



## General Terms and Conditions

### Scope

The following general terms and conditions of CW CONCEPT CONSULTING GMBH (Referred to from this point on as: Concept) are valid in relation to any commercial contact with Concept, above all when concerning the cession and formation of contractual declarations.

They shall be unconditionally implied into all contracts between Concept and third parties. All goods and services supplied by Concept are carried out on the basis of these general terms and conditions.

The general terms and conditions are equally valid for future commercial transactions with existing contractual partners, even where they have not been referred to explicitly anew.

Any conflicting trade conditions advanced by contractual partners shall be void. Without omission, in order to bind Concept, it is imperative that all acceptance and purchase conditions and general terms and conditions respectively, proposed by contractual partners, have been expressly acknowledged by Concept. Acknowledgement must be in writing. Acknowledgement shall never be assumed by omission to object on behalf of Concept.

### Offers and Conclusions of Contracts

Offers made by Concept are subject to confirmation and do not bind unless Concept has expressly communicated to the contrary that the offer is to have a binding effect.

Finalization of a contract shall take effect exclusively on written affirmation by Concept. Written affirmation is equally imperative for any finalization of subsidiary and amendment agreements, especially relating to release from the prerequisite of written affirmation. Oral subsidiary agreements, which are not subject to prior written affirmation of the release from the above-mentioned prerequisite, shall be void.

### Pre-contractual Negotiation Documentation

Just as with the above-mentioned offers, technical specifications and descriptions, designs, illustrations and performance figures are only binding when expressly declared as such in writing by Concept.

All negotiation documentation, data, information and designs, as well as models of potential design realizations prepared by Concept are not guaranteed.

Any documentation or offers submitted by Concept are exclusively the intellectual property of Concept. The offeree may only utilize these once the contract has been finalized and only within the scope of what is necessary for the fulfillment of contractual obligations.

All designs and models established by Concept are to be reviewed by the contracting party on grounds of their potential design realization, and all related, necessary, construction provisions. Subject to notification within 10 days of access to documentation, Concept will respond promptly in relation to any discrepancies; alternatively, any resulting defects and deviations are the responsibility of the client and at his expense.

In the absence of any manifestations or amendment requests, the designs and models will be regarded as affirmed and approved.

### Transfer of Perils

The peril of deficiency in goods and services as well as planning documentation provided by Concept, which is limited to a particular circumstance, is transferred to the customer where Concept has demonstrably assigned this to a carrier or haulier. In the absence of any statement to the contrary however the peril is transferred to the customer at the latest on departure from Concept Property.

In the implementation of a contractual performance which exceeds planning and construction work, the peril is transferred on acceptance, to the client. If on demand by Concept, acceptance by the client has however not followed within 14 days at the latest, Concept's performances will be regarded as approved and free of defect, and the perils will be transferred to the client. Acceptance by the client can only be waived in the event of a substantial defect. A defect can only be considered substantial when the client is unable to make even restricted use of the service provided by Concept.

In the offers proposed by Concept, no costs are included for certification by any technical inspection agency or public authorities. If such certification is necessary, Concept must be given sufficient notice by the client as to the



stipulated date of certification, and has the right but not the obligation to participate therein. If a request is made by the client for such certification and participation by Concept is respectively necessary, the client will carry all subsequent contingency costs.

## **5. Insurance Law**

Until the fulfillment of all requirements (including all accounts carried forward from open accounts, interest and charges) which Concept is entitled to, by whatsoever legal reasons, whether at present or in the future, including the obligation to encash any checks or returns received from Concept, Concept retains ownership of property to be consigned, as well as any services to be rendered.

Concept retains ownership even where the goods provided by Concept, and the property of the client are so integrated or as the case may be so attached, so long as the interconnection is not of the strength to require uneconomical means of reversal.

In the event of conduct contrary to the contract, especially concerning delayed payment, or the application of bankruptcy or settlement proceedings concerning the contracting party, Concept is entitled to withdrawal of the performed services and provided goods, and the contracting party, through exclusion from any retention rights is liable to account for these.

If a component or entire installation as the case may be, supplied by Concept is integrated with the property of the contracting party so that it no longer forms an independent entity autonomous from that property, the contracting party in the case of not being able to fulfill all the commitments of the respective contract is liable for dismantling the component or entire installation as the case may be, at its own peril and costs, as well as any costs arising indirectly from the dismantling and any measures connected therewith until arrival and handover thereof on the Concept factory premises. The contracting party recognizes Concept's entitlement to the dismantled subject matter. The services and property are then under the operation authority of Concept. The assertion of retention of title does not count as rescission of the contract.

So long as the retention of title stands, sale, pledging, transfer by way of security, or rental, and any other assignment of goods and services supplied by Concept without written authority is prohibited. In the event of the pledging of goods and services supplied by Concept which remain subject to retention of title, to a third party, the contracting party is obliged to inform Concept immediately of the name of the third party, the premium which has been demanded of them, any laws which have been engaged, the file number, and relevant the date of auction. Furthermore, the contracting party is obliged to notify Concept of any unusual diminution in value of the supplied products which remain subject to retention of title.

If the application of an alternate legal system to the Austrian legal system is agreed with the contracting party, or if an alternate legal system applies for other reasons, and if under that system, the retention of title incorporated within these general terms and conditions is rendered ineffective, then the potential security provisions prescribed by the alternate legal system are to be regarded as agreed upon. If to achieve this it is necessary to involve the contracting party, that party is under an obligation, to take all possible measures necessary to verify and maintain such provisions.

## **6. Immaterial Goods Laws**

Inventions and developments conceived by Concept employees within the scope of the proposed development work remain with Concept and Concept is entitled to apply for corresponding industrial trademark rights under its own name, and covered by its own expenses, in any country in the world. Contracting parties are permitted to make personal use of these kinds of inventions and developments for the product concerned with the proposed development work within the scope of compliance with the contract, without additional costs.

If it is necessary to employ patents for the performance of the proposed development work which Concept possessed prior to the commencement of the development work, or could provide access to, the contracting party is thus under license conceded the right to employ these patents and components thereof without express authorization or charge.

In the event that it is indispensable, or from an economic standpoint unjustifiable, to avoid using the patent of the third party, the contracting party and Concept will negotiate a solution.

## **7. Delivery Period**

The compliance with time limits and delivery deadlines always presupposes that the recipient provides all necessary documentation and equipment for the performance of the agreed service, as well as any cooperative procedures necessary. This encompasses the issuing on behalf of Concept of all information necessary for the execution of the service.



Delivery periods commence on the date stipulated in the contract, however, not before submission of documentation to the client, and notification on the client's behalf of receipt of the submitted information.

In any case a delay on behalf of the contracting party (e.g.: incorrect, incomplete, or late submission and documentation) as well as amendment requests on behalf of that party due to lack of, or delayed collaboration on the clients part will have the effect of invalidating previously agreed upon terms of delivery and performance deadlines, and will require Concept and the Contracting party to verify and engage new dates, time limits and deadlines.

In this case, the contracting party is obliged to deliver the payment due, on the deadline which would have applied in the previously agreed upon course of dealings for contractual fulfillment, as well as any additional costs bared by Concept as a result of the delay. Above all Concept is entitled to recover from the contracting party any warehouse charges, increased expenses as well as other incremental costs resulting from the delay.

Delivery periods for Concept will be extended in the event of force majeure (including strikes, lockouts, operational disruption, insurgence, states of emergency, war, magisterial order), for a period as long as the duration of that event. Force majeure in this respect encumbrances in particular unforeseeable events and events which even if foreseeable are not subject Concept's control, and whose effect on service performance could not have been prevented by reasonable measures taken on behalf of Concept.

In the event that through this occurrence the entire performance or the completion of a formerly commenced performance is prevented, Concept is entitled to withdraw the contract. In these cases, the contracting party does not have the right to claim compensation from Concept. On partial or total withdrawal of contract through Concept, it has a claim to aliquot compensation correlated to the extent of the service completed on withdrawal of the contract.

The contracting party will only have a right to damages if the delay or incompleteness of services supplied by Concept is due to gross negligence on the part of Concept.

Where Concept is instructed to employ a third party supplier, it will take free from any delay consequences, in so far as Concept has not been promptly facilitated, unless Concept has behaved in a grossly negligent manner in selecting the third party supplier.

## **8. Prices and Payment**

Net accounts must be settled within 30 days. The prices are quoted from the dispatch location and do not include additional expenses such as legal sales taxes, packing, customs, shipping, insurance etc.

Where the individual contract does not contain any distinct payment terms, the net payment should follow immediately on receipt of the dispatch notification, or particularly following the consignment of plans.

Should a situation arise during the project development requiring cost amendment, Concept will promptly inform the client. In this situation both partners, having revised the situation will agree on an appropriate amendment of the costs. Concept employs an annual index adjustment.

On default of payment, following a fruitless appropriate temporal extension, an interest on arrears in the amount of 12% per annum will be added to the costs.

Regardless of contrary provisions on behalf of the recipient, Concept is entitled to demand the payment of costs, and interest of the primary default in advance and then to recalculate the cost of the original service.

Should a situation become known during contractual negotiation or on conclusion thereof, which gives rise to an uncertainty concerning the ability of the contracting party to meet payment requirements, Concept can demand advanced payments and financial securities.

If the contracting party cannot meet such requirements, Concept can put on hold any services provided or respectively withhold any services formerly rendered; furthermore it can also withdraw the contract.

In this case the contracting party owes Concept the entire contractual consideration, less the expenditure put aside due to the omitted service provisions, and must confer this sum to Concept. The settlement date of the corresponding claim will take place 14 days after Concept's withdrawal from the contract, and at the earliest on notification of the corresponding claim.

The recipient is only entitled to offset, withhold, or mitigate payment, when the claims of the recipient have been legally asserted, regardless of any notifications of defects, or counterclaims.

## **9. Installation and initial operation**



In a case where the contracting party requires installation and initial operation procedures from Concept, it will be assumed that delivery, transfer, installation and initial operations will progress without hindrance. If delays should arise, for which Concept cannot be held culpable, the ensuing additional expenses will be at the expense of the contracting party.

This applies equally to interferences caused by others within the scope of companies engaged by the contracting party. For installations which on request of the contracting party must be carried out outside normal working hours or extend into such hours, the number of hours worked during this overtime, on Sundays, and during bank holidays will be added to the agreed apportionment of charges.

During the process of rebuilding existing constructions, machines and automations, tie-ups and service failures are to be reckoned with. Ensuing costs of any kind will be assumed exclusively by the contracting party.

The contracting party must ensure that an appropriate workforce is appointed and available for briefing by the commencement of installation. In individual cases, agreed training of the operations and maintenance personnel of the contracting party can follow the installation, and ensuing additional costs must be agreed with Concept.

## **10. Guarantees and Liabilities**

Concept guarantees that all its supplied goods and provided services meet the contractually incorporated standards and correspond to the accepted regulations of technology which are valid at the point in time at which the contract is completed.

The warranty period commences on performance of services by Concept, and at the latest on the date of acceptance or respectively the date at which the control is handed over, and extends to both moveable and fixed property for a period of 6 months. Insofar as the contracting party wishes to claim a defect under warranty, it must evidence that the respective deficiency existed at the point of handover.

Assuming that a deficiency in the warranty has been established, Concept will set aside enough time to verify and repair all defects. Insofar as reparation would be economically unreasonable for Concept, and where the material purpose for the contracting party of the service rendered by Concept remains functional, Concept can refrain from repairing the defect and award the contracting party with a proportionate discount in price.

The reparation of a defect by Concept will be seen as economically unreasonable when it exceeds 5% of the entire financial consideration contractually solicited from the contracting party.

An extension or reinstatement of the warranty period does not occur on realization of a defect under warranty. The warranty period only engages Concept for defects, on adherence with the prescribed service intervals and only where the service provided by Concept has been used for its ordinary purpose. The warranty period does not apply especially where the contracting party or a third party is culpable for the defect.

The warranty does not cover damage resulting from wear, or aesthetic damage.

Where the assembly or operation is not carried out by Concept, the issuing of any warranty becomes conditional upon evidence of authorized, appropriate and professional processing and workmanship, or respectively of the employment of able and trained personnel.

The warranty shall not extend to parts and services beyond Concept's own service and development capacity. For defects or damages resulting from parts or services which Concept has used or supplied on request of the contracting party, no warranty or liability for damages is provided by Concept.

If a part or service is supplied by Concept on grounds of instruction from, design, planning, models or any other specification which Concept receives from the contracting party, liability on behalf of Concept will only go so far as to guarantee that execution is in compliance with the specifications provided by the contracting party. In such a case, Concept is not bound to perform any ongoing tests.

In every case Concept is only bound by a warranty until the contracting party defaults on payment. Even in the case of defects or damages, the contracting party is not entitled to withhold any payments still due to Concept.

Concept is exclusively liable for damages for which there is evidence that they are linked to a construction or performance deficiency of Concept which could have been avoided by the application of recognized technical regulations.

Concept is exclusively liable to the contracting party in cases where the contracting party can prove that Concept is culpable for a premeditated or grossly negligent defect or damage. Where it is agreed that Concept's liability insurance is to be engaged in the event of the occurrence of some damage, the liability of Concept to insure



replacement, under whichever legal reasoning, is limited to a maximum total of 20% of the contract value of the relevant defect or damage

Concept's liability in any case does not extend to any slight negligence, as well as indirect or secondary damage, consequential damage, as well as lost profit and unrealized savings, as well as in particular damages caused by the disruption and temporary stoppage of production.

On loss of test data, or damage to any data and data processing mediums, Concept's liability is limited to the material value of the processing medium and does therefore in particular not include the responsibility to replace any lost data.

Concept's liability to pay damages under regulations governing liability and claims emanating from product liability laws which stipulate alternative terms and conditions do not apply.

The contracting party must be aware that with crash tests even with appropriate preparation, failures can arise, and therefore Concept is not liable for any damage to supplied test vehicles.

For claims based on breaches of confidentiality, Concept is only liable when Concept or one of its employees or subsidiaries or their employees has acted deliberately or grossly negligent.

### **11. Jurisdiction of applicable laws**

The objectively appropriate laws of Graz are the sole jurisdiction which applies between Concept and the contracting party whether directly or indirectly applicable. Concept is however also entitled to take legal action against the contracting party in the jurisdiction where it is based.

The laws of the Republic of Austria are exclusively valid for the legal relationship between Concept and the contracting party with the exception of referral rules, as well as the explicit exception of the UN purchase law conditions.

### **12. Safeguarding Clauses**

Should a term in these terms and conditions or a term in another relevant agreement become ineffective, then the effectiveness of the remaining terms and agreements is not invalidated. In such a case an agreed upon provision will apply which comes as close as possible in effect to the ineffective term.