

## Terms of Service

**1. Scope of Contract / Validity**

1.1. These terms and conditions apply between us, namely AKITRON eU, Kaindorf 348, 8224 Kaindorf, FN 526064z (contractor) and natural and legal persons (client) for the present legal transaction as well as for all future transactions, even if in individual cases, especially future ones Supplementary or follow-up orders have not been expressly referred to.

1.2. The version of our General Terms and Conditions that is current at the time the contract is concluded applies.

1.3. We contract exclusively on the basis of our terms and conditions.

1.4. Terms and conditions of the customer or changes or additions to our terms and conditions by the customer require our express written consent to be valid.

**2. Offer / conclusion of contract**

2.1. The contractor's offers are non-binding.

2.2. Commitments, assurances and guarantees by the contractor or agreements that deviate from these GTC in connection with the conclusion of the contract shall only become binding on the client if the contractor has confirmed them in writing.

2.3. Cost estimates are made without guarantee and are subject to payment. If an order is placed for all of the services included in the cost estimate, the fee for the cost estimate will be credited to the relevant invoice.

**3. Scope and Assessment**

3.1. In addition to the delivery of hardware, the subject of an order may include, in particular, the creation of individual programs, the delivery of library (standard) programs, the acquisition of usage rights for software products, the acquisition of work permits, participation in commissioning, telephone advice, program maintenance and other services.

3.2. The development of individual programs is carried out according to the type and scope of the binding information, documents and tools provided by the customer. This also includes practice-oriented test data and test options to a sufficient extent, which the client makes available in a timely manner, during normal working hours and at his own expense. If the customer is already working on the hardware provided for the test in live operation, the responsibility for backing up the real data lies with the customer.

3.3. The basis for the creation of individual programs is the written description of services, which the contractor draws up against a cost cal-

ulation based on the documents and information made available to him or which the customer makes available. This service description is to be checked by the customer for correctness and completeness and provided with his approval note. Requests for changes that occur later can lead to separate date and price agreements.

3.4. Individually created software or program adaptations require a program acceptance for the program package concerned no later than four weeks after delivery by the customer. This is confirmed in a log by the client (check for correctness and completeness based on the service description accepted by the contractor). If the customer allows the period of four weeks to elapse without accepting the program, the software supplied shall be deemed to have been accepted as of the end date of the stated period. If the customer uses the software in live operation, the software is deemed to have been accepted in any case.

Any defects that occur, i.e. deviations from the service description agreed in writing, must be reported to the contractor with sufficient documentation by the client, who will endeavor to remedy the defect as quickly as possible. If there are significant defects reported in writing, i.e. that real operation cannot be started or continued, a new acceptance is required after the defect has been rectified.

The client is not entitled to refuse acceptance of software due to minor defects.

3.5. When ordering library (standard) programs, the client confirms knowledge of the scope of services of the ordered programs with the order.

3.6. If it turns out in the course of the work that the execution of the order according to the service description is actually or legally impossible, the contractor is obliged to notify the client immediately. If the client does not change the service description to that effect or creates the conditions for execution to be possible, the contractor can refuse execution. If the impossibility of execution is the result of an omission on the part of the customer or a subsequent change in the service description by the customer, the contractor is entitled to withdraw from the order. The costs and expenses incurred for the work of the contractor up to that point, as well as any dismantling costs, are to be reimbursed by the customer.

3.7. Program carriers, documentation and service descriptions are sent at the expense and risk of the client. Any additional training and explanations requested by the client will be invoiced separately. Insurance is only taken out at the request of the client.

3.8. The customer must check the content provided by him for legal admissibility, in particular with regard to competition, trademark, copyright and administrative law. In the event of slight negligence or after fulfilling any obligation to warn the customer, the contractor is not liable for the legal admissibility of content if this was specified by the customer.

**4. Prices/Taxes/Fees**

4.1. Prices are generally not to be understood as a flat rate.

4.2. All prices are in euros without sales tax and ex warehouse. In particular, the costs of program carriers and any contractual fees will be invoiced separately. For services ordered by the customer that are not covered by the original order, there is a right to reasonable remuneration.

4.3. For library (standard) programs, the list prices valid on the day of delivery apply. For all other services (organizational advice, programming, training, conversion support, telephone advice, etc.), the workload will be charged at the rates applicable on the day the service is rendered. Deviations from a time expenditure on which the contract price is based, for which the contractor is not responsible, will be charged according to the actual occurrence.

4.4. The costs for travel, daily and overnight allowances will be invoiced to the customer separately according to the applicable rates. Travel times count as working time.

## 5 . Date of delivery

5.1. The contractor endeavors to meet the agreed deadlines for fulfillment (completion) as precisely as possible.

5.2. The desired performance dates can only be met if the customer makes all necessary work and documents available in full by the dates specified by the contractor and meets his obligation to cooperate to the required extent. Delays in delivery and cost increases caused by incorrect, incomplete or subsequently changed details and information or documents provided are not the contractor's responsibility and cannot lead to the contractor's default. The customer bears the resulting additional costs.

5.3. In the case of orders that include several units or programs, the contractor is entitled to make partial deliveries or issue partial invoices.

## 6. Risk of Loss

6.1. For the transfer of risk when the goods are sent to the customer, the risk passes as soon as the contractor has the object of purchase, the material or the work ready for collection, he delivers it himself or hands it over to a carrier.

6.2. The client will insure himself accordingly against this risk. The client approves any customary shipping method.

## 7. Payment

7.1. Unless otherwise agreed, 20% of the fee is due upon conclusion of the contract, 60% upon delivery and the rest after completion of the service or at the latest upon commissioning.

7.2. Payment commitments made by the client on bank transfer slips are not binding.

7.3. In the event of a delay in payment, 9.2% points above the base interest rate will be charged as default interest. In the event of non-compliance with two installments for partial payments, the contractor is entitled to allow the deadline to come into effect and to make the accepted acceptances due.

7.4. Compliance with the agreed payment dates is an essential condition for the execution of the delivery or the fulfillment of the contract by the contractor. Non-compliance with the agreed payments entitle the contractor to stop the ongoing work and withdraw from the contract. All associated costs and loss of profit are to be borne by the client.

7.5. If the payment period is exceeded, any remuneration granted (discounts, deductions, etc.) will be forfeited and added to the invoice.

7.6. The client is obliged to reimburse all costs necessary and appropriate for the collection as well as pre-trial costs of legal representation in the appropriate amount according to the general fee criteria.

7.7. The client is not entitled to withhold payments due to incomplete total delivery, guarantee or warranty claims or complaints.

## 8. Copyright / Usage

8.1. After payment of the agreed fee, the contractor grants the customer a non-exclusive, non-transferrable, non-sublicensable and unlimited right to use the individual program for the hardware specified in the contract. All other rights remain with the contractor.

8.2. If it has been agreed in writing that part of the source code will be made available, this relates exclusively to the part of the source code that was individually prepared for the customer. In this case, it is provided in such a way that a trained programmer is able to rework the source code to further develop the individual part of the software within a reasonable time.

8.3. No rights to the use specified in the present contract are acquired through the cooperation of the customer in the production of the software. Any infringement of the contractor's copyrights will result in claims for damages, in which case full satisfaction must be paid.

8.4. Should the disclosure of the interfaces be necessary for the creation of interoperability of the software, this is to be commissioned by the client from the contractor against payment of costs. If the contractor does not comply with this requirement and decompilation takes place in accordance with copyright law, the results are to be used exclusively to establish interoperability. Misuse will result in damages.

8.5. If the client is provided with software whose license holder is a third party (e.g. standard software), the granting of the right of use is based on the license agreement of the license holder (manufacturer).

## 9. Right of Withdrawal

9.1. In the event that an agreed delivery time is exceeded due to the sole fault of the contractor or illegal action, the customer is entitled to withdraw from the relevant order by registered letter if the agreed service is not provided in essential parts within the reasonable grace period and the customer is not at fault meets.

9.2. Force majeure, labor conflicts, natural disasters and transport blockages as well as other circumstances beyond the contractor's control shall release the contractor from the delivery obligation or allow him to reschedule the agreed delivery time.

9.3. Cancellations by the client are only possible with the written consent of the contractor. If the contractor agrees to a cancellation, he has the right to charge a cancellation fee of 30% of the order value of the entire project that has not yet been invoiced, in addition to the services rendered and costs incurred.

## 10. Warranty / Maintenance / Modifications

10.1. The contractor guarantees that the software fulfills the functions described in the associated documentation, provided that the software is used on the hardware described in the contract.

10.2. The prerequisite for troubleshooting is that - the client describes the error sufficiently in an error message and this can be determined by the contractor;

- the client provides the contractor with all the documents required for troubleshooting;

- the customer or a third party attributable to him has not interfered with the software;

- the software is operated under the intended operating conditions.

10.3. In the event of a warranty, improvement always has priority over price reduction or rescission. If the notice of defects is justified, the defects will be remedied within a reasonable period of time, whereby the client enables the contractor to take all measures necessary to examine and remedy the defects. The assumption of defectiveness according to § 924 ABGB is excluded.

10.4. Corrections and additions that prove to be necessary before the agreed service is handed over due to organizational and programming defects for which the contractor is responsible will be carried out by the contractor free of charge.

10.5. Costs for assistance, incorrect diagnosis and error and fault elimination for which the client is responsible, as well as other corrections, changes and additions will be carried out by the contractor against payment. This also applies to the correction of defects if program changes, additions or other interventions have been made by the customer himself or by third parties.

10.6. Furthermore, the contractor assumes no liability for errors, disruptions or damage caused

by improper operation, modified system components, interfaces and parameters, use of unsuitable organizational means and data carriers, insofar as such are prescribed, abnormal operating conditions (in particular deviations from the installation and storage conditions) as well as transport damage is due.

10.7. Any warranty by the contractor shall be void for programs that are subsequently modified by the customer's own programmers or third parties.

10.8. If the subject of the order is the change or addition to existing programs, the warranty relates to the change or addition. This does not reinstate the warranty for the original program.

10.9. Warranty claims expire six (6) months after delivery.

### **11. Liability**

11.1. The contractor is liable to the client for damage that can be proven to be his fault only in the case of gross negligence. This also applies analogously to damage caused by third parties called in by the contractor. This limitation also applies to damage to an item that the client has made available to the contractor for processing. In the event of culpable personal injury, the Contractor shall be liable for a maximum of the coverage amount of the existing liability insurance. If and to the extent that the client can claim insurance benefits for damage for which the contractor is liable through damage insurance (e.g. liability insurance, comprehensive insurance, transport, fire, business interruption and others) taken out on his own or in his favour, the client undertakes to make use of the insurance benefit and the contractor's liability is limited to the disadvantages that the customer incurs as a result of the claim being made for this insurance (e.g. higher insurance premiums).

11.2. Liability for indirect damage - such as lost profits, costs associated with business interruption, loss of data or claims by third parties - is expressly excluded.

11.3. Claims for damages become statute-barred in accordance with the statutory provisions, but no later than one year after knowledge of the damage and the person causing the damage.

### **12. Retention of Title**

12.1. The goods delivered, assembled or otherwise handed over by the contractor remain the property of the contractor until they have been paid for in full.

12.2. A resale of goods is only permitted if the customer has informed the contractor of this in good time in advance, stating the name and address of the buyer, and the contractor agrees to the sale. In the event of approval, the purchase

price claim of the entrepreneurial customer is already deemed to have been assigned to the contractor.

12.3. Until the payment or purchase price has been paid in full, the customer must note this assignment in his books and on his invoices and inform his debtors of this. Upon request, he must provide the contractor with all documents and information required to assert the assigned claims and claims.

12.4. If the customer is in default of payment, the contractor is entitled to demand the return of the reserved goods after setting a reasonable grace period.

12.5. The customer must inform the contractor immediately before opening insolvency proceedings about his assets or the seizure of the goods subject to retention of title.

12.6. The client declares his express consent that the contractor may enter the location of the reserved goods to assert his retention of title.

12.7. The assertion of the retention of title only constitutes a withdrawal from the contract if this is expressly declared.

12.8. The contractor may freely sell the reserved goods that have been taken back.

### **13. Loyalty**

13.1. The contractual partners commit to mutual loyalty. You will refrain from any enticement and employment, also via third parties, of employees who have worked on the realization of the orders of the other contractual partner during the term of the contract and 12 months after the end of the contract. The contractual partner who violates this is obliged to pay lump-sum compensation in the amount of one year's salary of the employee.

### **14. Confidentiality**

14.1. Furthermore, the client undertakes to keep secret the knowledge he has received from the business relationship towards third parties.

14.2. The client obliges all of his employees to comply with the provisions of Section 6 of the Data Protection Act.

### **15. Severability Clause**

15.1. Should individual parts of these General Terms and Conditions be ineffective, this shall not affect the validity of the remaining parts.

15.2. The contracting parties undertake - based on the horizon of honest contracting parties - to make a replacement regulation that comes closest to the economic result of the ineffective condition.

### **16. Miscellaneous**

16.1. Austrian law applies.

16.2. The UN sales law is excluded.

16.3. The place of fulfillment is the seat of the contractor.

16.4. The court responsible for the contractor's company headquarters is agreed as the exclusive place of jurisdiction.