract for work shall not apply.
- 1.4 These terms and conditions, in their currently valid version, also apply to future transactions, agreed changes or additions, unless the contracting parties agree otherwise in writing.
- 1.5 General terms and conditions or delivery conditions of the Client do not become part of the contract, even if the Contractor does not expressly object.

2 Offer and Conclusion of Contract

- 2.1 All offers from the Contractor are non-binding, unless explicitly stated otherwise in the offer itself. Cost estimates and price estimations from the Contractor are also non-binding, unless the contracting parties expressly agree otherwise in writing.
- 2.2 The service description in the offer must be checked by the Client, and the Client is responsible for the accuracy and completeness of the service description insofar as it concerns their operational, technical, and functional conditions and requirements.
- 2.3 All documents, concepts, test setups, and other materials provided to the Client in connection with the submission of the offer remain the intellectual property of the Contractor and may not be reproduced or made accessible to third parties without the written consent of the Contractor. If no contract is concluded, they must be returned or deleted and may not be used for commercial or non-commercial purposes.
- 2.4 Details regarding the type, content, and scope of services, dates, deadlines, place of performance, compensation, type and scope of the special cooperation obligations of the Client, acceptance or scope of use, contract law, and other conditions are to be regulated in the respective offer; otherwise, these GTC or the relevant statutory provisions apply in this order.
- 2.5 An order only becomes binding for the Contractor once it has been confirmed by the Contractor in the form of a written order confirmation.
- 2.6 In the event of contradictions between the offer and the Contractor's GTC, the offer takes precedence.

3 Scope of Performance

- 3.1 The Contractor provides its services in accordance with the agreed written description of services set out in the offer. The Contractor does not owe any additional features, characteristics and services.
- 3.2 Unless otherwise agreed, the Contractor begins the implementation of the services at the following dates:
 - Date of the order confirmation;
 - Date of fulfilment of all technical, commercial, and other requirements by the Client;
 - Date on which the Contractor receives the down payment or security (letter of credit, bank guarantee, etc.) required before work is carried out.

4 Cooperation

- 4.1 The Client will provide all necessary and appropriate provisions, contributions, and measures required to carry out the order in a timely manner and at its own expense to achieve the respective contractual objective on a timely manner.
- 4.2 Documents and other materials that the Client provides to the Contractor must be correct in terms of content and technology and free from third-party rights. The Contractor assumes no inspection duty in this regard. If this is not the case, the Client shall compensate the Contractor for all damages resulting from the use of this material and indemnify the Contractor against any third-party claims.
- 4.3 The provision and cooperation obligations incumbent on the Client are essential obligations of the Client. If the Client does not perform these duties or does not perform them on time or in the agreed manner, the resulting consequences, delays, or additional expenses shall be borne by the Client.
- 4.4 The Client shall immediately check each service for defects and report any defects without undue delay. Visible or obvious defects must be reported immediately.

5 Delivery & Acceptance

- 5.1 The method and route of shipment are determined by the Contractor, unless otherwise agreed in writing.
- 5.2 Production and delivery obstacles not caused by the Contractor, such as Force Majeure events, reduction or loss of working hours, transport difficulties, or delayed information and data affecting the Contractor or one of its subcontractors, entitle the Contractor to suspend deliveries for the duration of the obstacle plus a reasonable start-up period or to withdraw from the contract and/or cancel any outstanding part performance.
Force Majeure events include, but are not limited to:
 - all effects of natural forces, such as earthquakes, lightning, frost, storms, or floods;
 - epidemics or other outbreaks of diseases or plagues;
 - furthermore, war, laws, official interventions, seizure, destruction of transport, export, import, and transit bans, international payment restrictions, and raw material or energy failure;
 - operational and delivery disruptions such as explosions, fire, strikes, sabotage, and all other events that could only be prevented with disproportionate costs and economically unjustifiable means.
- 5.3 In the event of a delivery delay for which the Contractor is culpably responsible, the Client may, exclusively regarding the services affected by this delay and to the exclusion of further claims, either demand performance or withdraw from the contract and/or cancel any outstanding part performance by setting a demonstrably written, express grace period of at least 6 weeks. The withdrawal is only legally effective if the Contractor culpably misses the expressly set deadline.
- 5.4 Compensation claims by the Client due to late delivery or in the event of withdrawal are excluded to the extent legally permissible.
- 5.5 In the event that the Client is in default of payment, the Contractor has the right to stop the execution of further work steps with immediate effect until all outstanding claims have been fully settled. In this case, the Client waives any claims. Other claims of the Contractor remain unaffected.
- 5.6 The Contractor is entitled at any time to submit services or part performance suitable for acceptance procedures for acceptance and to invoice them. These invoices are final for acceptable partial services.
- 5.7 Acceptable partial services are, in particular, self-contained work packages for the fulfilment of the services specified in the offer or in another contractual document. Notwithstanding this, the offer can also define specific acceptances and partial acceptances of services.
- 5.8 The Client must accept the work, service, or software no later than 2 weeks after delivery or performance. Minor or insignificant defects do not entitle the Client to refuse acceptance. If the Client does not carry out an acceptance within the period mentioned above, or if the work, service, or software is actually used by them or by the Client's customer, it is deemed accepted at the end of this period or upon commissioning in live operation by the Client or the Client's customer.

- 5.9 Use and risk shall pass to the Client upon departure of the delivery from the Contractor's premises or warehouse. This point in time is therefore considered the handover and the start of the warranty period. This also applies if the delivery takes place within the framework of an assembly or if the transport is carried out, organized, or managed by the Contractor. Transport always takes place (even in the case of partial deliveries) at the expense and risk of the Client.

6 Prices/Payment Conditions

- 6.1 Prices and dates are based on the costs and information at the time the offer was created. Should there be changes to the requirements during the project period that make additional services necessary the sense of the offer, the Contractor is entitled:
- to extend the project milestones or term by mutual agreement with the Client and
 - to invoice the corresponding additional effort additionally no later than 4 weeks after it becomes known.

If no agreement is reached within a reasonable period during these negotiations, the project will be stopped completely, and the Client will be invoiced for all costs incurred up to that point.

The agreed hourly rate for additional services is index-linked according to the index for equipment investment by Statistics Austria (<https://www.statistik.at/statistiken/volkswirtschaft-und-oeffentliche-finanzen/preise-und-preisindizes/preisindex-fuer-ausruestungsinvestitionen>), whereby a downward adjustment is excluded. The hourly rate increases by the extent that corresponds to the change in the index from the time the contract was concluded to the time the additional service was ordered by the customer. Indexation takes place every 12 months, starting for the first time 12 months after the contract is signed by both parties. The index-linked hourly rate applies for 12 months at a time. The hourly rate adjusted in this way is commercially rounded to whole Euro amounts.

- 6.2 The respective statutory value-added tax is added to all invoice amounts.
- 6.3 Corresponding travel costs, proven travel times, and expenses are to be reimbursed additionally, unless the contracting parties agree otherwise in writing.
- 6.4 Payments are due within 14 days of invoicing.
- 6.5 In the event of a payment delay, the Contractor is entitled to default interest at the statutory rate as well as a reminder fee; the Contractor reserves the right to assert further rights or (damage) claims.
- 6.6 Expressly granted discounts, rebates, or bonuses are conditional on full payment being made on time.
- 6.7 Any offsetting of counterclaims by the Client against claims from the Contractor is excluded, as is the assertion of a right of retention against amounts that the Client is contractually obliged to pay to the Contractor.

7 Retention of Title

- 7.1 The Contractor reserves the right of ownership until full payment of its outstanding claims. In the event of a payment delay, the Contractor is entitled to demand the return of the reserved goods. The return of the reserved goods does not constitute a withdrawal from the contract. The Contractor will sell the reserved goods elsewhere by private sale and credit the Client with the proceeds received minus any expenses associated with the return and resale. A seizure of the reserved goods at the instigation of the Contractor is not considered a waiver of the right of ownership.
- 7.2 In the event that the Client disposes of the reserved goods, all claims of the Client against third parties resulting from the sale or other disposal of the reserved goods are deemed assigned to the Contractor for the purpose of payment. The Client is obliged to provide comprehensive information regarding the buyer, purchase price, delivery date, location of the goods, etc., as well as to disclose the assignment.
- 7.3 In the event of access by third parties to the reserved goods, including seizures, attachments and the like, the Client will point out the Contractor's right of ownership and notify the Contractor immediately in a demonstrably written manner. The Client shall fully indemnify and hold the Contractor harmless for all expenses incurred in defending any claims or attempts to seize the reserved goods.

- 7.4 After prior notice, the Contractor is entitled to withdraw from the contract and collect the reserved goods if the Client is in even objective delay with the fulfilment of its obligations or if circumstances occur that justify a threat to the Contractor's claims.

8 Confidentiality and Data Protection

- 8.1 The contracting parties undertake not to make any oral or written confidential information received as a result of the assignment (specifically business and trade secrets, intellectual property rights, know-how, and other information of a technical or business nature) accessible to third parties. This obligation to maintain secrecy continues for a further five (5) years after the end of the order. Should a separate confidentiality agreement exist or be concluded between the Client and the Contractor, the provisions of the confidentiality agreement shall take precedence over these GTC.
- 8.2 The confidentiality obligation under this point 8.1 does not apply to information that was disclosed to the other contracting partner by an authorized third party or was developed independently by an employee who had no knowledge of the information provided. Third parties within the meaning of this regulation are not subcontractors of the Contractor who are commissioned with partial services within the framework of the order and have been obligated to maintain secrecy.
- 8.3 The rules of the General Data Protection Regulation (Regulation 2016/679/EU) and the Data Protection Act in its current version are observed by both contracting parties. The Contractor will use all data entrusted to it by the Client only to carry out the respective order given by the Client and to fulfil legal obligations. If the Contractor uses subcontractors, it will only do so to the extent legally permissible and will only provide them with the data to the extent required by the subcontract.
- 8.4 The Client's data (commercial register data, address, telephone and fax numbers as well as other information required for addressing resulting from modern communication techniques, locations, contact persons, ordered goods, delivery quantities) from the respective business case are processed only for the purposes of processing the contract, in particular for administrative and billing purposes.

9 Intellectual Property Rights

- 9.1 The intellectual property rights embodied in the services provided or in the results shall be made available to the Client after delivery/acceptance as a limited, non-exclusive license (right of use) for use within the scope of application defined in the offer.
- 9.2 Notwithstanding the regulation according to 8.1, the Contractor reserves the right to use the services provided or results achieved for research and teaching purposes.
- 9.3 Regardless of any deviating regulations regarding rights of use and exploitation, the Contractor is entitled in all cases to use the services provided or results for general advertising purposes in such a way that the Contractor's activities are made known to the general public and for potential interested parties in particular. This also applies to the use of the results for general publication and acquisition purposes.
- 9.4 Changes to services, work results, and creations within the meaning of the Copyright Act are only permissible with the consent of the Contractor or the author.
- 9.5 The acquisition of any usage and exploitation rights by the Client occurs in any case only after full payment of all invoices to the Contractor. Until this point in time, the Contractor reserves all usage and exploitation rights. Furthermore, in the event of a payment delay, the Contractor is entitled to demand the cessation of any use of the services provided. Otherwise, the usage and exploitation rights belong to the Contractor unless another regulation is expressly agreed.
- 9.6 Already existing intellectual property rights and know-how introduced by the Contractor, as well as property rights registered and granted therefrom, remain the property of the Contractor even if they are used in the fulfilment of an order. If these intellectual property rights are necessary for the Client to exploit the results transferred to them, the Client shall receive a non-transferable, simple, non-exclusive right of use for the purpose of using the provided services or results, which is unlimited in time and based on market-standard conditions, provided that no other obligation of the Contractor prevents this.

9.7 Special additional provisions for orders concerning software:

9.7.1 Software License

Every delivery of software takes place exclusively as a transfer of usage rights (license). A software purchase is excluded. The use of the software and any agreed maintenance can be restricted by the provided license (e.g., to specific locations, to a specific number of users, to a specific number of instances, etc.). Bypassing these restrictions is not permitted.

9.7.2 Scope of License

Unless explicitly agreed otherwise, ownership of the delivered software remains with the Contractor. The respective license granted does not include the right to decompile, change, or reverse engineer the software into individual components. Unless explicitly agreed otherwise, the transfer of the source code as well as all rights to use and exploit the same is excluded. Unless explicitly agreed otherwise, there is no right to sublicense or resell the delivered software.

9.7.3 Libraries

If the software uses (external) libraries/components (e.g., "DLL files") or services, no sublicense is granted for these. The license terms of the respective manufacturer of the libraries/components or operator of the services referred to in their license provisions apply in each case.

9.7.4 Scope of Performance

Certain properties and functionalities of software can only be guaranteed if these have been explicitly agreed in writing and promised by the Contractor. The scope of a software functionality is in each case limited to the specific offer. Functionalities beyond this are not part of the contract, even if they were available or considered common.

9.7.5 Limitation of Liability

Unless otherwise expressly agreed in a corresponding agreement, the Contractor makes no warranties of any kind with regard to the software or for all services associated with the use of the software, in particular no implied warranty of a specific functionality, quality, or of commercial properties or suitability for a specific purpose. Every such warranty is excluded.

The functioning of a software with a specific software and/or hardware environment is only guaranteed if this has been explicitly promised in writing.

The Client is responsible for the usability of the software with the hardware and software environment existing at the Client's premises, unless responsibility for this has been explicitly assumed by the Contractor.

The Contractor fundamentally assumes no liability for data loss through the use of software. The Client is responsible for backing up their data before using the software. Otherwise, the liability for damages through the use of the software by the Contractor is limited to software components created by the Contractor itself, and to damages caused by gross negligence or wilful misconduct during exclusively intended and common use of the software using a current industry standard software and hardware environment despite careful application. The amount of liability is also limited to the license fees already paid. Liability is limited to actual damage and excluded for any loss of profit, indirect damage, incidental and consequential (defect) damage, or lost savings due to software defects.

9.7.6 Maintenance, Support, etc.

Services going beyond the licensing of the software, such as software support, maintenance services, or the creation of updates for the further development of the software with regard to ongoing developments in the IT environment, are not considered part of the contract unless they are explicitly agreed. If the maintenance of a software is agreed, the readiness for maintenance always applies to the respective latest version of the software, not to previous versions.

9.7.7 File Formats, Data Carriers

The method of providing the software is fundamentally at the Contractor's discretion. Provision in the form of a specific file format or on a specific data carrier only applies if this has been explicitly agreed.

9.7.8 Copies

Unless explicitly agreed otherwise, any copying of the delivered software is prohibited, except for copies required for the agreed use and backup copies. The Contractor is fundamentally free to provide delivered software with copy protection.

9.7.9 Updates

The Contractor is entitled to require the licensee to perform a software update provided by the Contractor during the term of the license if this is necessary for security reasons or to ensure compliance with contractual provisions.

10 Third-Party Industrial Property Rights

- 10.1 Should the Contractor infringe existing third-party property rights, the Contractor is only liable to the Client for any resulting claims for compensation of any kind in cases of intent and gross negligence.

11 Liability and Warranty

- 11.1 The Contractor warrants that its services are carried out in accordance with relevant scientific findings and process techniques according to the state of the art.

In the case of software services, it is guaranteed that the software matches the associated program documentation. Nevertheless, a complete exclusion of errors in the software is not possible.

- 11.2 The Client is obliged to inspect the (partial) deliveries from the Contractor immediately and thoroughly and to report any defects immediately in writing with a precise description of the defects, otherwise they shall lose all claims arising from any defects.

- 11.3 The Client is not entitled to withhold payments due to insignificant defects or to withhold payments relating to one part of the goods because another part of the goods has significant defects.

- 11.4 Any claims for warranty are suspended as long as the Client is in payment delay; however, this suspension does not prevent the beginning, course, and expiration of the warranty period.

- 11.5 The burden of proof that a defect existed at the time of delivery lies with the Client. The Client is obliged to support the Contractor in the identification and rectification of defects and to enable all necessary measures (such as access, inspection of documents, etc.). If the Client does not fulfil their cooperation duty during defect rectification despite a written warning from the Contractor, the assertion of any claims resulting from a defective service is excluded.

- 11.6 Warranty claims expire 6 months after the acceptance of the service by the Client.

- 11.7 The warranty is provided in the form of defect rectification or replacement delivery at the Contractor's discretion within a reasonable period, excluding further claims. This applies to defects communicated by the Client to the Contractor in writing and in a comprehensible form within the warranty period.

If the defect cannot be identified or traced, the Client bears the costs of the inspection.

- 11.8 In the case of minor defects, the Contractor is also entitled at its discretion, but not obliged, to refrain from improvement or replacement and instead grant a reasonable price reduction, particularly if replacement or improvement involves disproportionate effort. The original warranty period is not interrupted by improvement or replacement.

- 11.9 For both minor and non-minor defects, the Contractor is also entitled at its discretion, but not obliged, to take back the goods against credit of the order value, excluding further claims.

- 11.10 The warranty is subject to compliance with the application guidelines in the documentation. Any intervention, change made, post-processing, or expansion of the delivery item (hardware and/or software), such as programs and/or data, by the Client leads to the immediate loss of all warranty or guarantee claims, unless the changes were previously agreed in writing.

- 11.11 In the event of a delay in improvement or replacement for which the Contractor is responsible, the Client may, exclusively regarding the goods or services affected, withdraw from the contract and/or cancel any outstanding part performance by setting a written, express grace period of at least 6 weeks. The withdrawal shall only be legally effective if the Contractor fails to meet the expressly set grace period. There is no right of withdrawal for insignificant defects.

- 11.12 Use of the service is at the Client's own risk. Any warranty and/or liability on the part of the Contractor beyond the use or usability of the service agreed in writing is excluded. The Contractor shall only be liable for material defects if a replacement can be obtained from the Supplier and if the Contractor, exercising due care, could have reasonably detected the defect.

- 11.13 Any liability of the Contractor is fundamentally limited to such damages that are demonstrably caused by the Contractor intentionally or at least with gross negligence. Compensation for incidental and consequential (defect) damage, pure financial loss, indirect damage, lost profit, and third-party damages from claims against the Contractor is excluded in any case. Any compensation for damages is also limited in amount to the order value.

11.14 Claims for compensation of damages must be asserted in court within a maximum of 6 months from the provision of the service, otherwise they are lost. No liability is assumed for damages asserted after the expiration of this period or for damages that only arise then.

12 Compliance with Export Regulations and Sanctions

12.1 The exchange of information, delivery of (material and immaterial) goods, technologies, and/or services may be subject to export control laws and/or regulations. Contractor and Client will comply with applicable export laws and regulations.

13 Statute of Limitations

13.1 All claims from the contractual relationship shall become statute-barred within 6 months.

13.2 If acceptance of the service is planned, the limitation of claims due to defects begins with acceptance, otherwise with the handover.

14 Legal Succession

14.1 These provisions also apply to and against the legal successors of the parties. The Client may not assign, sublicense, or otherwise transfer the contractual relationship and rights granted on the basis thereof to third parties without prior written consent.

15 Austrian Research Premium

15.1 The Contractor reserves the right to claim the research premium if the Client does not inform the Contractor in writing of their own claim by the end of the current calendar year.

16 Place of Performance, Jurisdiction, Applicable Law

16.1 Austrian law applies, excluding the legal norms that refer to another legal system. The applicability of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

16.2 The court with subject-matter jurisdiction at the registered office of the Contractor is agreed as the exclusive place of jurisdiction for all disputes arising from the business relationship.

16.3 Steyr, the registered office of the Contractor, is agreed as the place of performance for all obligations arising from the business relationship.

17 Miscellaneous

17.1 All agreements between the contracting parties must be concluded in writing; oral agreements are ineffective. Similarly, contract changes and additions must be in writing.

17.2 Deliveries from the Contractor to the Client are made to the address or electronic address demonstrably last provided by the Client. The Client is obliged to notify the Contractor of address changes; otherwise, deliveries to the address last provided are deemed to have been received.

17.3 Nullity or invalidity of individual provisions of the contract does not affect the legal validity of the remaining provisions; in this case, those agreements are deemed to have been made which are legally effective and come closest to the legal and commercial intention of the parties.

17.4 The Client undertakes not to directly or indirectly solicit or hire any employees of the Contractor from the start of the order until 3 years after the completion of the project. For each breach of this non-solicitation obligation, the Client undertakes to pay the Contractor a contractual penalty in the amount of 6 gross monthly salaries (including bonuses) of the respective employee hired in violation of this obligation. For the calculation of the contractual penalty, the relevant employee's gross annual salary received in the year prior to the occurrence of the breach shall be decisive.

Furthermore, the Client is obliged to pay the Contractor for the damage incurred (including loss of profit).

This non-solicitation obligation also applies to subsidiaries of the Client in which the Client holds a majority of votes, and the Client undertakes to extend this non-solicitation obligation to such subsidiaries.

17.5 Sustainable, social, and legally compliant business practices are an essential part of the corporate culture for the Contractor. We therefore also request our business partners to comply with the Code of Conduct. (Viewable at https://www.profactor.at/code_of_conduct).