

GENERAL TERMS AND CONDITIONS

1 Contract Scope and Validity

All deliveries and services are based on these General Terms and Conditions, unless otherwise agreed in writing. All orders and agreements are only legally binding if they have been signed by the contractor in writing and in accordance with, and committed only to the extent specified in the order confirmation. Purchase conditions of the client are hereby excluded for the representational legal transaction and the entire business relationship. All offers are in principle subject to change.

2 Performances and Inspection

2.1 The subject of an order may be:
Development of organizational concepts, global and detailed analysis
Creation of individual programs
Delivery of library (standard) programs
Acquisition of rights to use software products
Acquisition of Permission to Use Work
Involvement in commissioning (conversion support)
Telephone advice
Program maintenance or creation of program mediums
Other services

2.2 The drawing up of individual organizational plans and concepts is based on the nature and extent of completely binding information, documents and resources provided by the client. This includes practical test data and testing capabilities to a sufficient extent which the client provides on a timely basis, in normal working hours and at his cost. Once work is already underway by the client to make the plant available for testing under real conditions, the responsibility for securing the real data lies with the client.

2.3 The basis for the creation of individual programs are the written terms of reference which the contractor issues against the cost calculation based on the documents and information respectively provided to him by the client. This description is to be checked by the client for accuracy and completeness and his endorsement given. Changes occurring later can lead to separate deadline and price agreements.

2.4 Individually created software or program adaptations respectively require that each affected program package be accepted by the client no later than four weeks after delivery. This is confirmed in a report by the client (check for accuracy and completeness by the contractor on the basis of the accepted specification by means of the above mentioned point 2.2 provided test data). Should a period of four weeks to pass without the client accepting the program, the delivered software will be deemed to have been accepted at the end date of the stated time period. By the client's use of the software in real operations, the software shall in any case be deemed to have been accepted.

Possible defects, which are deviations from the written performance specifications, should be well documented by the client to notify the contractor who in turn strives to immediately rectify the defect. Where there are written reported and essential deficiencies, that is, that the real-time operation cannot be started or continued; then a renewed acceptance is required for corrective action.

2.5 With the ordering of library (standard) programs, the client confirms with the order his knowledge of the scope of performance of the ordered programs.

2.6 Should it become apparent during the course of the work that the execution of the order as specified is actually or legally impossible, the contractor is obliged to inform the client immediately. If the client does not modify the specification accordingly or creates the conditions that execution is possible respectively, the contractor may refuse to execute. If the impossibility of execution is the result of a failure of the client or of a subsequent change in specifications by the client, the contractor is entitled to cancel the order. The past activity of the contractor costs and expenses until then, as well as any dismantling costs are to be reimbursed by the client.

2.7 The shipment of program medium, documentation and specifications shall be at cost and risk of the customer. In addition, training and explanations requested by the customer will be invoiced separately. Insurance will be only at the request of the client.

3 Prices, Taxes and Charges

3.1 All prices are in Euro excluding VAT. They only apply to this contract. The prices mentioned are from head office or branch office of the contractor.

The costs of program medium (e.g., magnetic tapes, magnetic disks, floppy disks, streamer tapes, magnetic tape cassettes, etc.) and any contract fees are billed separately.

3.2 For the library (standard) programs, the price is the list price which is valid on the day of delivery. All other services (organizational consulting, programming, training, migration support, telephone counseling, etc.), the amount of work will be charged at the rates in effect on the date of delivery of the service. Deviations from the contract price underlying the time spent, which is not attributable to the contractor, are calculated as incurred.

3.3 Price indication per day corresponding to 7.5 hours. Training days: 8h30 to 17h00 with 1 hour lunch. Additional hours will be billed accordingly.

3.4 The costs for travel, day and overnight accommodation are separately charged to the client at the prevailing rates. Travel times are considered as working time.

4 Delivery date

4.1 The Contractor shall endeavor to meet the agreed dates of delivery (completion) as accurately as possible.

4.2 The targeted completion dates can only be met if the client completely adheres to the dates specified by the Contractor for all necessary work and documentation, in particular the accepted standard of performance as per description. Section 2.3 provides for the client to fulfill his obligation to cooperate to the extent required.

Delivery delays and cost increases that result from incorrect, incomplete, or subsequently changed data and information or supporting documentation provided respectively; are not the responsibility of the Contractor and may not lead to distortion of the contractor. The resulting additional costs will be borne by the client.

4.3 For contracts that include multiple units or programs, the contractor is entitled to make partial deliveries and to submit partial invoices.

4.4 Delivery dates and periods are binding if they have been designated by the client and contractor in each case in writing to be binding, otherwise all delivery dates or deadlines are not binding. If non-compliance with a deadline is due to acts of God, which lie outside of the influence by the contractor, the period shall be extended accordingly.

5 Payments

5.1 The VAT inclusive invoices submitted by the contractor are payable no later than 14 days from receipt of the invoice without any deduction and free of charges. For partial invoices the total contract payment terms laid down apply analogously.

5.2 For contracts that include multiple units (e.g., programs and / or training, completed in stages), the contractor shall be entitled to submit invoices after the delivery of each single unit or service.

5.3 Compliance with the agreed payment dates is an essential condition for carrying out the delivery or performance of the contract by the contractor.

Failure to comply with the agreed payments entitles the contractor to discontinue current work and to withdraw from the contract. All the related costs as well as profit are to be borne by the client. With any delay of payment, interest will be charged in the normal banking manner. After non-payment for two installments, the contractor is entitled to have all amounts due handed over for collection.

5.4 The Client shall not be entitled to withhold payment because of incomplete total delivery, guarantee or warranty claims or complaints.

6 Copyright and Use

6.1 All copyright in the agreed upon services (programs, documentation, etc.) are the property of the contractor or its licensors. The client exclusively receives the right to use the software exclusively for its own purposes after payment of the agreed fee, only for the hardware specified in the contract and to the extent of the acquired number of licenses for simultaneous use on multiple jobs.

6.2 Through this representational contract, only the authorization to use is acquired. Any dissemination by the client is excluded in accordance with copyright law. Through the participation of the client during the production of software, no rights over the use specified in this contract shall be acquired. Any infringement of the copyrights of the contractor will result in claims for damages; and in such a case, full compensation is payable.

6.3 The making of copies for archival and backup purposes by the client is permitted on the condition that the software does not explicitly contain such a prohibition by the licensor or a third party; and that all copyright and proprietary notices are transmitted unchanged in these copies.

6.4 Should the disclosure of the interfaces be required for the establishment of interoperability of the representational software, this is to be assigned by the client against the remuneration of costs of the contractor.

If the contractor does not agree to this requirement and a decompilation takes place in accordance with copyright law, the results are to be used exclusively to achieve the manufacturing of interoperability. Misuse can result in claims for damages.

7 Rights to withdraw

7.1 In the event of exceeding the agreed delivery time due to the sole negligence or unlawful conduct of the contractor; the client is entitled to withdraw from the contract in question by registered letter, also when the agreed services are not performed in substantial parts within a reasonable grace period and the buyer is not at fault.

7.2 Acts of God, labor disputes, natural disasters and transportation barriers, as well as other circumstances that are beyond the control of the contractor, shall release the Contractor from the obligation to deliver or permit him to re-determine the agreed delivery period.

7.3 Cancellation by the client is possible only with the written consent of the contractor. If the Contractor agrees to the cancellation, he has the right to charge a cancellation fee in the amount of 30% of unbilled contract value of the entire project; in addition to the services performed and costs incurred.

8 Warranties, Maintenance, Alterations

8.1 The warranty period is 4 months. However, complaints are only valid when they affect reproducible defects and when they are within 4 weeks after delivery of the agreed performance; or for individual software after accepting the program carried out in accordance with Section 2.4 documented in writing. In the case of warranty, rectification takes precedence over price reduction or rescission. When the complaint is justified, the defects shall be remedied within an appropriate period, in which the client provides the Contractor any necessary measures for investigation and corrective action.

The burden of proof, i.e., requiring the contractor to prove that he is innocent of deficiency is excluded.

8.2 Corrections and additions that prove to be necessary up to the handover of the agreed service due to organizational and programmatic deficiencies that are the responsibility of the contractor will be carried out free of charge by the contractor.

8.3 Costs for assistance, error diagnostic as well as error and fault elimination that are in the responsibility of the client such as other corrections, changes and additions will be performed by the contractor against payment.

This also applies to the correction of errors when program changes, additions or other interventions have been made by the contractor himself or by a third party.

8.4 Furthermore, the contractor assumes no responsibility for errors, malfunctions or damage resulting from improper use, altered operating system components, interfaces and parameters, use of unsuitable organization means and data medium, so far as they are prescribed, abnormal operating conditions (particularly deviations from the installation and storage conditions), as well as that due to damage in transit.

8.5 For programs that are or subsequently changed by the client programmers or third parties respectively, there is no warranty by the contractor.

8.6 Insofar as the subject of the order relates to amending or supplementing already existing programs, the warranty covers the change or addition. The warranty for the original program is not revived.

9 Liability

The Contractor shall be liable for damages insofar as willful intent or gross negligence can be proven, under the statutory provisions. Liability for slight negligence is excluded.

10 Loyalty

The contracting parties agree to mutual loyalty. They will refrain from headhunting and employing, including through third parties, employees who have worked on the realization of the orders, those of other contracting parties during the term of the contract and for 12 months after termination of the contract. In violation of this clause the offending contracting party is required to pay lump sum compensation in the amount of one annual salary of the employee.

11 Data Protection, Confidentiality

The Contractor shall require its employees to comply with the provisions of § 15 of the Data Protection Act.

12 Passing of Risk

The risk shall pass with the handing over of the goods to the client.

13 Reservation of Ownership

The contractor shall retain ownership of the delivered products until full repayment of the purchase price and to the satisfaction of all, and also against future (net) claims. The client cannot acquire ownership of the delivered products through incorporation into other devices. When installed in foreign goods by the client, the contractor becomes co-owner of the newly established products in relation to the value of their products to foreign goods used concomitantly.

14 Installation and readiness for operation

The supplies and services of the contractor are in the systems business with the ready-to-operate installation of systems, in addition to shipping the products supplied, as fulfilled.

15 Miscellaneous

15.1 The client may only transfer the contractual rights and obligations resulting from the contract with the written consent of the contractor. Claims against the Contractor may only be set off or a right of retention asserted if the counterclaim of the client is undisputed or legally binding.

15.2 The parties undertake to replace any invalid provision of these Terms and Conditions by an effective provision which comes as close as possible to the economic purpose of the invalid provision. The validity of the other provisions shall not be affected by this.

16 Final Determination

Unless otherwise agreed, the statutory provisions between traders apply exclusively to Austrian law, even if the order is carried out abroad. It is hereby agreed that any potential disputes will be heard exclusively by the local jurisdiction of the competent court for the place of business of the contractor.

The provisions apply only to the extent that the Consumer Protection Act does not prescribe other provisions for sale to consumers under the Consumer Protection Act.