

General Terms and Conditions

of Engenium GmbH - Zweigniederlassung Graz (hereinafter referred to as „Engenium Graz “)
State: 11.01.2023

1 Validity of the General Terms and Conditions and Deviations

- 1.1 The following General Terms and Conditions (GTCs) apply to all our deliveries and services and are an inseparable part of our offers and order confirmations. They are the basis for all present and future contracts between the Client and Engenium Graz.
- 1.2 The GTCs as amended from time to time shall also apply to future transactions between the contracting parties, even if no further reference is made to them when concluding a contract in the future.
- 1.3 Deviations from these terms and conditions and in particular also conditions of the Client shall only apply if they are expressly recognised and confirmed by us in writing.
- 1.4 The GTCs apply in their original German version.

2 Offers, Ancillary Agreements

- 2.1 Unless otherwise stated, the quotations shall be non-binding with regard to all indicated details, including the fee.
- 2.2 If an order confirmation contains changes to the order, these shall be deemed to have been approved by the Client unless the Client objects in writing within 10 working days.
- 2.3 Agreements must always be made in writing.

3 Order Placement

- 3.1 The contract shall not be deemed concluded until we have sent a written order confirmation. Confirmation will be sent within 5 working days.
- 3.2 The type and scope of the agreed services result from the specifications, contract, power of attorney and these General Terms and Conditions.
- 3.3 Changes and additions to the order must be confirmed in writing in order to become the subject of this contractual relationship.
- 3.4 We undertake to execute the order placed in accordance with the generally recognised rules of technology and the principles of economic efficiency.
- 3.5 Engenium Graz may enlist the services of other appropriately authorised parties to fulfil the contract and place orders with them on behalf of and for the account of the Client. Engenium Graz is however obliged to inform the Client of this intention in writing and grant the Client the option of rejecting this order placement with third parties within 10 days.

4 Prices

- 4.1 Price quotations shall become binding when we have confirmed them in written form stating the scope of performance. Deliveries or services exceeding this scope of performance may be invoiced separately by us.
- 4.2 Prices are based on costs at the time they are announced. We are entitled to adjust prices if the order differs from an overall offer or if costs have changed by the time of delivery. This applies to prices that are charged according to actual expenditure, such as transport and travel costs, as well as transit items (e.g. tracks rent and traction costs) and similar.
- 4.3 In particular, we are entitled to charge additional costs due to a delay for which we are not responsible, especially in clarifying the technical or legal prerequisites for the delivery, as a result of unfavourable weather conditions and as a result of training courses, overtime, night or Sunday work requested by the Client.
- 4.4 We are entitled to charge additional costs (e.g. hotel cancellation, rental costs, travel costs, etc.) incurred due to delays which were neither our fault nor foreseeable.
- 4.5 It is expressly agreed that the value of the claim and all ancillary claims shall remain stable. The consumer price index published monthly by the Austrian Central Statistical Office shall serve as a measure for the calculation of the stable value, whereby the basis for the calculation shall be the index published for the month in which the order was placed.

5 Delivery

- 5.1 In the event that we are responsible for exceeding the delivery time, the Client is entitled to withdraw from the contract by granting a reasonable grace period of at least 4 weeks. The period of grace shall commence on the date of receipt of the notice of withdrawal, which shall be sent to Engenium Graz by registered letter. Claims for compensation of the Client due to delayed delivery or in case of withdrawal are limited to a maximum of 50% of the order volume as far as legally permissible.
- 5.2 All additional services not reserved for us in the order confirmation and necessary for the fulfilment of the contract shall be provided by the Client at his own expense.
- 5.3 Necessary authorisations of third parties, as well as notifications to and authorisations by authorities for the provision of services by Engenium Graz, are to be arranged by the Client at his own expense.
- 5.4 Compliance with the agreed delivery deadlines by Engenium Graz requires the timely receipt of all data and documents to be provided by the Client, as well as the legal and technical prerequisites to be created on the part of the Client, which are necessary for the provision of the services.
- 5.5 Manuscripts, originals, drafts, sketches, samples and other documents handed over to us shall remain with us and shall not be returned after the end of the order.
- 5.6 In the absence of an express agreement to the contrary, the costs and risk of transport for deliveries shall be borne by the Client.
- 5.7 Objectively justified and reasonable changes to our scope of delivery and performance (e.g. sensor type, etc.), which are reasonable for the Client, shall be deemed to have been approved in advance.
- 5.8 Unless otherwise agreed, the project language shall be German. All documents written by Engenium Graz shall be written in German and, if necessary, translated into the respective target language at the expense of the Client.

6 Cooperation Obligations of the Client

- 6.1 The Contractor may use subcontractors in the performance of the service.
- 6.2 The delivery of the Client's test objects to the Contractor or the agreed place of performance and their collection shall be at the expense and risk of the Client.
- 6.3 The Client shall provide the Contractor with all materials, information and documents required for the proper execution of the order free of charge and in good time. The Contractor is not obliged to check the documents provided by the Client for completeness and correctness, unless the order itself lies therein or this is not expressly the subject of the order.
- 6.4 If the Client does not comply with its acts of cooperation, or does not comply with them in time or completely, or if the Contractor's performance is delayed for other reasons for which the Client is responsible, the Contractor shall be entitled to demand compensation for the resulting damage, including additional expenses.
- 6.5 Insofar as the Contractor provides services on the Client's premises or has to enter them, the Client shall be obliged to ensure compliance with the safety and accident prevention regulations and regulatory provisions applicable at this place of use free of charge - in particular access authorisations, house rules, disaster plan - and to instruct them if necessary. If employees of the Contractor are to enter track facilities, stay in this area or carry out work in this area, then the Client must take special safety precautions.

7 Payment

- 7.1 Unless otherwise stated, all prices are quoted in EURO.
- 7.2 The amounts stated do not include value added tax (VAT). If applicable, this must be paid separately by the Client.
- 7.3 We are expressly entitled to also make partial payments, provided that the service is rendered in parts.
- 7.4 If additional or increased expenses or charges, in particular due to customs duties, changes in official exchange rates, etc., are incurred between the conclusion of the contract and delivery due to changes in statutory regulations, we shall be entitled to adjust the agreed prices accordingly.
- 7.5 Unless a shorter term of payment has been agreed, the invoice shall be paid in any case no later than 30 days after invoicing.
- 7.6 In the case of partial offsets, the corresponding partial amounts are due upon receipt of the relevant invoice. This shall also apply to offsetting amounts arising from subsequent deliveries or other agreements in excess of the original final amount, irrespective of the payment terms agreed for the main delivery.
- 7.7 Payments shall be made by direct debit or in due time without any deduction free of charge to our paying agent in the currency stated in the invoice. The date of payment shall be the date of receipt by us or our paying agent.
- 7.8 Incidental costs of the contract and expenses of monetary transactions shall be borne by the Client.
- 7.9 The Client is not entitled to withhold payments due to warranty claims or other claims of any kind whatsoever or to offset them against counterclaims. Compensation with any counterclaims, for whatever reason, is inadmissible.
- 7.10 If certain items are disputed at the time when the Contractor's invoices are due, the undisputed part of the invoice amount may not be retained by the Client for this reason.
- 7.11 If the client is in default with his payment or other performance, in particular within the meaning of item 5.2, we may:

- postpone the fulfilment of our obligations until the outstanding payment or other services have been effected,
- claim a reasonable extension of the delivery period,
- call due the entire outstanding balance of the purchase price (forward loss) and
- charge default interest of 9.2 percentage points per annum above the respective base interest rate from the due date plus reminder charges, or
- withdraw from the contract if a reasonable grace period is not observed,
- in any case charge pre-litigation costs, in particular reminder fees and lawyer's fees

7.12 Any rebates, discounts or bonuses granted shall be conditional upon full payment being made on time.

7.13 The service remains our property until all claims arising from all mutual legal transactions with the Client, including interest and capital, have been settled in full.

8 Warranty

- 8.1 The warranty claim shall only arise if the Client has reported the defect that has occurred in writing by registered letter within 14 days of handover of the service or partial service and has described it in detail. A first transmission via e-mail within the time limit is permissible, but an additional transmission of a registered letter is nevertheless absolutely necessary.
- 8.2 Receipt of a complaint is always acknowledged and progress reports and the outcome are provided to the complainant. The complaint handling procedure will be made available electronically to any interested party upon request.
- 8.3 Defects in a part of the delivery may not lead to a complaint about the entire delivery or service. In the event of a justified complaint, we may, at our discretion, replace or repair the defective delivery, defective service or defective parts thereof, have them sent to us for repair or grant a reasonable price reduction. As soon as the defect has been detected by the Client, any further disposal of the delivery without our express consent is not permitted; if the Client nevertheless does so, he thereby waives any warranty claims against us.
- 8.4 Claims for redhibitory action and price reduction are excluded. Claims for improvement or supplementation of what is missing shall be fulfilled by us within a reasonable period, which shall generally be one third of the period agreed for the performance of the service. A claim for damage caused by delay cannot be asserted within this period.
- 8.5 We provide all services with the care to be expected from us as a professional (§ 1299 ABGB).
- 8.6 If a service is provided on the basis of design information, drawings, models and other specifications of the Client, our liability shall only extend to the execution in accordance with the conditions.
- 8.7 Engenium Graz does not assume any liability for services of third parties that are organised by us on behalf of the Client (e.g. tracks rent and traction by a rail transport company).

9 Compensation and Liability

- 9.1 Unless otherwise provided for in these terms and conditions, our liability shall in all cases be limited to those damages which have occurred to the object of our performance. Any further compensation, in particular for consequential damages, is excluded, unless we can be accused of gross negligence.
- 9.2 The Client shall pass on this limitation of our liability to his customers and oblige them to pass it on to the final purchaser accordingly, so that the validity of our limitation of liability is guaranteed up to the final purchaser.

9.3 If contractual penalties have been agreed, any further claims under the respective title shall be excluded.

9.4 The Contractor's liability shall expire in any case 3 years after completion of performance.

9.5 Engenium Graz accepts no liability for services provided by third parties which are organised by us on behalf of the Client (e.g. tracks rent and traction by a rail transport company).

10 Withdrawal from the Contract

10.1 Withdrawal from the contract is only permissible for good cause.

10.2 In the event of a delay in performance, the Client may only withdraw from the contract after setting a reasonable period of grace. The grace period shall be set by registered letter.

10.3 In addition to the cases mentioned so far, both parties are in particular entitled to withdraw from the contract in whole or in part:

- if the execution of the delivery, the start or the continuation of the service is impossible for reasons for which the Client or Engenium Graz is responsible or is further delayed despite the setting of a grace period,
- if bankruptcy proceedings are instituted against the assets of the Client or Engenium Graz or if bankruptcy proceedings are dismissed for lack of assets to cover costs.

10.4 In the event of a justified withdrawal from the order on the part of the Client, the services rendered by the Contractor up to the point of withdrawal shall be remunerated by the Client.

10.5 Events of force majeure affecting us or one of our suppliers shall entitle us to suspend deliveries for the duration of the hindrance and a reasonable start-up period or to withdraw from the contract in whole or in part in accordance with their effects. If the delivery is delayed by more than 3 months due to the effects of force majeure, the customer is entitled to withdraw from the affected part of the delivery by registered letter within 10 working days. Events of force majeure shall be deemed to include, but not be limited to:

- all effects of the forces of nature, such as earthquakes, lightning, frost, storms, flooding, epidemics, etc.
- war, laws, official interventions, confiscation, transport disruptions, export, import and transit bans, international payment restrictions, raw material and energy shortages,
- operational disruptions such as explosion, fire, strikes, sabotage and all other events that could only be prevented with disproportionate costs and economically unreasonable means.

10.6 If we are entitled to withdraw from the contract, we retain the right to payment for the entire agreed scope of delivery and performance, likewise in the event of unjustified withdrawal by the Client. Without prejudice to our claims for damages, in the event of withdrawal we shall be entitled to payment for the deliveries or services already provided (§ 1168 ABGB), as well as for the preparatory acts performed with regard to the contract, even if the contract was only partially fulfilled as a result. Even if no delivery has been made, we shall in this case be entitled to compensation for the costs incurred in preparing it.

11 Impartiality and Independence

11.1 We are committed to impartiality and independence in all decisions and evaluations concerning the services offered in order to ensure objective service delivery. The results of our work are free from external constraints and only objectively controlled by technical conditions.

11.2 In order to maintain impartiality, we do not provide consultancy services for projects that are the subject of an assignment.

12 Confidentiality and Data Protection

- 12.1 We are bound to confidentiality of all information provided by the Client by the Federal Data Protection Act DSG.
- 12.2 All confidential information arising from the activity will only be disclosed to third parties with the written consent of the Client, unless we are legally obliged to disclose it.
- 12.3 Confidential information about the Client that comes from sources other than the Client itself (e.g. complainants, authorities) is also treated confidentially by us. The source of information itself may also not be communicated without their consent.
- 12.4 We are also obliged to keep our activities confidential if and as long as the Client has a legitimate interest in this confidentiality. After execution of the order, we are entitled to use the contractual project in whole or in part for advertising purposes, unless otherwise contractually agreed.
- 12.5 The confidentiality obligation ends five years and the retention obligation ten years after termination of the contract.

13 Industrial Property Rights and Copyrights

- 13.1 We reserve all rights and uses to the documents created by us. These documents, even if they do not originate from us, may not be used by the Client in a way that goes beyond the content of the contract.
- 13.2 Any use (in particular processing, execution, duplication, distribution, making available) of the documents or parts thereof is only permitted with our express consent. All documents may therefore only be used for the purposes expressly specified when the order is placed or by a subsequent agreement.
- 13.3 We are entitled, and the Client is obliged, to state the name (company, business name) of Engenium Graz in publications and announcements about the project.
- 13.4 The client shall be obliged to indemnify and hold us harmless against all claims raised by third parties arising from infringements of copyrights, ancillary copyrights, other industrial property rights or personal rights. We reserve the right to declare the dispute to the client in any legal action brought against us. If the client does not join the proceedings as a party to the dispute on our side, we shall be entitled to acknowledge the claim.

14 Jurisdiction and Law

- 14.1 For all disputes arising directly or indirectly from this contract between the Client and Engenium Graz - including those concerning its existence or non-existence - jurisdiction of the competent court in Graz, Austria is agreed.
- 14.2 Austrian law shall apply exclusively.

15 Place of Performance

- 15.1 Unless otherwise agreed, the place of performance for our services is the location of Engenium Graz.