

**General Terms and Conditions**  
**of qoncept technology GmbH and qoncept engineering GmbH**

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Table of Contents

<b>1. General</b> .....	2
<b>2. Conclusion of Contract</b> .....	2
<b>3. Scope of Delivery and Services</b> .....	3
<b>4. Cooperation Duty of the PR</b> .....	4
<b>5. Subcontractors and Assignment</b> .....	5
<b>6. Time and Dates for Delivery and Services</b> .....	5
<b>7. Contract Price</b> .....	6
<b>8. Terms of Payment, Invoicing</b> .....	6
<b>9. Transfer of Risk, Retention of Title</b> .....	7
<b>10. Commissioning, Acceptance</b> .....	7
<b>11. Warranty</b> .....	10
<b>12. Liability</b> .....	12
<b>13. Export control regulations (for Delivery of Goods)</b> .....	13
<b>14. Copyright and Right of Use</b> .....	13
<b>15. Confidentiality and Data Protection</b> .....	15
<b>16. Inventions, Industrial Property Rights, Right of Use</b> .....	15
<b>17. Withdrawal from Contract, Termination Rights</b> .....	16
<b>18. Applicable Law, Jurisdiction</b> .....	16
<b>19. Miscellaneous</b> .....	16

## 1. General

- 1.1. For all Contracts between the Principal (hereinafter: PR) and qoncept technology GmbH or qoncept engineering GmbH as the Contractor (hereinafter: CO) in connection with consulting, engineering and / or other services of the CO including respective documentation of the CO (hereinafter: Service or Services) as well as any delivery of goods (hereinafter: Delivery of Goods) and / or any software deliveries (hereinafter: Delivery of Software) of the CO including respective documentation of the CO (hereinafter both Delivery of Goods and Delivery of Software: Delivery or Deliveries) the following General Terms and Conditions shall apply exclusively. The edition of the General Terms and Conditions effective at the time of the conclusion of the Contract shall be valid to the Contract.
- 1.2. The PR will be notified about any amendment of the General Terms and Conditions and such amendment shall be deemed agreed if the PR does not object to the amended General Terms and Conditions in writing within 14 calendar days.
- 1.3. The General Terms and Conditions also apply to all future Contracts between the CO and the PR (hereinafter both: Parties), even if this is not expressly stated in supplementary Contracts of the Parties.
- 1.4. Conflicting general terms and conditions, purchasing conditions or other contract conditions of the PR (hereinafter: GTC of the PR) are excluded, unless they have been expressly acknowledged by the CO in writing. Silence to the GTC of the PR shall in no case be deemed as consent of the CO. Written form in the meaning of the General Terms and Conditions of the CO shall mean in writing via letter or e-mail.
- 1.5. Therefore, the CO expressly objects to any GTC of the PR. No further objection by the CO to the GTC of the PR shall be required; GTC of the PR shall not become part of the Contract even if the CO refers in his order confirmation to inquiry documents of the PR, which refer to any GTC of the PR. The acceptance of payments by the CO shall not constitute acceptance of any GTC of the PR.
- 1.6. If there are any regulatory gap in the General Terms and Conditions of the CO, only the applicable law shall apply.

## 2. Conclusion of Contract

- 2.1. Quotations and cost estimates of the CO are not binding and are subject to changes.
- 2.2. The Contract (hereinafter also: Order) between the Parties consists of the following documents, unless the order confirmation of the CO expressly provides otherwise. In case of a contradiction or conflict between the Contract documents, the documents shall apply in the following order:
  1. Order confirmation of the CO
  2. Attachments listed in the order confirmation (e.g. quotation of the CO, solution specification, technical description of the CO)
  3. General Terms and Conditions of the CO
- 2.3. The Contractual relationship between the Parties becomes effective by the written order confirmation of the CO. Oral or telephone orders shall only be effective if confirmed in writing by the CO. With submission by email the order confirmation shall be deemed legally effective.
- 2.4. Should there be no written order confirmation of the CO in the particular case, the Contract shall become effective by the written order of the PR on the basis of the quotation of the CO. Any deviations of the order of the PR to the quotation of the CO shall only be valid if they are confirmed in writing by the CO.

- 2.5. Should the PR wish to make changes to the Contract after the Contract has been concluded such changes shall only be effective if the CO confirms them in writing. In any case, the CO shall be entitled to an appropriate adjustment of Contract Price as well as time schedules for Deliveries and / or Services.
- 2.6. Later cancellations of the Contract (see in comparison: withdrawal from Contract for good cause as per Article 17 of the General Terms and Conditions) and / or a suspension of the Contract shall only be granted in case of a mutual agreement by the Parties. Any costs or disadvantages caused thereby shall be borne by the PR, except if the Parties agree otherwise.
- 2.7. In the event that legal provisions, technical standards or judicial decisions that apply to the Contract are amended or supplemented after the date of conclusion of the Contract, and this results in disadvantages or additional requirements for the Contract execution by the CO, the CO shall be entitled to amend the Contract with regards to the Contract Price, Delivery or Service time and / or scope of Contract.

### **3. Scope of Delivery and Services**

- 3.1. The scope of Delivery and Services of the CO (hereinafter: Scope of Contract) is agreed in detail between the Parties and results from the order confirmation or the Contract or a technical specification as an integral part of the Contract between the Parties.
- 3.2. Any information contained in general product sheets or service brochures of the CO shall only be binding if the Contract expressly refers to it. Production-related deviations in terms of dimensions, weight, technical features and specifications are in any case permitted within the tolerances customary in the industry or those shown in the applicable technical standards (EN, DIN, ÖNORM as applicable).
- 3.3. Documentation to the Contract shall be determined in the order confirmation or the offer of the CO in terms of scope and delivery respectively service time. Language of the documentation is German or English, depending on the choice of the Parties, unless the Parties explicitly agree another language in the Contract.
- 3.4. Services of the CO that are carried out by the CO for the PR beyond the agreed scope of Services shall be compensated by the PR according to actual personnel and material expenses of the CO at the respective applicable rates of the CO; such as but not limited to in case of software: analysis and elimination of faults and errors caused by improper handling or operation by the PR or caused by other circumstances not attributable to the CO; also training services; or an extension or change of an engineering order
- 3.5. Supplementary conditions for the execution of Services by the CO:
  - 3.5.1. Unless the Parties agree otherwise, the basis for the execution of Services by the CO is the written service description in the order confirmation and / or any documents prepared by the CO (e.g. as-is analysis, requirement or solution specification or any other specification, planning or similar), which the CO will draw up on the basis of the documents and information provided by the PR. For Services of the CO in the field of project management, the Parties will define the exact scope of the CO in a separate agreement prior to or at the time of conclusion of the Contract.
  - 3.5.2. The Services by the CO shall be provided in the business premises of the CO, unless the Services of the CO can only be provided outside the business premises of the CO. If, at the request of the PR, part of the Services shall be provided outside normal working hours, the additional costs shall be invoiced to the PR separately.
  - 3.5.3. The facilities and technologies used for the execution of the Services by the CO are based on the qualitative and quantitative service requirements of the PR, as determined on the

basis of the information provided by the PR. If new requirements of the PR make it necessary to change the Services or the technology used, the CO will at the request of the PR provide a corresponding quotation.

3.5.4. The choice of resources and employees used to provide the Services is at the discretion of the CO.

3.6. Supplementary conditions for Delivery of Software by the CO:

3.6.1. Services of the CO, which are caused by changes of operating system, hardware changes and / or changes to software programs and interfaces, which are not in the Scope of Contract but are mutual dependent programs, shall not be included in the Contract and shall be considered additional Services, which are to be paid by the PR according to the usual rates of the CO, unless the Parties agree otherwise.

3.7. The CO shall be released from all obligations under the Contract if without the prior consent of the CO changes to the contractual Deliveries are made by the PR, its employees or third parties assigned by the PR or if the Deliveries are not used as agreed.

#### **4. Cooperation Duty of the PR**

4.1. The PR shall provide the CO in a timely and complete manner with all information and documents required for the execution of the Contract. The PR further undertakes to take all measures that are necessary to execute the Contract and that are not in the CO's Scope of Contract.

4.2. If the Services are to be provided at the premises of the PR, the PR shall provide free of charge the necessary components and infrastructure (e.g. electricity, network connections, workplaces, etc.) for the execution of the Services in the required extent. The PR shall be responsible for appropriate safety precautions in his premises. On the other hand, please refer to Article 10.2. of the General Terms and Conditions for the cooperation duties of the PR in case of erection or commissioning supervision or other similar services of the CO.

4.3. The PR shall inform the CO about all circumstances which are of importance for the fulfillment of the Contract, even if such circumstances become known only during the fulfillment of the Contract. Any additional costs of the CO, in case for example that work must be repeated or delayed, which is caused by incorrect, incomplete or later changed information by the PR (meaning "changes implemented after conclusion of the Contract") shall be borne by the PR.

4.4. The PR shall carry out his obligations in such a timely manner that the CO will not be hindered in the execution of the Contract. If the PR fails to fulfill his obligations on time or on agreed dates or to the extent stipulated, the Deliveries and Services by the CO shall anyway be deemed to be in conformity with the Contract despite possible restrictions. Time schedules for the Deliveries or Services of the CO shall be postponed to an appropriate extent. The PR shall be liable for any additional expenses incurred by the CO.

4.5. The PR shall be liable to the CO for ensuring that the documents (specifications, logos, etc.) provided for the execution of the Contract are free of copyright, trademark or other rights of third parties and can be used by the CO for the agreed purpose. The PR shall be liable for the completeness and correctness of the documents and information made available to the CO. Any additional costs or other disadvantages of the CO due to incorrect or incomplete documents or information from the PR shall be borne by the PR (e.g. price increases, postponements of delivery dates).

## 5. Subcontractors and Assignment

- 5.1. The CO shall be entitled at its own discretion to execute the Contract by itself and / or to have the Contract carried out in whole or in part by a third party (subcontractor).
- 5.2. The PR shall not enter into any business relationship with regards to the Scope of Contract or in connection therewith with persons or companies that the CO uses to fulfill the Contract during the term of the Contract and at least up to 5 years after the expiration of the Contract. In particular, the PR will not assign these persons and companies with same or similar Services that the CO also offers.
- 5.3. The assignment of the Contract or part of it, including the rights and obligations therein, by the PR to third parties shall only be permitted with the prior written consent of the CO.
- 5.4. The assignment of a claim of the PR out of the Contract shall only be permitted with the consent of the CO; the consent may not unreasonably be refused.

## 6. Time and Dates for Delivery and Services

- 6.1. Specified Delivery or Service times are, unless expressly agreed as binding, only approximate and non-binding. Binding deadlines must be recorded as such between the Parties in writing or be confirmed by the CO in writing. Delivery and Service times start to run from the date of the written confirmation by the CO.
- 6.2. If the Deliveries or Services of the CO are delayed for reasons for which the CO is not responsible, such as events of force majeure (e.g. war, turmoil, forces of nature, epidemics, explosions, fire or currency policy, trade policy or other sovereign restrictions) or other unforeseeable events that cannot be averted by reasonable means (hereafter: equivalent event) the contractual obligations shall be suspended for the duration and extent of the obstacle. Delivery and Service times shall be extended accordingly. An equivalent event under this Article shall be for example strike by the staff of the CO or by any third party commissioned by the CO; operational disruptions for which the CO is not responsible (e.g. machine breakdown, lack of raw materials), obstruction of traffic routes, delays in import or customs clearance; in case of Delivery of Software or Software Services: also if cloud services or other data exchange services or programs are not available; or cases in which the internet access of the CO is not possible or blocked by no fault of the CO.
- 6.3. If such a delay lasts for more than three months, both Parties are entitled to withdraw from the Contract, whereby the PR has to pay for Deliveries or Services already carried out by the CO.
- 6.4. Article 6.2. of the General Terms and Conditions shall apply equally if the CO uses a subcontractor to fulfill the Contract and if such subcontractor is prevented from performing the Contract due to a force majeure event or an equivalent event.
- 6.5. If the CO is culpably in delay of the Delivery or Service, the PR may only withdraw from the Contract after setting a reasonable period of grace for the CO in writing and if this grace period has expired unsuccessfully. Compensation claims of the PR for non-performance or default are excluded, except in the case of proof, which the PR has to provide, of intent or gross negligence of the CO. Contractual penalties or liquidated damages for delay are excluded; these are only effective in exceptional cases where the CO has explicitly confirmed them in the order confirmation, though it is to be noted that a global reference to inquiry documents of the PR shall not be considered an explicit confirmation.
- 6.6. In the event of delays caused by the PR or a third party commissioned by the PR, the PR shall reimburse any additional costs and expenses incurred by the CO as a result of the delay.
- 6.7. Default of Acceptance by the PR:

- 6.7.1. If the PR can foresee that he will not be able to accept the Deliveries or Services or part of it at the agreed time, the PR must immediately inform the CO in writing and inform about a new acceptance date. Irrespective of the announcement of a new acceptance date by the PR, the following applies: If the PR does not accept the Deliveries or Services or a part thereof on the (initially) agreed Delivery date according to the Contract, the PR nevertheless has to pay for the part of the Contract price that is due on the (initial) Delivery date. In this case, the CO is also entitled to store the Deliveries at a suitable location at the cost and risk of the PR. The PR bears all costs associated with the storage. The costs are to be paid by the PR before the Deliveries are dispatched.
- 6.7.2. Moreover, the CO reserves the right to withdraw from the Contract in whole or in part in writing in case the delay of acceptance by the PR lasts more than 8 weeks and after a reasonable grace period granted by the CO has expired. In this case, the CO is entitled to compensation for the damage caused by the default of the PR.
- 6.7.3. Inspection before delivery: If the Parties have agreed in the Contract on an inspection at the place of manufacture of the Deliveries or at the headquarters of the CO, the following applies: The PR shall bear all his own costs in connection with such an inspection (e.g. travel costs, costs for independent third-party inspectors). If the inspection is not carried out at all, or not carried out on time, or incompletely through no fault of the CO, the CO is entitled to complete the Deliveries without inspection or to store and invoice the Deliveries at the expense and risk of the PR. If the Deliveries or a part of the Deliveries shows to be non-conforming to the Contract during inspection, the CO shall restore the contractual condition without delay and repeat the inspection at the request of the PR. In case of minor defects, i.e. defects that do not impair the functionality of the Deliveries a repetition of the inspection is not required.

## 7. Contract Price

- 7.1. Price basis of the Contract Price:  
(a) for Services: the price shall apply ex place of performance  
(b) for Deliveries: the price shall apply ex works  
plus applicable VAT and other taxes.
- 7.2. Packing, freight, customs clearance and insurance are not included in the Contract Price, except if otherwise agreed between the Parties in writing.
- 7.3. Costs for travel and accommodation of the CO in connection with the execution of the Contract (e.g. commissioning of a Delivery at the place of the PR) are not included in the Contract Price, except if otherwise agreed between the Parties in writing. Cash expenditures of the CO shall be charged on top of the Contract Price also. All these costs shall be invoiced by the CO to the PR plus an administration fee of 10% and shall be payable by the PR.
- 7.4. Any taxes or duties in connection with the execution of the Contract shall be borne by the PR.

## 8. Terms of Payment, Invoicing

- 8.1. Specific terms of payment will be agreed between the Parties for the particular case. In lack of a deviating agreement in the order confirmation the following terms of payment shall apply:  
(a) For Deliveries and Engineering: at the time of conclusion of the Contract an advance payment of 25 % of the Contract Price shall be payable. The remaining amount of 75 % of the Contract Price shall be payable upon readiness of delivery.  
(b) For Services: the Contract Price shall be payable upon completion of Services. However, in case that the term of the Services lasts more than a month, the CO is entitled to issue

progress invoices according to the actual progress of works at the end of each month. For details the PR shall refer to the order confirmation.

- 8.2. All payments are due for payment 14 calendar days after invoice date strictly net. Payments shall be made to the bank account of the CO only.
- 8.3. The PR agrees that invoices of the CO can be submitted electronically, i.e. by e-mail to the e-mail address given by the PR. Invoices sent by e-mail shall be deemed effectively submitted.
- 8.4. In case that the Parties agree on a cash discount, the cash discount periods shall start from the invoice date. A discount always requires the full payment of all due liabilities of the PR to the CO at the time of the discounting.
- 8.5. In case of a default of payment of the PR, the CO is entitled to suspend the fulfillment of his own obligations under the Contract until fulfillment by the PR and to demand interest in the amount of 8 % p.a. above the base rate of the European Central Bank. Any further claims of the CO under this title are expressly reserved.
- 8.6. If payment in installments has been agreed between the Parties, the CO reserves the right to demand the immediate payment of all outstanding amounts in the event of late payment of an installment.
- 8.7. The PR shall not be entitled to offset own claims against claims of the CO, unless the claims of the PR have been expressly acknowledged by the CO in writing in terms of reason and amount or if the claims of the PR have been finally determined by court.
- 8.8. The PR is not entitled to withhold payments based on the grounds that the Deliveries or Services have not been completed in total or based on warranty claims or other claims arising from the Contract.

## 9. Transfer of Risk, Retention of Title

- 9.1. The risk of the Deliveries of the CO, including the documentation supplied, shall pass to the PR upon acceptance. If there is no acceptance, the risk shall pass to the PR upon delivery.
- 9.2. Goods delivered by the CO, documentation or other documents of the CO remain the property of the CO until full payment of the Contract Price. Regarding intellectual property rights refer to Article 14 of the General Terms and Conditions.

## 10. Commissioning, Acceptance

### 10.1. Delivery of Software:

#### 10.1.1. Commissioning:

10.1.1.1. At the start of commissioning, all devices, equipment and programs that interact with the Subject of the Contract but are not part of the Contract shall be available in full operation. For the duration of commissioning, the existing systems shall be completely available to the CO.

10.1.1.2. For the assessment of possible errors in the Deliveries, error classes are defined as follows:

- Class 1: Errors that lead to the failure of the entire system and make a normal operation impossible, whereby the failure is caused by the Deliveries or part thereof of the CO.
- Class 2: Errors that do not interfere with the operation of the system (for example, short-term failures without loss of data or with the possibility to recollect data, erroneous results in reports and evaluations, missing functions that are not mandatory for normal operation or that can be replaced by other functions).

- Class 3: Other errors (for example, incorrect fixed texts in reports and screens, etc.).

#### 10.1.2. Acceptance:

10.1.2.1. After completion of the commissioning tests and elimination of any errors of class 1 that have occurred, the CO declares the readiness for hand-over respectively the readiness for acceptance. Thereafter, the joint acceptance of the Delivery of Software takes place. If there are errors of class 2 and 3 at the time of acceptance, these are documented in the acceptance protocol. The CO will remedy these errors within a reasonable period of time at his own expense. The PR shall not be entitled to refuse acceptance in case of errors of class 2 or 3.

10.1.2.2. Nor does the partial or total lack of documentation justify a refusal of acceptance by the PR. The outstanding parts of the documentation shall be recorded in the acceptance protocol and those shall be submitted by the CO within a reasonable period of time.

10.1.2.3. If without the fault of the CO the acceptance does not take place or does not take place in time or is held incomplete, the CO nevertheless is entitled to charge for any outstanding final payment which shall then be paid by the PR. In this case, the warranty period starts with the notification of readiness for acceptance by the CO.

10.1.2.4. If the PR uses the Delivery of Software in a productive manner without declaring acceptance first, the Delivery of Software shall be considered as having been accepted by way of their productive use.

#### 10.2. Delivery of Goods:

##### 10.2.1. Erection and Commissioning:

10.2.1.1. If the Contract also includes the erection and / or commissioning or the supervision of erection and / or commissioning of the Delivery of Goods by the CO, the following shall apply:

10.2.1.2. The scope start and duration as well as the place of performance of the CO (hereinafter: Place of Performance) shall be agreed separately between the Parties, if not already defined in the Order Confirmation.

10.2.1.3. The PR shall take care and organize the following:

- All preparatory works at the Place of Performance in order for the CO to start his performance without delay and in order to ensure that the required operating conditions are fulfilled and available during performance by the CO;
- Operating and maintenance personnel of the PR in sufficient number and qualification (especially during commissioning);
- Any official permits, authorizations or similar required approvals for the plant at the Place of Performance;
- The commodities required for the performance of the CO (e.g. lifting equipment, scaffolding) as well as raw materials, technical materials or consumables (e.g. lubricants); also electricity, gas, water, compressed air at the point of use;
- Lockable storage facility for the CO's equipment or tools; as well as
- Office and common room for the CO's personnel with standard office equipment (Internet connection, printer, copier, etc.).

- 10.2.1.4. Unless the Parties have agreed otherwise in the Contract, the PR shall provide for the CO free of charge for the duration of performance of the CO at the Place of Performance:
- Accommodation: one furnished single room per person with shower and toilet according to European standards, including electric power, hot and cold water, heating and / or air conditioning and internet;
  - Possibility of meals close by the Place of Performance;
  - Pick-up, means of transport or airport transfer to the CO's accommodation at the Place of Performance and transfer between the accommodation and the Place of Performance; as well as
  - A reasonable number of translators if proper verbal communication in German or English is not possible with the PR's staff on site.
- 10.2.1.5. As soon as the CO has notified the PR about the end of the mechanical erection of the Delivery of Goods, the Parties will take all necessary steps to start commissioning within a reasonable time, but no later than 30 calendar days after the end of erection, unless the Parties expressly agree otherwise.
- 10.2.1.6. If during commissioning defects are found in the Delivery of Goods, the CO shall remedy the defects as soon as possible. If the defects are minor, i.e. defects that do not disrupt the functionality of the Delivery of Goods or do not affect any agreed performance parameters, the commissioning and / or performance test, if such has been agreed by the Parties in the Contract, shall continue.
- 10.2.1.7. If the Parties have agreed performance parameters for the Delivery of Goods in the Contract, a performance test shall take place no later than 14 calendar days after commissioning. The performance test shall be carried out by the CO in the presence of the PR.
- 10.2.1.8. The duration and scope of the performance test shall be agreed in the Contract between the Parties. There is no addition of test times before and after an interruption, except if the PR is responsible for the interruption or if after achievement of 50% of the required test period, there is only a brief interruption due to reasons attributable to the CO. A brief interruption is an interruption of maximum of 2 hours.
- 10.2.1.9. If the performance test needs to be repeated, the costs shall be borne by the Party responsible for the failure of the performance test.
- 10.2.1.10. The PR grants the CO every opportunity to fulfill his contractual obligations with regard to measuring, aligning and adjusting the Delivery of Goods until acceptance. The PR's production is of secondary importance during commissioning and a performance test.
- 10.2.1.11. If the performance parameters are achieved outside a performance test during the operation of the Delivery of Goods, the performance parameters are deemed to have been achieved, even if no performance test was carried out by the CO.
- 10.2.2. Acceptance:
- 10.2.2.1. The joint acceptance of the Delivery of Goods takes place after successful commissioning or a performance test (if the Parties have agreed a performance test in the Contract). Any minor defects on the Delivery of Goods shall be documented in the acceptance protocol. The CO will remedy these defects within

a reasonable period at its own expense. Minor defects do not justify refusal of acceptance.

10.2.2.2. Until acceptance, the PR may only operate the Delivery of Goods with the written consent of the CO. If operation is permitted, any such operation is at the risk of the PR. Life time of the Delivery of Goods starts from the first operation. Any wear and tear of the Delivery of Goods during operation shall be borne by the PR and shall be taken into account in any later performance test to be conducted by the CO.

10.2.2.3. In each of the following cases, the acceptance of the Delivery of Goods by the PR is deemed to have taken place - regardless of whether an acceptance protocol has been signed by the Parties:

- The commissioning or - if a performance test has been agreed by the Parties - the performance test was successful;
- Any agreed performance parameters were achieved outside of a performance test during operation;
- If the commissioning or any performance test cannot be carried out or completed for reasons attributable to the PR;
- after the third unsuccessful repetition of the performance test, if the failure of the performance test is due to reasons attributable to the CO, the acceptance shall be deemed to have been granted if the CO pays compensation to the PR in accordance with Article 12 of the General Terms and Conditions or if the CO pays liquidated damages to the PR if liquidated damages were agreed in the Contract by the Parties; or
- if the PR uses the Delivery of Goods productively or puts the Delivery of Goods or parts thereof into operation without the presence of the CO, unless the CO has given its consent in accordance with Article 10.2.2.2. of the General Terms and Conditions.

10.2.2.4. The partial or total lack of documentation does not entitle the PR to refuse acceptance. The missing parts of the documentation shall be listed in the acceptance protocol and they shall be submitted by the CO within a reasonable period of time.

10.3. Services:

10.3.1. Commissioning:

10.3.1.1. Void.

10.3.2. Acceptance:

10.3.2.1. The Services of the CO shall be deemed accepted by the PR at the time of complete fulfillment of the Services and delivery of any associated documentation (for example analyses).

10.4. General Provisions:

10.4.1. Any delay during the performance of the CO for which the CO is not responsible shall be borne by the PR. The costs incurred by the CO in connection with such delay will be charged to the PR at costs in addition to the Contract Price according to the normal hourly rates of the CO (including waiting times and travel costs).

## 11. Warranty

11.1. The CO undertakes to perform the Deliveries or Services in accordance with the Contract. Unless expressly agreed otherwise by the Parties, the CO assumes no guarantee or liability for features of the Deliveries or Services other than those expressly agreed by the Parties.

- 11.2. Any defects in the Deliveries or Services shall within a reasonable period of time after notification by the PR be remedied by the CO at the discretion of the CO by either repeating or replacing the defective Deliveries or Services or carrying out necessary repair work. The CO is entitled to refuse to remedy the Deliveries or Services if remedy works are impossible for the CO or would involve a disproportionately high effort by the CO or be economically unreasonable for the CO. In this case, the PR has the right to request an adequate reduction of price.
- 11.3. The PR shall report any defects immediately to the CO, in any case within 30 calendar days from delivery or service completion by the CO and for hidden defects within 30 calendar days after detection thereof, in writing with a description of the defect; otherwise, the Deliveries or Services shall be deemed approved. In this case warranty claims and other compensation claims for such defect as well as the right to appeal on the grounds of error shall be forfeited.
- 11.4. If the CO fails to carry out the remedy of a defect within a reasonable period of time, the PR may, after setting an appropriate grace period which must be designated as such, either remedy the defect himself or have it remedied by a third party or demand a reasonable price reduction. The CO shall reimburse the PR for the direct costs incurred in connection with the remedy of a defect, provided such costs are reasonably substantiated by the PR (for example, invoice copy, work reports, etc.). In the event that the CO is not given the opportunity to remedy the defect within a reasonable period of time, reimbursement of costs by the CO to the PR shall be excluded.
- 11.5. If the defect is due to supplies or participation of the PR or due to a breach of other obligations of the PR under the Contract, the remedy of a defect by the CO shall not be free of charge for the PR. In these cases, the Deliveries or Services provided by the CO are considered as in conformity with the Contract despite possible restrictions. At the request of the PR, the CO shall remedy any such defect at the expense of the PR.
- 11.6. Unless otherwise agreed by the Parties in the Contract, the warranty period shall be:
- 11.6.1. For Delivery of Goods of the CO: 12 months from acceptance or, if no acceptance takes place, from date of delivery or completion of service.
- 11.6.2. For all other Deliveries and Services of the CO: six months from acceptance or, if no acceptance takes place, from the date of delivery or completion of service.

The presumption rule of §924 of Austrian Civil Code is excluded. The warranty period for repaired or replaced parts starts to run anew with the completion of repair or replacement. The PR bears the burden of proof throughout the warranty period that any defect in the Deliveries or Services already existed at the time of the transfer of risk.

- 11.7. In the following cases any warranty or liability of the CO shall be excluded:
- Usual wear and tear parts:
    - » In case of Delivery of Software additionally: accessories (e.g. data media)
    - » In case of Delivery of Goods additionally: in case of excessive use, wear on parts that get in contact with material, if no lifetime has been agreed in the Contract. If a lifetime has been agreed, the affected part of the Delivery will be replaced "pro rata temporis" if the wear limit is reached prematurely.
  - Improper use, operation, maintenance or non-compliance with operating manuals or other documentation of the Contract
  - Improper storage of the Deliveries by the PR prior to commissioning
  - Unauthorized interference on the Deliveries (without the consent of the CO) by the PR or by third parties attributable to the PR or any defect arising from any other circumstance after the transfer of risk

- Improper erection or commissioning of the Deliveries, especially without the attendance of the CO.
- 11.8. For Delivery of Software the following shall apply additionally:
- 11.8.1. The PR shall enable the CO to take all necessary measures to investigate and remedy the defect and provide the CO with all necessary documents and information without delay. In case for example of a defect of the software program, the PR is obliged for the purpose of a detailed examination of possible errors to make available to the CO the computer system, the software program, protocols, diagnostic documents, etc., in an appropriate extent and without delay. If during the remedy of a defect additional expenses incur by the CO due to the PR's delay or refusal of necessary cooperation duties, these additional expenses shall be borne by the PR.
  - 11.8.2. The CO shall bear no liability for the functionality of already existing hardware products (e.g. server, computer, printer, networks and interfaces between them, etc.).
  - 11.8.3. If the Deliveries are used in connection with devices and / or programs of third parties, there is a warranty for functionality and performance defects of the Deliveries only, if such defects would have occurred without such a connection too, unless the cause for the defect on the faulty connection lies within the Deliveries or part thereof of the CO.
  - 11.8.4. For any hardware or software products of third parties provided by the CO to the PR, the respective warranty terms of the manufacturer of these products shall apply in priority to the provisions of this Article or the Contract.
- 11.9. For Delivery of Goods the following shall apply additionally:
- 11.9.1. The PR shall enable the CO to take all measures necessary to investigate and remedy defects and to provide the CO with all necessary documents and information without delay (e.g. access to operating and maintenance data). If the CO is required to remedy the defect or to find the cause, the rejected parts of the Delivery or a sample thereof shall be made available to the CO. The PR shall ensure that the CO receives access to the objected part without delay in order for the CO to examine the objected part. If during the remedy of a defect additional expenses incur by the CO due to the PR's delay or refusal of necessary cooperation duties, these additional expenses shall be borne by the PR.
  - 11.9.2. At the request of the CO, the PR shall make available any replaced defective part of the Delivery to the CO and shall ensure that ownership on such part is transferred to the CO.
- 11.10. If a defect reported by the PR proves to be no warranty claim, the costs incurred by the CO in connection with troubleshooting and any remedy of defect shall be borne by the PR.
- 11.11. A contractual guarantee must be agreed separately and in writing between the Parties. If guarantee services are agreed upon, an agreed guarantee period shall apply instead of the general warranty period, thus such guarantee period shall not extend the period specified in Article 12.6. of the General Terms and Conditions.
- 11.12. The PR is not entitled to withhold payments in case of warranty claims or other claims under the Contract against the CO.

## 12. Liability

- 12.1. The CO shall be liable to the PR for damages, with the exception of personal damage, only in the case of gross negligence or intent. This also applies mutatis mutandis to damages caused by third parties (such as subcontractors) assigned by the CO. The burden of proof that the damage is due to the fault of the CO shall be on the PR.
- 12.2. The liability of the CO resulting from or in connection with the Contract, for whatever legal reason, shall be limited for each Contract to the net total of the respective Contract Price.

- 12.3. Any further liability of the CO for whatever legal reason shall be excluded. In no case shall the CO be liable for indirect or consequential damages (such as but not limited to business interruptions, data losses), for loss of profit, missed savings or pure financial loss.
- 12.4. Notwithstanding anything to the contrary in the General Terms and Conditions or any underlying Contract, all claims of the PR arising out of or in connection with the Contract shall expire at the latest 36 months after the transfer of risk or completion of the Services.

### **13. Export control regulations (for Delivery of Goods)**

- 13.1. The CO's fulfillment of the Contract is subject to any necessary export control approvals being granted and that no other obstacles to the fulfillment of the Contract due to national or international (e.g. US-American) regulations of foreign trade law and no embargoes and / or other sanctions hinder the performance of the Contract by the CO.
- 13.2. If required by the CO, the PR shall provide the CO with any documents and information necessary in connection with export control procedures within a reasonable period of time.

### **14. Copyright and Right of Use**

#### 14.1. Concept Development and Protection of Ideas:

- 14.1.1. If the CO is invited by a potential PR to develop a concept, and if the CO accepts this invitation before concluding the main Contract with this potential PR, the following applies:
- 14.1.2. By acceptance of the invitation by the CO, the Parties enter into a Contractual relationship, which shall already be subject to the General Terms and Conditions of the CO.
- 14.1.3. During concept development the CO already provides cost-intensive preliminary services. For valuation purposes these preliminary services shall be measured at the normal hourly rates of the CO. Invoicing of these costs to the PR shall only take place if expressly agreed between the Parties in writing.
- 14.1.4. The concept constitutes a work of the CO; therefore the provisions on copyright and use hereafter apply mutatis mutandis to a concept created by the CO.
- 14.1.5. If the concept contains new ideas but does not reach such a creative element as to be considered a protected work in the meaning of copyright law, these ideas shall be protected in favor of the CO anyway:
- 14.1.6. The potential PR will refrain from economically exploiting whether actively or passively, using or making use of a new idea developed by the CO in his concept outside of a main Contract that is to be concluded later with the CO.
- 14.1.7. If the potential PR is of the opinion that an idea presented by the CO was already known by the PR prior to the presentation of the concept by the CO, the PR shall inform the CO in writing within 14 days after presentation of the concept specifying the evidences that must allow a temporal assignment ("objection").
- 14.1.8. In the opposite case, i.e. if the PR does not object, the Parties assume that the idea of the CO was new to the potential PR. If the PR wishes to use this new idea, the PR will either conclude a main Contract with the CO, in the course of which the idea will be further processed and developed by the CO or the PR will make an appropriate compensation to the CO, which is to be determined by the CO, for the use of the idea.

#### 14.2. Intellectual property rights, copyrights:

- 14.2.1. The intellectual property rights respectively all copyrights to the agreed Services remain with the CO or its licensors. This also applies if the PR with the manufacturer's consent changes or edits software supplied by the CO or connects such software with another

software. Existing labels, copyright and property notes of the CO or the manufacturer may not be removed or changed by the PR.

14.3. Right of use:

14.3.1. The PR is granted a right of use on the Scope of Contract as follows, provided however that the PR has paid the Contract Price as contractually agreed:

14.3.2. A work created by the CO (such as reports, analyzes, programs, calculations, etc.) inclusive of documentation received by the PR may only be used by the PR during and after the term of the Contract for purposes that are covered by the Contract. The PR is not entitled to reproduce and / or distribute the work without the explicit consent of the CO. In no case shall the CO bear any liability towards third parties as a result of an unauthorized copying or distribution of the work, for example for the accuracy of the work.

14.3.3. Special provisions for Delivery of Software by the CO:

14.3.3.1. Any software supplied by the CO may be used by the PR exclusively for his own purposes and exclusively for the hardware specified in the Contract and only to the extent of the purchased number of licenses for the simultaneous use at several workstations.

14.3.3.2. Copying for archival and data protection purposes shall be permitted for the PR under the condition that the software does not contain an explicit prohibition of the licensor or a third party and that all copyright and proprietary notes are transmitted into these copies without change.

14.3.3.3. Should the production of interoperability of the software require a disclosure of interfaces, the PR shall request the CO accordingly against compensation of costs for the CO. If the CO does not comply with this request and it comes to a decompilation (reverse engineering) in accordance with copyright law, the results shall be used exclusively for the production of interoperability.

14.3.3.4. If under the Contract the CO supplies the PR with a software that does not become the property of the PR or if the PR is granted the use of a software under the Contract, the PR shall for the term of the Contract be granted the non-exclusive, non-transferable, non-sub-licensable right to use the software in unchanged form.

14.3.3.5. Unless otherwise agreed, the use of software in a network requires a license for each concurrent user.

14.3.3.6. If the CO supplies the PR with software of a third party the respective license terms of the manufacturer of this software shall have priority over the provisions of this Article.

14.3.3.7. All documentation provided by the CO to the PR for a software, e.g. software documentation, may not be reproduced or distributed in any way whether against a charge or free of charge.

14.3.4. The PR's cooperation duties under the Contract do not grant him any further rights over the right of use as specified in the General Terms and Conditions.

14.4. In case of the PR's breach of these provisions the CO shall be entitled to immediately withdraw from the Contract prior to the expiration of the Contract and to assert any other legal claim, in particular to seek injunction relief and / or compensation for damages.

## 15. Confidentiality and Data Protection

- 15.1. If the Parties have not concluded a separate confidentiality agreement to the Contract, the following shall apply:
- 15.2. Each Party guarantees to the other that all business matters brought to its knowledge by the other Party in connection with the Contract and its execution, in particular business and trade secrets, shall be treated confidentially and not made available to third parties unless they are generally known or were already known by the recipient without an obligation to maintain confidentiality, or have been disclosed to the recipient by a third party not bound to an obligation for confidentiality, or have been evidently independently developed by the recipient, or have to be disclosed on the basis of a final decision by a public authority or court.
- 15.3. If the CO uses subcontractors to fulfill the Contract, the CO shall conclude a corresponding confidentiality agreement with the subcontractors.
- 15.4. The confidentiality obligation continues after the expiration and / or termination of the Contract.
- 15.5. The CO is entitled to process personal data within the purpose of the Contract. When processing such personal data the CO shall respect the regulations of the data protection legislation. The PR guarantees to the CO that all necessary measures have been taken to allow such processing of data by the CO, in particular concerning data falling under the restrictions of the data protection legislation, such as the PR makes sure that there are consent declarations of the people whose data is concerned. The PR shall indemnify and hold the CO harmless in case of claims arising from the transfer of personal data.
- 15.6. The CO shall take all reasonable measures to protect the data and information of the PR stored at the registered office of the CO against unauthorized access by third parties. However, the CO shall not be responsible if third parties nevertheless succeed in illegally gaining access to the data and information.
- 15.7. By entering into the Contract, the PR agrees that data related to the fulfillment of the Contract may also be passed on to any subcontractors of the CO.
- 15.8. The PR agrees that the CO may quote him as a reference customer for tenders, publications, lectures, etc., and that the CO may name the cooperation with the PR as a reference project along with a reasonable description of the Scope of Contract. If the PR does not agree with this, he shall notify so the CO in writing immediately.

## 16. Inventions, Industrial Property Rights, Right of Use

- 16.1. Any inventions, technical improvements and intellectual property rights arising out of or in connection with the performance of the Contract shall be the intellectual property of the party from which it are originating, respectively whose employees they are originating from.
- 16.2. Any inventions, technical improvements or intellectual property rights resulting from the cooperation of both Parties shall entitle both Parties equally.
- 16.3. The registration of any property rights shall be done by one or both Parties according to the prior agreement of the Parties.
- 16.4. The use of such community inventions, improvements, intellectual property rights and other common know-how shall be undertaken independently of each other and during the term of the intellectual property rights shall be free of charge. Licensing to third parties requires the prior agreement of both Parties.

## 17. Withdrawal from Contract, Termination Rights

- 17.1. The CO shall be entitled to withdraw from the Contract for good cause with immediate effect by written notification to the PR. The following shall constitute a good cause for example:
- the fulfillment of the Contract becomes impossible for reasons for which the PR is responsible or is further delayed despite the expiration of a reasonable grace period given by the CO;
  - the PR continues, despite written warning and a reasonable grace period given by the CO, to violate material obligations under the Contract, such as but not limited to he fails to pay a due amount or fails to fulfill to cooperate as obligated under the Contract;
  - the CO has reasonable concern regarding the credit standing of the PR and despite the request of the CO the PR does not make an advance payment within a reasonable period of time or otherwise provides payment security (e.g. bank guarantee).
- 17.2. The PR shall be entitled to withdraw from the Contract for good cause with immediate effect by written notification to the CO. A good cause shall be for example if the CO continues to violate material obligations under the Contract despite a written warning and a reasonable grace period given by the PR. A withdrawal by the PR shall not cover the part of the Deliveries or Services, which have already been carried out in conformity with the Contract before the date of withdrawal.
- 17.3. Either Party shall be entitled to withdraw from the Contract with immediate effect by written notice to the other Party if recovery or insolvency proceedings or proceedings similar in effect have been applied for or have been opened against the other Party's assets or the commencement of such proceedings has been rejected due to the lack of sufficient assets.
- 17.4. Compensation rights by the Parties under this Article:
- 17.4.1. In the case of a withdrawal, Services or Deliveries already made by the CO shall be paid in accordance with the agreed Contract Price, less the expenses and costs saved due to the early termination of the Contract.
- 17.4.2. In the case of a withdrawal by the PR, the PR is entitled to claim for compensation for reasonable costs incurred in excess of the Contract Price, if he undertakes to purchase the Deliveries or Services from a third party in replacement ("cover purchase").
- 17.4.3. Upon withdrawal by the CO, the PR is entitled to claim for compensation for damages and wasted expenses incurred by the CO due to the early termination of the Contract.
- 17.5. Upon termination of the Contract, the PR shall immediately return all documents and documentation provided to him by the CO if the CO so requests.

## 18. Applicable Law, Jurisdiction

- 18.1. The Contract, the General Terms and Conditions and all disputes arising therefrom or in connection therewith shall be governed by Austrian substantive law, excluding the rules on conflict of laws of international of the Austrian International Private Law and excluding the Convention on the International Sale of Goods (CISG) 1980, as amended.
- 18.2. The exclusive place of jurisdiction shall be at the court that is competent for the registered seat of the CO.

## 19. Miscellaneous

- 19.1. Place of performance shall be the registered seat of the CO unless the Parties agree otherwise.

- 19.2. Amendments and supplements to the Contract and the General Terms and Conditions must be in writing to be effective. This also applies to the cancellation of this formal requirement. Oral collateral agreements between the Parties do not exist.
- 19.3. In case that one or more provisions of the General Terms and Conditions or of an underlying Contract be or become wholly or partially invalid or unenforceable, this shall not affect the validity of the remaining provisions and the Contracts concluded thereunder. The ineffective or unenforceable provision shall be replaced by a provision which comes as close as possible to the economic purpose of this provision in a legally permissible manner.
- 19.4. Rights and obligations under the Contract shall pass on to any singular or universal successor on both sides.
- 19.5. Contractual language shall be German or English at the choice of the Parties.