

1. SCOPE / CONCLUSION OF CONTRACT

- 1.1. These General Terms and Conditions shall apply exclusively to the performance of services or deliveries by FH JOANNEUM Gesellschaft mbH (hereinafter FHJ). Deviations or amendments shall only be effective if acknowledged in writing by FHJ.
- 1.2. Should individual provisions of these General Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provisions shall be replaced by valid provisions that come closest to the legal and commercial purpose of the invalid provisions. Section 915 (2nd sentence) of the Austrian Civil Code (ABGB) shall not be applicable. The above shall apply *mutatis mutandis*.
- 1.3. Liability shall not be limited in cases of personal injury where limitation of liability is not permitted due to mandatory provisions.
- 1.4. The contract shall be deemed to be concluded when FHJ receives a written confirmation of order from the Client within the period specified in the offer or proposal. If the Client accepts services provided by FHJ, the contract shall in any case be deemed to be concluded under the terms and conditions offered by FHJ.
- 1.5. Any amendments or additions to the contract shall be invalid unless in writing. This shall also apply to any waiver of the written form requirement.
- 1.6. Non-German speaking Clients shall be provided with an English language version of these General Terms and Conditions. In the event of contradictions, ambiguities, doubts etc. the German version shall prevail.

2. COST ESTIMATES / OFFERS AND PROPOSALS

- 2.1 Cost estimates are provided free of charge and without obligation and shall not be binding.
- 2.2 Offers and proposals submitted by FHJ shall be binding within the specified period of validity unless expressly stated otherwise in writing by FHJ.
- 2.3 Offer, proposal and project documents provided by FHJ, such as illustrations, sketches or cost statements, shall not be reproduced or disclosed to third parties without its consent. These documents may at any time be reclaimed and must be returned to FHJ free of charge if no order or contract is awarded within the period specified in the offer or proposal.

3. NATURE / SUBJECT MATTER OF THE CONTRACT

- 3.1 Unless FHJ has expressly and explicitly committed to achieving a specific outcome in writing and in cases of doubt, any work (including but not limited to research and development activities) performed under this contract shall be deemed to be provided as part of a contract for the performance of continuing obligations. The specification of project goals or a scope of delivery shall not be taken to be an obligation to achieve a specific outcome, but shall be regarded as a commitment to achieve the intended results, considering in particular the research risk associated with the performance of the work. The results specified in the offer or proposal as the subject matter and objective of the contract will in the following be referred to as 'work results', irrespective of the nature of the contract.
- 3.2 FHJ will provide the contractual services in accordance with the state of the art and exercising due scientific care. The Client shall bear the full research risk, including the commercial risk concerning the

usefulness of the work results, the development risk and the risk that the work results may be technologically impossible to implement.

- 3.3 Irrespective of the nature of the contract, FHJ shall at its own discretion be entitled to subcontract its contractual obligations in whole or in part to third parties (e.g. subcontractors).

4. PRICES

- 4.1 Prices are quoted ex works (relevant FHJ location), exclusive of packaging, loading, transport, unloading, assembly, installation etc. and value added tax.
- 4.2 Any fees, taxes or other charges levied in connection with the performance of a service/delivery shall be borne by the Client.
- 4.3 If shipment with delivery is agreed, the latter and any transport insurance requested by the Client shall be charged separately, but shall not include unloading and/or other (transport) activities on site. Returned packaging shall only be accepted by express agreement.
- 4.4 Services and extra services whose necessity and expedience only become apparent during the performance of the contract shall be notified to the Client including suggested price adjustments, and will only be provided after they have been ordered in writing. FHJ shall in any case be entitled to charge the Client any additional costs arising from the Client's sphere of responsibility, e.g. as specified in items 5.3. or 5.6.

5. TERMS OF DELIVERY & PERFORMANCE

- 5.1 FHJ undertakes to meet any dates and deadlines, e.g. delivery deadlines, to the best of its abilities. Such dates shall not be binding and shall be regarded as the expected date of provision or delivery to the Client.
- 5.2 The term of delivery shall start on one of the following dates, whichever is the latest:
 - a) Date of confirmation of order;
 - b) Date on which the Client can prove to FHJ that it has satisfied all its technical, commercial and other obligations under the contract;
 - c) Date on which FHJ has received a down payment or collateral.
- 5.3 Permits to be issued by authorities/third parties shall be obtained by the Client. If such permits are not obtained in good time, the performance period shall be prolonged accordingly.
- 5.4 FHJ shall be entitled to carry out and invoice part or advance deliveries.
- 5.5 The delivery date agreed as binding according to item 5.1 shall be complied with unless compliance is prevented by circumstances that cannot be foreseen or are beyond the control of the contracting parties, such as e.g., force majeure, armed conflicts, regulatory interventions/prohibitions, transport/customs clearance delays, transport damage, energy/raw materials shortages, industrial conflicts and loss of a major supplier who is difficult to replace. The aforesaid circumstances shall also justify an extension of the term of delivery if they affect suppliers.
- 5.6 The Client shall be obliged to accept delivery in the event of creditor default.

6. PERFORMANCE / TRANSFER OF RISK

- 6.1 Use and risk shall, irrespective of the price terms agreed (e.g. CIF, etc.), transfer to the Client at the latest upon departure from the relevant FHJ site. This shall also apply if the delivery is made as part of assembly

work or if the transport is carried out or organised and directed by FHJ as contractually agreed.

- 6.2 In the case of services that do not constitute a delivery or part thereof, the place of performance shall be where the contractual service is provided. The risk for a service or an agreed part-service shall transfer to the Client as and when it is provided.
- 6.3 The risk of data loss or alteration during download and online transmission shall transfer to the Client upon passing the FHJ network interface.
- 6.4 Any agreed formal acceptance procedures, trial runs etc. shall not affect the provisions concerning place of performance and transfer of risk.

7. PAYMENT / RESERVATION OF TITLE / OBJECTION

- 7.1 3/10 of the agreed amount shall become due and payable upon order receipt, 4/10 on expiry of half the contract term or term of delivery, and the balance on expiry of the contract term or upon delivery. The terms of payment shall be 30 calendar days from receipt of invoice.
- 7.2 Payments shall be made in Euros without any deduction and the amount shall be transferred to the FHJ account stated on the invoice at FHJ's registered office. All interest and charges in connection therewith shall be borne by the Client.
- 7.3 If part payments have been agreed, default shall be considered to have occurred if any part payment has been made late or not in full. The entire outstanding balance will then become due for payment.
- 7.4 If the Client is in default with an agreed payment or other obligation, FHJ shall be entitled at its discretion
 - a) to postpone the performance of its own obligations until the outstanding payments or other obligations have been effected;
 - b) to claim a reasonable extension of the term of delivery or contract term;
 - c) to withdraw from the contract in the event of non-compliance with a reasonable grace period;
 - d) to charge default interest at a rate of 2% per month from the due date unless FHJ can prove more extensive costs;
 - e) to charge pre-litigation costs, in particular dunning costs and attorney costs.

This applies analogously to all cases where payment/performance is objectively uncertain/where FHJ is under an advance performance obligation, irrespective of whether FHJ had prior knowledge thereof, in particular upon conclusion of the contract.
- 7.5 FHJ reserves title and all rights in the work results until the remuneration plus interest and charges has been paid in full. Until such time, the Client shall only be entitled to resell, process, machine and assemble them with the written consent of FHJ, except in cases in which they are intended for resale, processing, machining or assembly. Until full payment has been received, the Client assigns all rights arising from resale to FHJ and grants FHJ co-ownership of any new objects produced by machining, processing or assembly. Pledging or transfer as collateral shall not be permitted. In the event of seizure or other claim, the Client shall be obliged to refer to FHJ's title and notify the latter immediately.
- 7.6 The Client shall only be entitled to a right of objection, retention and/or setoff if the claims have been expressly acknowledged in writing by FHJ or have been established by a judicial decision.

8. WARRANTY / LIABILITY FOR DEFECTS

- 8.1 Warranty will only be assumed if a specific outcome has been expressly agreed acc. to item 3.1 of these General Terms and Conditions.
- 8.2 FHJ will accept liability only for characteristics of physical objects it has expressly warranted in writing. Any other characteristics usually

associated with the object shall not be relevant. Sec. 933b of the ABGB shall not be applicable.

- 8.3 FHJ shall assume no warranty for the sale of used goods, repair contracts, modifications, conversions or legal defects. Should FHJ nonetheless be held responsible for legal defects due to mandatory statutory provisions, such legal defects are only warranted if they derive from absolute rights that are applicable in Austria and listed in national public registers and if the Client did not or cannot be expected to be aware of these defects (see item 10.5).
- 8.4 The warranty period shall be 1 year. It starts upon the transfer of risk acc. to item 6, irrespective of whether the defect is hidden or not or whether it relates to warranted characteristics. The repair of defects shall not extend the warranty period.
- 8.5 The Client shall prove that a defect has occurred. Sec. 924 (2nd sentence) of the ABGB shall not be applicable.
- 8.6 Any warranty claim shall be subject to the condition that the Client inspects the work results immediately upon receipt and notifies any defect immediately in writing. Defects shall not entitle the Client to reduce or withhold payment.
- 8.7 The type of warranty (improvement, replacement, price reduction or nullification) will be determined exclusively by FHJ. For example, it may at its discretion replace defective parts, repair them on site, request them to be sent for repair or provide workarounds in the case of legal defects.
- 8.8 All ancillary costs incurred in connection with the repair (e.g. installation/dismantling, transport, travel, journey times) shall be borne by the Client. The Client shall provide any workers, lifting gear, small material etc. required for carrying out the work at its premises free of charge. The components replaced within the framework of the warranty shall pass into the ownership of FHJ.
- 8.9 Warranty shall be excluded for defects that result from installation and assembly work not effected by FHJ, non-contractual use, insufficient equipment, non-compliance with installation requirements and terms of use, excess strain on the components going beyond the performance specified by FHJ, negligent or incorrect handling and the use of inappropriate operating materials; this shall also apply to defects due to material provided by the Client. Nor shall FHJ be liable for damage due to acts of third parties, atmospheric discharge, excess voltage and chemical influences. The warranty shall not apply to the replacement of components that are subject to natural wear and tear.
- 8.10 Substitute performance by third parties shall not be permitted. The warranty shall expire immediately if the Client or a third party not authorised by FHJ in writing effects modifications or repairs on the work results. Invoices for such will not be recognised.
- 8.11 The provisions specified in items 8.1 to 8.11 shall apply *mutatis mutandis* to any liability for material and legal defects based on other legal grounds. Sec. 1096 of the ABGB shall not be applicable.

9. CONTRACT TERM / WITHDRAWAL FROM CONTRACT

- 9.1 Contracts for the performance of continuing obligations shall end upon expiry of the agreed period of performance. Ordinary termination is not possible.
- 9.2 In the event of default the Client shall only be entitled to withdraw from the contract if the default is caused by gross negligence on the part of FHJ and if a reasonable grace period of at least 10% of the project duration (but at least 2 weeks) has expired without the default being remedied. Withdrawal shall be notified by registered letter.
- 9.3 In addition to item 7.4 c), FHJ shall be entitled to withdraw from the contract in whole or in part

- a) if the performance of the work or the start or continuation of the work becomes impossible or is further delayed despite the setting of a reasonable grace period for reasons attributable to the Client;
 - b) if a deadline extension granted for the circumstances listed in item 5.5 amounts to more than one half of the period originally agreed, but at least 6 months.
- 9.4 Without prejudice to any other claims FHJ may have, (part) services already provided shall be paid as contractually agreed in the event of early termination. FHJ shall alternatively be entitled to demand return of the work results. If the Client or someone within its sphere of responsibility is responsible for the termination, FHJ shall be entitled to full remuneration.

10. LIABILITY / DUE DILIGENCE

- 10.1 The liability of FHJ shall be limited to wilful intent or gross negligence. Sec. 1298 of the ABGB shall not be applicable. Liability for slight negligence, loss of profit, compensation for consequential damage and financial loss, indirect damage, savings not realised, interest losses, product recall costs or loss of production, loss of or damage to data and programs and their recovery as well as damages arising from third party claims against the Client shall be excluded.
- 10.2 No liability claims can be derived from seminar content and the like or application of any knowledge acquired therein.
- 10.3 FHJ shall not be liable for damage caused to a company within the scope of the Product Liability Act (PHG).
- 10.4 No damages shall be payable in the event of a failure to comply with any conditions for assembly, start up and use (e.g. operating instructions) or the conditions for official authorisation.
- 10.5 Unless otherwise provided by mandatory law, FHJ shall not be obliged to check documents, instructions, items etc. supplied by the Client for usefulness, accuracy, completeness or legal defects. The Client must check the work results for suitability, usability etc. at the planning stage and prior to use (e.g. by conducting a global freedom-to-operate analysis) at its own expense. Any and all resulting risks shall be borne by the Client
- 10.6 FHJ's liability, based on whatever legal title, shall in any case be limited to the agreed contract amount.
- 10.7 Liability claims against FHJ shall lapse 6 months after the Client has gained knowledge of the damage and the liable party, but not later than 3 years after the damage incident (absolute limitation period).

11. INTELLECTUAL PROPERTY RIGHTS / RIGHT TO USE WORK RESULTS / SOFTWARE

- 11.1 If FHJ carries out work on the basis of design details, drawings, models or other specifications or requirements of the Client, the latter shall indemnify and hold FHJ harmless in the event of any infringement of intellectual property rights or third party rights.
- 11.2 The work results are made available to the Client on a non-exclusive basis for the purpose specified in the contract. FHJ shall be entitled in particular to use work results for publications, teaching/continuing education and other projects without restriction subject to confidentiality requirements or to apply for registration of intellectual property rights. If FHJ has used pre-existing knowledge or knowledge and results from other projects in performing the contract, the Client shall be granted a non-exclusive licence for the purpose specified in the contract unless this is in conflict with third party rights.
- 11.3 Inventions and related intellectual property rights shall require a separate agreement to be concluded, granting rights to the Client and specifying additional remuneration.
- 11.4 If software is to be supplied by FHJ, the source code and documentation will not be included and FHJ will not warrant that the

software is free from defects. The Client will be granted a non-exclusive licence for the purpose specified in the contract. The permitted use shall exclusively include installation as well as loading, displaying and running the software and other uses granted by mandatory statutory provisions unless any further use can be derived from the purpose specified in the contract. If a software is subject to licence conditions such as GNU GPL, the relevant provisions shall take precedence to the extent absolutely necessary.

12. PERSONAL DATA / CONFIDENTIALITY

- 12.1 FHJ will process personal data in compliance with applicable data protection laws and to the extent permitted by law for the purpose of implementing pre-contractual measures, for conclusion and performance of the contract, including enforcement of legal claims, and for compliance with legal obligations or in the interest of FHJ and/or in the interest of a third party and/or on any other legitimate basis. Appropriate technical and organisational measures will be taken.
- 12.2 FHJ will process the personal data, where necessary, for the entire duration of the business relationship (from initiation and performance to termination of the contract) and beyond in accordance with the statutory retention and documentation obligations and until the conclusion of any legal dispute or expiry of any continuing limitation, warranty or contractual retention periods etc.
- 12.3 If the Client provides FHJ with personal data for performance of the contract, it warrants that it does so in compliance with the applicable provisions, including but not limited to data protection regulations. FHJ will not verify such compliance. The Client shall ensure that the transmission of personal data and the processing of the data by FHJ is legitimate.
- 12.4 FHJ and the Client undertake to conclude further data processing agreements pursuant to Art. 26 or 28 of the GDPR, if required.
- 12.5 The contracting parties undertake to maintain confidentiality in respect of any confidential information (including but not limited to inventions) obtained in performing the contract, unless such information is or becomes state-of-the-art through no fault of the receiving party, has previously been available in the public domain without being subject to confidentiality obligations, has been lawfully acquired from a third party not subject to confidentiality obligations, has been generated independently, or must be disclosed due to statutory provisions, regulatory or judicial decisions. This confidentiality obligation shall remain in force for 2 years after the end of the contract.

13. JURISDICTION / APPLICABLE LAW

- 13.1 All disputes arising from or in connection with the contract (including disputes about its existence or non-existence) shall be submitted to the exclusive jurisdiction of the competent court at the location of FHJ's registered office in Graz.
- 13.2 The contract shall be exclusively governed by Austrian law to the exclusion of its conflict of law provisions and the UN Convention on the International Sale of Goods.