

# GENERAL TERMS AND CONDITIONS



Graz, July 2023

Version: V10

**This document is valid and applied from July 1<sup>st</sup> 2023**

## 1. Scope

1.1 All legal transactions between the client (THE CLIENT) and Uptime ENGINEERING GmbH (THE CONTRACTOR), Schönaugasse 4, 8010 Graz, shall be subject to these General Terms and Conditions exclusively. The version valid at the time the Contract is concluded shall be applied. Deviations are only valid upon written acceptance by the CONTRACTOR.

1.2 These General Terms and Conditions shall also apply to any future Contractual relationships even if these General Terms and Conditions are not expressly referred to in collateral Contracts.

1.3 Any conflicting General Terms and Conditions on the part of THE CLIENT shall be invalid unless they have been explicitly accepted in writing by THE CONTRACTOR.

1.4 If any provision of these General Terms and Conditions is or becomes invalid, the other provisions and any contract provisions, concluded pursuant to them, shall not be affected thereby. The invalid provision shall be replaced by a provision which best corresponds to the intended purposes of the invalid provision.

## 2. Scope of Services and/or Consulting Assignments / Representation

2.1 The scope of each particular assignment shall be individually agreed by Contract. On the basis of these Terms and Conditions, the corresponding order is legally effective either by written order confirmation of the CONTRACTOR or the actual provision of services by the CONTRACTOR.

2.2 THE CONTRACTOR shall be entitled to subcontract to third parties, in whole or in part, the services for which THE CONTRACTOR is responsible. Payment of said third parties shall be done by THE CONTRACTOR. No Contractual relationship of any kind shall come into existence between THE CLIENT and said third party.

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2.3 Offers of the CONTRACTOR are subject to change. Information in catalogues, brochures, etc. are only authoritative if expressly referred to in the order confirmation. Offer and project documents may neither be duplicated nor made accessible to third parties without the written consent of the contractor. They remain the property of the CONTRACTOR and must be returned at any time upon request and any existing written or electronic copies must be deleted.

### **3. Principal's Obligation to Provide Information / Declaration of Completeness**

3.1 THE CLIENT shall ensure that during the performance of the service and/or consulting assignment, organizational conditions in THE CLIENT's place of business allow the service and/or consulting process to proceed in a timely and undisturbed manner.

3.2 THE CLIENT shall also inform THE CONTRACTOR in detail about correlated, previously conducted and/or currently active projects.

3.3 THE CLIENT shall, in a timely manner and without special request on the part of THE CONTRACTOR, provide THE CONTRACTOR with all documents necessary to fulfil and perform the service and/or consulting assignment and shall inform THE CONTRACTOR of all activities and conditions pertinent to the performance of the service and/or consulting assignment. This includes all documents, activities and conditions that become known or available during the performance of the service and/or consulting assignment.

3.4 THE CLIENT shall ensure that all employees as well as any employee representation provided by law, if established, are informed of THE CONTRACTOR's activities prior to the commencement of the assignment.

### **4. Maintenance of Independence**

4.1 The Contracting parties shall be committed to mutual loyalty.

4.2 The Contracting parties shall be obligated to take all necessary measures to ensure that the independence of all persons working for THE CONTRACTOR and of any third parties employed by THE CONTRACTOR is not jeopardized. This includes that during the Contract period and for one year after termination thereof no employment offer shall be made by THE CLIENT to said persons and no assignments on their own account shall be accepted by THE CLIENT.





## **5. Reporting / Obligation to Report**

5.1 THE CONTRACTOR shall be obligated to report to THE CLIENT on the progress of services performed by persons working for it and any third parties employed by THE CONTRACTOR.

5.2 If contractually agreed THE CONTRACTOR shall deliver the final report in a timely manner, i.e. depending on the type of assignment, four to eight weeks after completion of the assignment.

5.3 THE CONTRACTOR shall not be bound by directives while performing the agreed service and shall be free to act at its discretion and under its own responsibility. THE CONTRACTOR shall not be required to work in a particular place or to keep particular working hours.

## **6. Protection of Intellectual Property**

6.1 All information, which is shared by one of the Parties before or after signature of the contract remains the exclusive property of the Party, which is handing over said information to the other Party. They shall be treated as confidential information by the accepting Party. This information may only be used for the relevant order.

6.2 All existing ideas, know-how and patents (as well as their applications) of the contractor, which are not the result of the respective order, but are brought in by the contractor for its processing, remain the exclusive property of the contractor.

6.3 The contractor is entitled to use confidential information exclusively for contractually agreed purposes. Therefore, he is prohibited from passing on this information to third parties without the written permission of the contractor or from allowing third parties access to confidential information.

6.4 Any violation of this provision by THE CLIENT shall entitle THE CONTRACTOR to prematurely terminate the Contract and to enforce other legal claims, in particular for restraint and/or damages.

6.5 Subject to §§ 6.1 to 6.3, THE CLIENT, after fulfilment of his payment obligations regulated in the respective order, receives

a) non-exclusive, non-transferable right of use to the ideas, know-how and inventions of THE CONTRACTOR referred to in §§ 6.1 and 6.2, whether patented or not, for all applications covered by the respective order, but for no other purposes, and





b) a right of use to the results and the documentation of the respective order, whereby THE CLIENT must treat the project documentation, received from the contractor, as confidential information.

## **7. Property rights of third parties**

7.1 The Contractor shall endeavour to ensure that the order results do not infringe any property rights of third parties.

7.2 Should the appropriate use of an ordered result lead to a claim arising from an (alleged) infringement of a third-party property right, THE CLIENT shall notify the Contractor immediately in writing. In this case, the Contractor shall provide THE CLIENT with appropriate support in defending against such claims. Should the use of an ordered result actually infringe a valid property right of a third party, the Contractor shall endeavour to:

- a) modify the ordered result in such a way that it no longer infringes any property right, or
- b) obtain a license from the owner of the property right.

The aforementioned obligations of the Contractor are limited to a total amount of 10% of the respective order amount and require the assertion of the claim within six months after the infringements appear.

7.3 In any case, the Contractor shall not be responsible for any settlements or agreements between THE CLIENT and third parties that have been reached without the written consent of the Contractor. Likewise, the Contractor shall not be responsible for the consequences of an infringement of combination or process patents, relating to the use of the order result in connection with other goods/services not originating from the Contractor. This paragraph contains all obligations of the contractor for infringements of property rights. The contractor is in no way liable for

- a) consequential damages resulting from an infringement of property rights,
- b) litigation and/or other representation costs incurred by THE CLIENT, or
- c) damages awarded to third parties in court.

## **8. Warranty**

8.1 The Contractor guarantees to carry out the order in a professional and competent manner, in accordance with the state of the art, in compliance with Austrian laws, standards and regulations.





8.2 THE CLIENT shall check the results of the order upon receipt and shall notify the Contractor in writing of any defects within a reasonable period of time, but not exceeding ten (10) working days. If this obligation is not complied with, all claims mentioned in §377 UGB will be lost.

8.3 In the event of defective order results, the Contractor shall remedy such defects within a reasonable period of time.

8.4 The Contractor's warranty obligation is limited to the obligations defined in this § 8 and replaces all other assurances and warranties, whether expressed or implied. The contractor is not liable for any further or consequential damages that are due to defective results, unless the Contractor is responsible for intent or gross negligence.

8.5 The warranty period is six months after the respective service has been provided.

## **9 Performance of contract**

The order is fulfilled after

- a) configuration and activation of the licensed software and transfer of the access keys to the licensed users of the client and full payment by the client in accordance with § 13, or
- b) handing over the relevant reports and documentation containing the results of the contract in question; and full payment by THE CLIENT in accordance with § 13.

## **10. Liability**

10.1 THE CONTRACTOR shall be liable to THE CLIENT for damages only to the extent that these are the result of serious fault due to intention or gross negligence. Any liability of THE CONTRACTOR for indirect damage or for costs of consequential damage, including loss of profit, recall, loss of availability is explicitly excluded.

10.2 Any claim for damages on the part of THE CLIENT may only be enforced by law within six months after those entitled to assert a claim have gained knowledge of the damage and the liable party, but not later than two years after the finalization and delivery of work or services as agreed by Contract, upon which the claim is based.

10.3 THE CLIENT shall furnish evidence of THE CONTRACTOR 's fault.

10.4 If THE CONTRACTOR performs the required services with the help of third parties, any warranty claims and claims for damages which arise against the third party shall be passed on to THE CLIENT. In this case, THE CLIENT shall primarily refer to the third party.





10.5 The Contractor shall not be subject to any obligations arising from claims arising from strict liability and shall be indemnified and held harmless by the Customer with regard to all damages and costs associated with any product liability claim that the Contractor may incur as a result.

## **11 Force majeure**

In the event that the Contractor or one of its subcontractors becomes a victim of force majeure or an event beyond the control of the Contractor or its subcontractors, such as war, natural events, interventions and prohibitions on the part of the government, lack of energy and raw materials, strikes, civil unrest, transport damage or delay, etc., the Contractor is entitled to extend the agreed delivery time accordingly, provided that the Contractor shall inform THE CLIENT in writing within fourteen (14) days of such an event.

## **12 Confidentiality / Data protection**

12.1 The contractor undertakes to maintain the secrecy of the business and trade secrets that come to his knowledge in the course of order processing.

12.2 The Contractor is released from secrecy vis-à-vis any subcontractors and companies affiliated with the Contractor (these are those in which the Contractor or its holding company, directly or indirectly, holds at least 50% of the shares) which it uses for order processing. However, he must completely transfer the duty of secrecy to the aforementioned and is liable for their violation of the confidentiality obligation like for his own violation.

12.3 The confidentiality obligation continues beyond the end of the respective order for a period of three (3) years.

12.4 The contractor is entitled to process personal data entrusted to him within the scope of the purpose of the respective order. THE CLIENT warrants to the contractor that all necessary measures have been taken, in particular those within the meaning of the Data Protection Act, such as declarations of consent of the persons concerned.

## **13. Remuneration**

13.1 After completion of the services agreed upon, THE CONTRACTOR shall receive remuneration agreed upon in advance between THE CONTRACTOR and THE CLIENT.





THE CONTRACTOR shall be entitled to render intermediate accounts and to demand payment on account as required by the progress of the work.

13.2 11.1 THE CLIENT agrees explicitly to accept invoices transmitted electronically by THE CONTRACTOR.

13.3 Any cash expenditures, expenses, travel expenses, etc. shall be reimbursed to THE CONTRACTOR by THE CLIENT separately, upon appropriate receipts.

13.4 In the event that the work agreed upon is not completed due to reasons attributable to THE CLIENT, or due to a premature termination of Contract by THE CONTRACTOR for good cause, THE CONTRACTOR shall be entitled to claim payment for the work completed till that date of the remuneration agreed upon, less expenses not incurred. In the event that an hourly fee had been agreed upon, THE CLIENT shall pay for the number of hours expected to be required for the entire Contracted assignment, less expenses not incurred.

13.5 THE CLIENT is not entitled to withhold or offset payments due to warranty or other counterclaims.

13.6 In the event of default of payment, the Contractor may:

- a) postpone the fulfilment of one's own obligations until the payments due have been made
- b) invoice the total outstanding payments (loss of deadline)
- c) from the due date, charge default interest at the rate of 8% above the respective base interest rate (main refinancing operations) of the European Central Bank
- d) in the event of non-compliance with a reasonable grace period, withdraw from the corresponding order as well as optionally from other outstanding orders.

This shall not affect the assertion of further claims resulting from non-payment.

## **14. Early termination of the contract**

14.1 An order ends in principle after the corresponding services have been provided by the contractor and the client in accordance with § 9.

14.2 However, either Party may terminate an order with immediate effect by giving written notice to the other Party if one of the following occurs:

- a) insolvency proceedings are opened against the assets of the other contracting party or an application for the opening of bankruptcy is dismissed for lack of assets;





b) the other contracting party violates an essential provision of the respective order and fails to remedy this breach within 20 (twenty) days of a written warning.

14.3 In addition to the circumstances listed in § 14.2, the Contractor may terminate the order immediately by means of written notification to THE CLIENT if:

a) the provision of services becomes impossible for reasons for which THE CLIENT is responsible or is delayed for such reasons by more than a reasonable grace period notified to THE CLIENT in writing;

b) THE CLIENT does not make payments due within a reasonable grace period notified to him in writing despite the proper provision of services by the Contractor;

c) a change in ownership of THE CLIENT's company occurs, which has a significant influence on the interests of the Contractor.

## **15. Final Provisions**

15.1 In the event that individual provisions of these General Terms and Conditions and/or the orders should be and/or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a valid provision that comes closest to its meaning and economic purpose.

15.2 Amendments and/or additions to these General Terms and Conditions shall only be valid if they have been concluded in writing and signed by the bodies authorized to represent the contracting parties. This shall also apply to a waiver of this requirement of written form. There are no verbal ancillary agreements.

15.3 These General Terms and Conditions and all corresponding contracts are governed by the substantive law of the Republic of Austria. The application of the United Nations Convention on Contracts for the International Sale of Goods (UNCITRAL) is excluded.

15.4 The place of jurisdiction for all disputes arising from the contractual relationship shall be the competent court in Graz, Austria. However, the Contractor may also bring an action before another court competent for THE CLIENT.

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*Released by F. Langmayr, Managing Director, 1.7.2023*

