

# General Conditions of Purchase of qoncept technology GmbH and qoncept engineering GmbH

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## Table of Contents

1.	General .....	2
2.	Conclusion of Contract .....	2
3.	Scope of Delivery and Services .....	3
4.	Scope of Delivery and Services – Supplementary Provisions for the Delivery of Software .....	4
5.	Documentation .....	6
6.	Time for Delivery and Services .....	6
7.	Packaging, Shipping, Storage (for the Delivery of Goods) .....	7
8.	Contract Price .....	8
9.	Payment Terms, Invoicing .....	8
10.	Changes to the Contract, Change Order .....	9
11.	Testing, Acceptance .....	9
12.	Testing, Acceptance – Supplementary Provisions for the Delivery of Software .....	10
13.	Transfer of Risk, Ownership, Right of Use .....	10
14.	Subcontracting, Assignment .....	11
15.	Consequences in Case of Delay of Deliveries or Services .....	11
16.	Warranty, Guarantee .....	12
17.	Third Party Rights .....	13
18.	Liability .....	13
19.	Force Majeure .....	13
20.	Suspension, Cancellation .....	14
21.	Confidentiality, Data Protection .....	14
22.	Copyright, Right of Use .....	15
23.	Client Protection, Spare Parts .....	15
24.	Withdrawal for Good Cause .....	15
25.	Applicable Law, Jurisdiction .....	16
26.	Miscellaneous .....	16

## 1. General

- 1.1. The following General Conditions of Purchase (hereinafter referred to as GCP) shall apply to all Purchase Orders or Contracts of qoncept technology GmbH or qoncept engineering GmbH as Principal (hereinafter: PR) concluded with suppliers or contractors (hereinafter: CO) in connection with the delivery of goods or software ('hereafter: Delivery or Deliveries) and services (hereinafter: Service or Services).
- 1.2. The GCP become a binding part of the Purchase Order respectively the Contract between the PR and the CO and they shall apply exclusively. Conflicting or additional conditions by the CO, whether in the general terms and conditions of the CO or in other documents, such as specifications, delivery notes, order confirmations, etc., do not apply and are excluded in any case, unless the PR has expressly confirmed them in writing.
- 1.3. Missing objections of the PR to conditions deviating from the GCP or the unconditional acceptance of Deliveries or Services or issuance of payments shall be deemed as an acknowledgment or acceptance of conflicting or additional conditions of the CO. If the Purchase Order of the PR refers to offer documents of the CO, such reference shall not constitute an acceptance of the commercial conditions of the CO's offer either.
- 1.4. Unless the PR has given its prior written acceptance, terms and conditions provided with software products in paper form or digital form shall do not apply either; neither if the PR acts in a way that would be deemed committal according to such software conditions nor if a supplied registration code is used by the PR.
- 1.5. The PR expressly objects to any general terms and conditions of the CO. No further objection by the PR shall be required.
- 1.6. The GCP shall apply to all future Contracts between the CO and the PR (hereinafter both: Parties). The edition of the GCP effective at the time of conclusion of Contract shall be valid to the Contract.
- 1.7. If there are any regulatory gaps in the GCP of the PR, only the applicable law shall apply.
- 1.8. "Writing" or in "written" shall mean in text format via letter, e-mail or fax.
- 1.9. Offers shall be deemed binding and valid for a minimum of 90 calendar days, free of charge, unless the Parties agree otherwise.

## 2. Conclusion of Contract

- 2.1. Purchase Orders of the PR shall only be legally binding if they are in writing. Oral orders require the written confirmation of the PR in order to be valid.
- 2.2. The contractual relationship between the Parties is effectively concluded by the written Purchase Order of the PR based on the offer of the CO. Purchase Orders sent by e-mail shall be deemed legally effective.
- 2.3. The Contract consists of the following documents:
  1. Purchase Order of the PR
  2. The GCP of the PR
  3. Any attachments listed in the Purchase Order of the PR (e.g. specifications, data sheets, etc.)

The Contract constitutes the entire agreement of the Parties regarding the Scope of Delivery and Services. In case of contradictions or conflicts, the documents of the Contract shall apply in the above sequence.

- 2.4. If the Parties refer to the Purchase Order in correspondence, documents or the like, this always refers to the entire Contract between the Parties.

- 2.5. The CO shall confirm the Purchase Order to the PR in writing within seven calendar days from receipt of Purchase Order (note: valid is the date when the confirmation is received by the PR) exclusively by e-mail to [purchasing@qoncept.at](mailto:purchasing@qoncept.at). The CO shall send its order confirmation by way of returning the signed Purchase Order of the PR. Other formats of an order confirmation are only valid to the extent that they do not contradict the content of the Purchase Order. If the CO does not send a written rejection of the Purchase Order within the seven days period or if the CO starts executing the Purchase Order, the Purchase Order of the PR including the GCP shall be deemed fully accepted by the CO. The PR reserves the right to refuse any order confirmation that the PR receives after the deadline mentioned above at any time without this terminating the Contract.
- 2.6. The Purchase Order of the PR usually contains a Purchase Order number. The Purchase Order number must be stated by the CO in all correspondence and on all documents relating to the Purchase Order. If deadlines are calculated from the Purchase Order, in case of doubt the date appearing on the written Purchase Order shall be valid.
- 2.7. Later changes and additions to the Contract require the written confirmation of the PR in order to be valid.
- 2.8. In the event that legal norms, technical standards, judicial or administrative rulings that apply to the Contract are changed or supplemented after the date of conclusion of the Contract, this falls in the responsibility of the CO and disadvantages or additional costs caused thereby shall not be on the account of the PR.

### 3. Scope of Delivery and Services

- 3.1. The Scope of Delivery and Services is defined in the Purchase Order and its attachments.
- 3.2. The CO will carry out the Deliveries and Services with the utmost care in compliance with the current state of the art. Any cooperation obligations of the PR shall be exhaustively listed in the Purchase Order. The CO shall supply the Deliveries or Services including documentation according to the Contract at the agreed time, in full and at the agreed Contract Price.
- 3.3. When executing the Purchase Order, the CO shall comply with all applicable legal regulations as well as any technical norms and standards applicable to the Delivery and Services as a minimum requirement. Further agreed technical specifications for the Purchase Order remain unaffected and must also be fulfilled by the CO.
- 3.4. In view of the recognizable purpose of the Contract, the CO shall – in lack of expressly agreed obligations of the PR to cooperate or to provide required goods – carry out all (additional) measures required for the proper fulfillment of the scope of Delivery and Service without additional costs, without request and without delay for the PR, and the CO shall if necessary provide additional deliveries and services, even if these are not explicitly mentioned in the Contract.
- 3.5. In order to ensure a smooth execution of the Contract, the CO shall examine the documents of the Contract for completeness and accuracy and shall inform the PR without delay about any problems in this regard, otherwise the CO shall not be entitled to claim additional costs or other disadvantages from the PR (e.g. delay in delivery, price increase, etc.). Likewise, the CO shall request information about the operating conditions or operating systems existing at the place of use of the Deliveries or Services if the CO cannot extract this information from the Contract so that the functionality of the Deliveries and Services for the purpose of use by the PR is guaranteed.
- 3.6. At the request of the PR, the CO shall at all times give the PR full insight into the current status of the fulfillment of the Contract or the status of the work results and shall work on and answer

all other queries of the PR within a reasonable period of time. In the case the PR reports a defect in the Deliveries and / or Services to the CO, the CO shall immediately organize the necessary remedial work as well as inform the PR about the planned measures and their commencement. Work results within the meaning of the GCP shall mean any results or intermediate results of the contractual Services of the CO, e.g. requirement specification, studies, documentation, programs, software adjustments, etc. (in the following: work results).

#### **4. Scope of Delivery and Services – Supplementary Provisions for the Delivery of Software**

- 4.1. Subject to different or further provisions in the Purchase Order, the following applies: As far as the Scope of Delivery and Services includes the preparation of the requirement specification for the software by the CO, the specification must contain the following:
  - a. Description of the individual functions to be implemented in the software with specification of guaranteed characteristics (access times, memory requirements, etc.)
  - b. Information on the data base (types, quantities, frequencies, etc.)
  - c. Definition of the required equipment and the program environment (system programs, etc.) as well as graphical user interfaces
  - d. Description of the program-technical procedures for the problem solution (system structure, data flow, program modules and their functions, inputs and outputs, etc.)
  - e. Definitions for programming (programming language, coding, documentation, etc.)
  - f. Definitions for acceptance (procedure, test data, performance measurement, etc.)
- 4.2. The specification shall include a time schedule that is structured in phases for the software development to enable the PR to check the work progress.
- 4.3. The list in Article 4.1. of the GCP is not exhaustive and shall only be the minimum requirement. The specification must take into account all requirements made by the PR in the tender specifications. The CO shall review the tender specifications for completeness, accuracy and feasibility and shall add necessary modifications and improvements when drawing up the specification for the Purchase Order.
- 4.4. The CO shall prepare the software for the PR on the basis of the specification(s) agreed between the PR and the CO (see Articles 4.1. of the GCP).
- 4.5. If the PR has prepared the specification for the Purchase Order itself, the CO shall review the same for completeness, accuracy and feasibility and accepts this as a binding basis for the development of the software. A later change of the specification may only be made by written agreement between the Parties. Article 3.5. of the GCP shall apply mutatis mutandis.
- 4.6. The CO shall provide at its own expense development environment, development licenses, development hardware and any necessary storage locations required for the development of the software. Moreover, any consumables required for the work, including media for the software, shall be provided by the CO.
- 4.7. The CO shall deliver to the PR the contractually agreed software in a compiled form and the CO shall also provide the PR with the fully open source text on the media or storage locations as specified in the Purchase Order. The functionality of the software must fulfill the specification. The CO shall submit the operating software together with its source program, the test programs, test data as well as compilers, linkers, operating systems and standard software packages as far as used by the CO during software development.
- 4.8. The CO shall submit the following documents at the dates and in the quantity specified in the Purchase Order:
  - a. Description of function of the software

- b. System manual showing the conceptual design and structure of the software
- c. Software manual showing the technical implementation of the program
- d. Data handbook with a summary showing the memory usage and database structure
- e. User manual with operating instructions and error descriptions
- f. Fully commented source code in the format agreed in the Purchase Order with explanations for all parts of the program

These documents are an essential part of the documentation that the CO shall provide to the PR and thus an essential part of the fulfillment of the Contract.

4.9. The CO shall train the PR or its employees and, if agreed, also third-party employees, at no additional cost regarding the setup, handling and use of the software.

4.10. If the Scope of Delivery and Services also includes the maintenance (updates) of the software, the following shall apply additionally:

- a. Maintenance services are, as far as the Purchase Order does not provide otherwise, in particular: remedy of errors in the program and in the documentation provided by the CO, telephone assistance ("hotline"), modifications due to mandatory administrative or statutory provisions or requirements, unsolicited transmission of new or modified documentation, necessary modification work on the software in case of changes of existing operating systems by the producer, follow-up trainings.
- b. In addition, the CO shall provide during the warranty period, unless the Parties agree on a different period, ongoing development of the software and shall provide the PR with free upgrades and new versions of the software. The PR shall receive corrections, patches, updates, upgrades, new versions or similar as well as updated documentation also in case of trouble shootings.
- c. Updates that may affect the productivity of the software for the PR or for the end customer shall be installed by the CO during a maintenance window that is to be agreed with the PR or the end customer. The PR or the end customer can reject the troubleshooting or updates of the software if they do not have essentially the same compatibility and functionality as the replaced part of the software.
- d. The PR is not obliged to accept the installation of upgrades or new versions of the software by the CO. Older versions of the software are supported for a minimum of two years from the date of availability of the most recent version of the software. If an installation of the current version is unreasonable for the PR, in particular because of the costs associated with the implementation or other adjustment risks, then the PR may demand the continuation of the maintenance of the version used by him, but only for a maximum of three further years beyond the aforementioned period.
- e. The CO must plan care services in such a way that the use of the software by the PR is not affected. If care services unavoidably have to be carried out during the regular operating hours of the software, the CO will inform the PR of the reason for this and shall arrange a maintenance window with the PR at least two weeks prior to implementation in order to minimize impairments of the PR as much as possible.

4.11. Not later than in the order confirmation must the CO inform the PR about possible restrictions with regards to the usability, changeability or further distribution of delivered hardware and software which should result from licensing conditions of third parties. Particularly this applies to software or software components that are subject to an open source license or a comparable

license model. If the CO informs the PR later or not at all, the PR is entitled to cancel the Purchase Order. In this case the CO shall indemnify and hold the PR harmless.

## 5. Documentation

- 5.1. "Documentation" includes all documents accompanying the CO's performance of the Contract in written, graphical or any other form (depending on the kind of Delivery and Services, e.g.: operating or user manuals, drawings, transport documents, safety data sheets, storage and safety regulations, assembly instructions, spare parts lists, supplier declaration, etc.).
- 5.2. The CO shall submit the documentation of the Contract in the agreed scope and on the agreed date. The language of the documentation is German or English at the choice of the PR, unless the Contract provides otherwise.
- 5.3. Place of delivery: Unless otherwise specified in the Purchase Order, the documentation shall be delivered and handed over at the PR's registered office (DDP in accordance with Incoterms 2020).
- 5.4. Supplementary provisions for Software: refer to Article 4.1. et seq. of the GCP.

## 6. Time for Delivery and Services

- 6.1. The time of fulfillment is the time of complete and faultless fulfillment of all contractual and legal obligations of the CO in connection with the Purchase Order.
- 6.2. All agreed Delivery or Service dates or periods are binding and must be strictly adhered to by the CO.
- 6.3. Delivery or Service periods start to run with the date of the Purchase Order provided that their beginning was not agreed otherwise. If no deadline has been agreed, Deliveries or Services shall be delivered or carried out immediately. A Delivery is considered as delivered on time when the Delivery has been received at the destination place specified by the PR in time; the timely performance of Services is determined by the acceptance date.
- 6.4. If it becomes obvious within the Delivery or Service period that the CO cannot duly carry out the Deliveries or Services by the contractually agreed date, the CO shall inform the PR immediately in writing. In parallel, the CO shall immediately implement all necessary and appropriate measures for prevention or reduction of a delay. The PR is also entitled to take further or additional measures at the expense and risk of the CO in order to avoid an imminent delay of the CO. Compensation claims of the PR or claims for liquidated damages for delay remain unaffected in any case.
- 6.5. The CO may only claim a delay in the fulfillment of the Contract caused by the PR if he has requested the PR in due time in writing and by setting a reasonable grace period, which must be designated as such, to fulfill his obligations to cooperate. In the event of a delay caused by the PR in the above sense, the agreed dates or periods shall be postponed at most by the period of delay for which the PR is responsible, whereby the CO shall be obliged to minimize the delay. Any resulting direct additional costs of the CO shall be reported to the PR fully documented at the latest four weeks after the delay of the PR has occurred, otherwise a claim for compensation of the additional costs shall expire.
- 6.6. Any disputes or disagreements between the Parties do not entitle the CO to withhold or terminate any Deliveries or Services due.
- 6.7. If the CO is in delay with a Delivery or Service for whatever reason, except in case of force majeure, the PR is entitled, without prejudice to Article 6.4. of the GCP, to withdraw from the entire Contract, if the CO does not provide the delayed Delivery or Service within a reasonable grace period.

- 6.8. Not agreed partial or advance deliveries or services are only permitted after prior written approval by the PR. The PR is not obliged to accept early (partial) Deliveries or Services. In the event of acceptance, the PR reserves the right to charge the associated costs to the CO. Early Deliveries or Services have no impact on agreed payment dates.

## **7. Packaging, Shipping, Storage (for the Delivery of Goods)**

- 7.1. Deliveries are made on basis DDP according Incoterms 2020 unloaded at the named place of destination, unless the Purchase Order specifies otherwise. The reception hours for deliveries shall to be coordinated between the CO and the PR before dispatch of the Goods by the CO.
- 7.2. The CO shall ensure that the entire Contract scope is packaged suitably and appropriately for the means of transport that is used. If the Purchase Order provides for further packaging or transport conditions, these shall be respected by the CO. Any damage or additional costs incurred by the PR resulting from non-compliance with packaging or transport conditions shall be compensated by the CO.
- 7.3. The PR shall be notified in writing and in good time in advance of the dispatch of a delivery (but at least 14 calendar days before dispatch). Immediately after dispatch, the CO shall send to the PR a written delivery notice which shall contain the exact name, the quantity, the gross and net weight, the type and the packaging of the Delivery. An invoice does not count as a delivery notice.
- 7.4. All costs and risks associated with the transport (e.g. transport insurance, export permits, transport of dangerous goods, etc.) shall be borne by the CO.
- 7.5. The transport documents shall indicate PR's order number. At least one copy of the transport documents shall be enclosed with the delivery. If the necessary transport documents or delivery notice are missing for a Delivery, the Delivery will be stored at the expense and risk of the CO until the CO submits the relevant documents to the PR.
- 7.6. Delivery notice and packing lists are part of the documentation and shall accompany the delivery in German and English language. A comprehensible connection with the PR's order shall be ensured. Insufficient or inadequately filled packing lists shall be corrected or replaced immediately at the expense of the CO. At the request of the PR, packing lists shall be drawn up by the CO according to a template of the PR.
- 7.7. According to the SOLAS Regulation dated 1st July 2016 (International Convention for the Safety of Life at Sea in its version of 01.07.2016) gross weights of container must be verified. Thus the CO is obliged to correctly calculate the weight from each transported good, the packaging and filling material as well as empty weight of the container (for container stowage). The CO shall be liable to the PR for the correct calculation and timely submission of weight data to the PR. In case of failure by the CO to comply with this regulation, the CO shall be liable for any damages or loss of the PR resulting therefrom.
- 7.8. The CO shall inform the PR immediately after conclusion of the Contract, if the Deliveries or Services or part of them are subject to an export approval in accordance with the Austrian Foreign Trade Act as amended or they are included on the European list of dual-use goods or if they are subject other national or international approval requirements. If customs clearance is required, the CO is obliged to carry out the correct customs clearance of the Deliveries in consultation with the PR. These obligations are part of the contractual obligations of the CO.
- 7.9. If the PR requires a supplier declaration from the CO - at the choice of the PR - with or without preferential origin (declaration according to Regulation (EU) No. 2015/2447 Art. 62, Annex 22) with details of the exact description of the goods, the country of origin and the customs tariff number and/or a certificate of origin, the CO shall send these documents in original to the PR

in a timely manner upon request of the PR and at no additional cost to the PR, but at the latest upon delivery. Any of these documents shall form part of the documentation due under the Contract.

- 7.10. If the Delivery is classified as dangerous goods and the CO is responsible for transport and packaging according to the Purchase Order, packaging, transport and labeling shall strictly comply with national and international regulations and guidelines for dangerous goods. All necessary certificates and data sheets shall accompany the delivery and be provided by the CO.
- 7.11. Upon request of the PR, the CO shall store the Deliveries appropriately at its own expense and risk for a maximum of 8 weeks from proven readiness for delivery.

## 8. Contract Price

- 8.1. The prices listed in the Purchase Order (Contract Price) are firm prices inclusive of all taxes, duties and levies, though exclusive of value added tax.
- 8.2. Price basis for the Contract Price is the following:
  - 8.2.1. For Services: the price shall apply ex place of performance
  - 8.2.2. For Deliveries: the price shall apply DDP nominated place according Incoterms 2020.
- 8.3. The Contract Price includes all (ancillary) expenses usually associated with the fulfillment of the purpose of the Contract, depending on the kind of Delivery or Services for example packaging, transport, insurance, customs clearance, (un-)loading, technical examinations, corrosion protection, marking, testing or similar, unless the Contract expressly stipulates otherwise.
- 8.4. Supplementary provisions for delivery of software: If services of the CO are caused by changes of the operating system, hardware changes or changes in mutually dependent, non-contractual software programs and interfaces, such services are included in the Contract Price, provided the scope of the services related to such changes does not exceed the extent of max. 3 % of the total Contract Price.
- 8.5. A later price increase is not accepted unless the GCP provide otherwise.

## 9. Payment Terms, Invoicing

- 9.1. Unless otherwise agreed between the Parties, payments by the PR shall only be made after complete and contractual fulfillment of the Purchase Order: Invoicing is only permitted after complete Delivery or acceptance of the Service by the PR and submission of documentation (especially but not limited to supplier declaration with indication of origin, customs tariff number – according Article 7.9. of the GCP).
- 9.2. Invoices are accepted by the PR exclusively in electronic form (by email). Invoices shall be sent to the PR to the following email address: [purchasing@qoncept.at](mailto:purchasing@qoncept.at). The CO's invoices shall state the order number and shall fulfill the requirements of the applicable VAT law.
- 9.3. If the Contract provides for certain conditions for a (partial) payment, such as handover of documentation, bank guarantee or similar, an invoice may only be issued upon fulfillment of these requirements.
- 9.4. The PR has the right to reject not properly issued invoices and payment periods are suspended until a correct invoice is received. The payment period starts to run anew from the date of receipt of correct invoice.
- 9.5. Unless otherwise agreed, payments are due net within 60 days by the last day of the month after receipt of a proper invoice, or within 30 days by the last day of the month minus 3 % discount. As far as the CO has to provide documentation, the completeness of the Delivery or Service also requires the receipt of these documents by the PR.



- 9.6. If the Parties agree to make a payment prior to Delivery or Service against presentation of a security by the CO, such security must be provided in the form of an irrevocable, abstract guarantee on first request from a first-class European bank or insurance company. The costs associated with the issuance and any extension or change of the guarantee shall be borne by the CO.
- 9.7. The CO is not entitled to set off against the PR.

## **10. Changes to the Contract, Change Order**

- 10.1. If during Contract execution the need for changes in the Scope of Delivery or Services arises, such changes shall be agreed by the Parties on the basis of a written offer of the CO by way of a change order or supplementary agreement. A change in the Scope of Delivery or Services either means additional requirements outside the contractual scope or changes to the agreed contractual scope.
- 10.2. The PR will notify the CO of any required change in writing. The CO shall promptly check the change request of the PR for its feasibility and inform the PR in writing within 5 working days after receipt of the change request about the possible effects of the change on the Contract execution as well as submit a change offer, provided that the implementation of the change leads to a change in the delivery schedule or Contract Price. Any price changes shall be calculated by the CO on the basis of the original calculation basis.
- 10.3. If the PR accepts the change offer in writing (change order or supplementary agreement), the change becomes part of the Contract and changes or supplements the original Contract.
- 10.4. All documentation shall be updated accordingly by the CO upon implementation of the change. The CO will continue the contractual Deliveries and Services during the coordination of a change offer between the Parties as contractually scheduled, unless the PR informs the CO in writing that the work shall be stopped or limited until final decision on the change.
- 10.5. Subject to Article 3.5. of the GCP, if during the performance of the Contract the CO considers that the requirements of the PR or other circumstances for which the PR is responsible lead to increased expenses for the CO and / or have an impact on the Delivery date or Contract Price or if the CO considers changes to the Scope of Delivery or Services to be necessary or useful, the CO shall immediately inform the PR in writing and submit a change offer to the PR.
- 10.6. The CO's changes shall only to be implemented and additional expenses of the CO or an increase in the Contract Price shall only be permitted if the change offer has been confirmed in writing by the PR. Article 10.3. and 10.4. of the GCP apply mutatis mutandis.
- 10.7. Any claims of the CO in connection with or resulting from the fulfillment of the Contract shall be presented to the PR in writing sufficiently documented no later than 30 calendar days after submission of the final invoice, otherwise they shall be expired.

## **11. Testing, Acceptance**

- 11.1. The PR reserves the right to carry out free of charge production and progress checks at the CO at any time, either himself or through third parties commissioned by him.
- 11.2. For this purpose, the CO shall grant the PR access to the relevant locations and documents (in particular test documentation) and continuously inform the PR about the actual progress of the fulfillment of the Contract.
- 11.3. In addition, the PR reserves the right to carry out an acceptance test. Unless otherwise agreed, the acceptance test is to be carried out free of charge at the CO or at a location to be determined by the PR during normal working hours.

- 11.4. The CO shall inform the PR of the readiness for acceptance as early as possible, but no later than four weeks before the intended date. Within two weeks before this date, the PR may request a postponement of the date to a later date (maximum postponement three months), without the CO being able to derive any claims against the PR from this.
- 11.5. The CO shall provide free of charge the necessary resources for carrying out the tests or acceptance, such as materials, specialists and assistants, suitable test facilities or the like. Each party shall bear the costs of its own personnel.
- 11.6. The performance of an (acceptance) test or a waiver of (acceptance) test on the part of the PR shall not limit the obligations of the CO.
- 11.7. After conducting (acceptance) test without detection of a defect, an acceptance protocol will be signed by the PR. Upon signing of acceptance protocol by the PR acceptance is deemed accomplished.
- 11.8. If errors or defects occur during acceptance, the CO shall rectify them immediately at his own expense.
- 11.9. Costs and expenses of the PR in connection with an unsuccessful (acceptance) test for reasons attributable to the CO or due to false information provided by the CO in regards to acceptance readiness shall be borne by the CO.
- 11.10. Any obligations of the PR under the Contract, in particular payment obligations, are suspended until fully remedy of all defects by the CO.

## **12. Testing, Acceptance – Supplementary Provisions for the Delivery of Software**

- 12.1. Unless the Parties have agreed otherwise, a functional test of the software shall be carried out with the attendance of both Parties.
- 12.2. After positive functional test the CO shall declare readiness for acceptance. Thereafter, the joint acceptance by both Parties shall take place. The acceptance of the Deliveries and Services as well as associated documentation shall take place at the date agreed in the Purchase Order, unless the Parties agree otherwise.
- 12.3. At the time of acceptance the CO shall prove that the features of the software comply with the specifications of the Contract by way of conducting a functional test with subsequent trial operation for 72 hours, unless the Parties agree otherwise in writing.
- 12.4. After a functional test free from defects and trial operation as well as complete handover of the agreed documentation of the Contract, the acceptance protocol shall be signed by the PR.

## **13. Transfer of Risk, Ownership, Right of Use**

- 13.1. The risk in regards to the Deliveries and Services of the CO shall pass to the PR upon acceptance. If acceptance does not take place for reasons attributable to the PR or in case of a waiver of acceptance by the PR or no acceptance is agreed between the Parties, the risk passes to the PR upon delivery.
- 13.2. The unrestricted and unencumbered ownership of the Deliveries and Services, of documentation and any work results of the CO (e.g. requirement specification, studies, documentation, programs, software adjustments, etc.) shall pass to the PR upon transfer of risk.
- 13.3. In addition, the CO grants the PR on the Deliveries and Services and on any work results upon their occurrence, at the latest with their handover, a transferable, unlimited and irrevocable right to use them including associated documents and documentation.
- 13.4. For the delivery of software additionally the following applies:

- 13.4.1. If the CO has to deliver software that was not developed individually for the PR, the CO grants the PR a non-exclusive right of use. This also applies to any third party components which the CO purchases from third parties for the fulfillment of the Contract.
  - 13.4.2. On software individually developed for the PR the right of use for the software belongs exclusively to the PR. Unless otherwise agreed, the source code of the software shall be delivered in the current version. This includes the proper commenting of the source code and the description of the necessary system parameters as well as other necessary information that enables the PR to process the source code with qualified personnel. Measures carried out in connection with remedy actions in regards to defects of the software shall be included immediately in the source code and the documentation by the CO.
  - 13.4.3. The PR has the right to reproduce the software, to change it and to connect it with other programs.
  - 13.4.4. The PR's right of use for the software includes the right to grant right of use or sublicenses to third parties. The PR may use the originals as well as copies and modified versions without credit to the author.
  - 13.4.5. If the subject matter of the Contract is the delivery of software specially developed for the PR, the CO may – other than for the Contract with the PR - only use the software handed over to the PR and/or the associated documents, in whole or in part, with the prior written consent of the PR.
- 13.5. The above provisions also apply in case of early termination of the Contract.

#### **14. Subcontracting, Assignment**

- 14.1. The assignment or subcontracting of the Contract in whole or in part to third parties is only permitted with the prior written consent of the PR. The consent of the PR does not release the CO from his obligations under the Contract.
- 14.2. Subcontractors of the CO are considered servants of the CO.
- 14.3. The assignment of a claim by the CO is only permitted with the prior written consent of the PR.

#### **15. Consequences in Case of Delay of Deliveries or Services**

- 15.1. In case the CO is in delay with the fulfillment of the agreed Delivery or Service dates or periods, the CO shall pay the PR liquidated damages as follows, unless the Purchase Order provides otherwise. A prior notification of the PR regarding the delay to the CO is not required:
  - a. In the event of delay of Deliveries or Services: for each case of delay 1 % of the total Contract Price for each begun week of delay, maximum 10 % of the total Contract Price.
  - b. In the event of delay of documentation: for each case of delay 0,5 % of the total Contract Price for each begun week of delay, maximum 10 % of the total Contract Price.
  - c. For the first 7 days of delay (calendar days) no claim for liquidated damages of the PR shall be permitted.
- 15.2. Any other or further rights of the PR in accordance with the GCP or applicable law remain unaffected thereby. The payment of liquidated damages does not release the CO from its fulfillment obligations or other contractual obligations.
- 15.3. Liquidated damages can be claimed by the PR during the statutory limitation period according applicable law. A written notification by the PR immediately after Delivery or Services have been carried out is not required to save the claim for liquidated damages.

## 16. Warranty, Guarantee

- 16.1. The CO guarantees that the Deliveries and Services are carried out in the contractually agreed manner and that they are free of defects of any kind at the time of delivery and that they remain this way throughout the entire warranty period.
- 16.2. The CO expressly guarantees that the Deliveries and Services fulfill all the requirements of the Contract, in particular the requirement specifications and other specifications during the warranty period and that they have the usual and in particular the specially agreed qualities in this respect; also that they comply with national and international standards and guidelines and that they correspond to the information in catalogs, brochures or other public statements of the CO. Statements in catalogs or brochures or the like are qualified as contractually guaranteed characteristics regardless of whether the Parties referred to it in the Purchase Order or whether the characteristic in question can usually be presumed.
- 16.3. In addition, the CO guarantees the correctness and completeness of his consulting and documentation services in the above sense.
- 16.4. The burden of proof that a defect or damage occurring during the warranty period is no defect subject to guarantee shall be borne by the CO.
- 16.5. The PR will report detected defects in writing to the CO within a reasonable time. The CO waives the objection of belated notification of defects within the meaning of sections 377 and 378 of the Austrian Commercial Code.
- 16.6. If random sample inspection shows that parts of the Scope of Delivery or Services do not correspond to the Contract, the entire Delivery or Service can be rejected and full replacement or improvement can be demanded.
- 16.7. The CO shall remedy defects occurring within the warranty period at his own expense and, if possible, directly at the place of use within a reasonable period of time at the discretion of the PR either by way of repair or by way of replacement delivery without delay. When remedying the defect the CO shall protect the legitimate interests of the PR.
- 16.8. Normal wear and tear and damage due to improper use or operation are excluded from warranty.
- 16.9. For the delivery of software additionally the following applies: The CO shall describe the cause and the measures taken to remedy defects and if necessary update the documentation without delay and without any costs for the PR.
- 16.10. All costs in connection with the remedy of defects (e.g. transport costs, travel costs, costs for assembly or disassembly, etc.) shall be borne by the CO. Any investigation costs of the PR shall be reimbursed by the CO if the investigation has revealed defects on the Scope of Delivery or Services.
- 16.11. In case of imminent danger, for example to avoid own delay of the PR or in case of delay of the CO in remedying a defect, the PR reserves the right without prior notice and without prejudice to its rights under the warranty liability of the CO to either remedy the defect itself or let it be remedied by a third party at the expense of the CO. The costs for such remedy actions shall be reimbursed to the PR by the CO in full, even if they are higher than what it would have cost the CO if it had remedied the defect itself.
- 16.12. The PR may withdraw from the Contract in whole or in part or demand a reduction of Contract Price if the CO rejects to remedy the defect in the way selected by the PR (repair or replacement) or if the remedy work is not carried out by the CO within a reasonable period or if a remedy of defect is not possible or economically unreasonable for the PR.

16.13. Any other or further rights arising from the defectiveness of the Deliveries or Services in accordance with applicable law shall remain unaffected.

16.14. Warranty period: The warranty period is 24 months from transfer of risk (refer to Article 13.1. of the GCP). In case of a remedy of defects, the warranty period for the repaired or replaced scope starts to run anew. If there is a defect that significantly limits or prevents the functionality or use of the entire Deliveries or Services, the warranty period for the entire Scope of Delivery or Service starts to run anew. The warranty period is suspended during standstill times of the Deliveries or Services caused by the CO or caused by any defect. For hidden defects and legal defects, the warranty period starts to run at the earliest with detectability of said defects.

## 17. Third Party Rights

17.1. The CO assures that the Deliveries and Services together with the associated documents and documentation are free from third party rights and will keep the PR indemnified from any claims of third parties therefrom.

17.2. If intellectual property rights of third parties are violated by the use of the Deliveries or Services and if the use or performance of the Deliveries or Services by the PR is therefore prohibited in whole or in part, the CO shall either, at his own expense and choice

- Arrange for the PR to receive the legal right to use or
- Arrange for the Deliveries or Services to become free of intellectual property rights.

Any compensation claims of the PR against the CO resulting from a third-party claim or from changes in the Deliveries or Services caused by intellectual property rights remain unaffected thereby.

## 18. Liability

18.1. The liability of the CO is determined according the statutory provisions of the applicable law. The CO shall be liable for its subcontractors and for other third parties commissioned by the CO. In case of a claim by a third party against the PR on the basis of a culpable act or omission by the CO or a person attributable to the CO, the CO shall indemnify and hold the PR harmless.

18.2. Liability for loss of production, lost profits, loss of business and consequential damage is excluded. The limitation of liability does not apply in the event of personal injury, intent, gross negligence or breach of confidentiality obligations under the Contract.

## 19. Force Majeure

19.1. The Parties shall be fully or partially exempt from the timely performance of the Contract if they are prevented from doing so by an event of force majeure.

19.2. A force majeure event shall solely be war, force of nature, fire, explosion, flooding, embargos or riots. Upon request, the CO shall submit a confirmation from the relevant chamber of commerce confirming the presence of a force majeure event.

19.3. The CO may only claim a force majeure event if the CO notifies the PR immediately, but at the latest within 5 calendar days from the occurrence of the event about the beginning and the probable duration of the event. The Parties shall make every effort to eliminate or reduce the disadvantages and foreseeable damage caused by the force majeure event. The PR shall be informed immediately about the end of the force majeure event.

19.4. A Delivery or Service date or period shall be extended by the duration of the impact of the force majeure event.

- 19.5. In case the force majeure event lasts for more than four weeks, the PR shall be entitled to withdraw from the Contract in whole or in part.
- 19.6. Subject to Article 19.4. of the GCP the PR shall not be liable to the CO for any adverse effects (such as price increases) on the fulfillment of the Contract by an event of force majeure.

## **20. Suspension, Cancellation**

- 20.1. The PR reserves the right to demand the suspension of the further execution of the Contract at any time (suspension). In case of a suspension for a period of more than three months, the CO shall demonstrate to the PR in detail the costs resulting from the excess of the three months suspension period, however excluding indirect costs such as loss of profit which shall not be subject to a compensation by the PR. The CO may request compensation for its demonstrated costs to the extent that they are reasonable.
- 20.2. These costs shall be reimbursed by the PR in the course of the final settlement of the Contract Price, provided the costs have been demonstrated by the CO according Article 20.1. of the GCP no later than four weeks after the end of the suspension period.
- 20.3. For the first three months of a suspension, the CO is not entitled to assert claims against the PR.
- 20.4. During the suspension the contractual rights and obligations of the Parties are suspended. Any extension of the Delivery or Service date or period shall be communicated by the CO as soon as foreseeable and shall be kept as little as possible. The CO shall keep the costs resulting from the suspension as low as possible and shall continue the fulfillment of the Contract immediately after the end of the suspension.
- 20.5. The PR reserves the right at any time, even without justification, to withdraw from the Contract in whole or in part (cancellation). Until receipt of an order confirmation from the CO a cancellation is free of charge for the PR. Thereafter, the CO shall be entitled to only invoice for the Deliveries or Services that the CO demonstrably has already carried out at the time of the cancellation, whereby the CO shall deduct all possible savings and utilization options that the CO may have. Ready-to-handover Deliveries and / or services are to be handed over immediately in exchange for the transfer of unrestricted ownership to the PR. Further claims of the CO shall be excluded.

## **21. Confidentiality, Data Protection**

- 21.1. The CO shall treat all information available to the CO in connection with the Contract whether about the PR or about the subject matter of the Contract confidentially as far as such information is not publicly known or otherwise lawfully known to him.
- 21.2. Furthermore, the CO shall keep confidential all work results or partial results which the CO has prepared in execution of the Contract and shall use them exclusively for the fulfillment of the Contract. The CO shall not be prevented from using the know-how acquired during the fulfillment of the Contract for his own purposes if this does not interfere with proprietary rights or above-mentioned right of use of the PR or other legitimate interests of the PR are affected. However when providing services for third parties the CO may not use the work results created exclusively for the PR in execution of the Contract, in particular neither completely nor partially copy them.
- 21.3. If the CO uses a third party for the fulfillment of his contractual obligations, the CO shall contractually bind such third party to a corresponding secrecy agreement.

- 21.4. The confidentiality obligation also applies to software created by the CO and the associated documents. A transfer to third parties or the use for orders of third parties by the CO shall not be allowed except for the written consent of the PR.
- 21.5. The confidentiality obligation continues after termination of the Contract.
- 21.6. The PR is entitled to process personal data or other data provided to the CO within the scope of the applicable data protection legislation.
- 21.7. The CO agrees that the data will also be stored by the PR beyond the fulfillment of the Contract and kept for information purposes about the services offered by the CO, for the fulfillment of legal requirements as well as for the internal analysis and evaluation of the business relations with the CO.
- 21.8. As far as there are no conflicting statutory storage obligations and to the extent granted by the applicable data protection law, the CO is entitled to obtain information from the PR in regards to personal data stored by the PR, to request correction of incorrect data, to revoke, restrict or object to personal data or to request deletion of the same.

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## **22. Copyright, Right of Use**

- 22.1. All documents handed over by the PR remain the intellectual property of the PR, shall be treated confidential and may not be reproduced nor made accessible to third parties by the CO without the prior written consent of the PR. They may only be used by the CO without the written consent of the PR for the purpose of fulfilling the Contract.
- 22.2. 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 they are originating, respectively whose employees they are originating from.
- 22.3. Any inventions, technical improvements or intellectual property rights resulting from the cooperation of both Parties shall entitle both Parties equally.
- 22.4. The registration of any property rights shall be done by one or both Parties according to the prior agreement of the Parties.
- 22.5. 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.

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## **23. Client Protection, Spare Parts**

- 23.1. The CO grants the PR a client protection for possible follow-up orders of the client of the PR for a period of 15 years from the date of Delivery or Service. In particular, the CO shall not submit any direct or indirect offers to the client of the PR in connection with the Contract.
- 23.2. For the delivery of goods additionally the following applies: The CO confirms that spare and wear parts for the subject matter of the Contract are available for at least 10 years after delivery.

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## **24. Withdrawal for Good Cause**

- 24.1. In addition to the withdrawal rights of the PR expressly resulting from the GCP, the PR reserves any further termination rights granted by the applicable law.
- 24.2. In particular, the PR is entitled to withdraw from the Contract for good cause without observing a deadline with immediate effect. The following cases shall constitute a good cause in particular:

- 24.2.1. there is a serious or repeated breach of the Contract by the CO or a breach of Contract by the CO which the CO does not remedy at its own expense within a reasonable period of time; or
  - 24.2.2. a substantial deterioration of the financial situation of the CO occurs or threatens to occur and thereby the fulfillment of the Contract towards the PR is endangered; or
  - 24.2.3. a significant change in the company structure of the CO occurs; or
  - 24.2.4. another reason in the person of the CO occurs which makes it intolerable for the PR to adhere to the Contract taking into account the circumstances of the individual case.
- 24.3. A serious breach of the Contract exists, for example, in case of a serious defect of the Deliveries or Services of the CO that jeopardizes the PR's fulfillment of the Contract towards his client; or in case of such a delay of delivery by the CO that the maximum amount of liquidated damages in accordance with the GCP is reached and the CO still fails to render the Deliveries or Services within a final grace period, designated as such, set by the PR; or in the case of an unauthorized subcontracting by the CO.
- 24.4. In case of withdrawal Deliveries or Services provided shall be reversed. All documents provided by the PR shall be returned to the CO. Without prejudice to the applicable law, the PR shall be entitled to compensation claims against the CO due to the early termination of the Contract.
- 24.5. The PR shall notify the CO about the withdrawal in writing. Immediately after receipt of the notification of withdrawal, the CO shall stop the execution of Contract in whole or in part (depending on the extent of the termination). Non-terminated contractual parts shall be continued and completed without delay by the CO.

## 25. Applicable Law, Jurisdiction

- 25.1. The Contract, the GCP and all disputes arising out of or in connection therewith shall be governed by Austrian substantive law, excluding the rules on conflict of laws of the Austrian International Private Law and excluding the Convention on the International Sale of Goods (CISG) 1980, as amended.
- 25.2. Exclusive place of jurisdiction shall be at the court that is competent for the registered seat of the PR.

## 26. Miscellaneous

- 26.1. As far as the GCP do not provide any regulation, the applicable law shall apply.
- 26.2. In case that one or more provisions of the GCP or 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.
- 26.3. Amendments and supplements to the Contract and the GCP shall be in writing and signed by both Parties to be effective. This also applies to the cancellation of this formal requirement.
- 26.4. Contractual language shall be German or English at the choice of the Parties.