



GENERAL TERMS AND CONDITIONS

April 2012

1. Scope

1.1 All legal transactions between the Principal and the Agent UPTIME ENGINEERING GMBH, Schönaugasse 7 / II, 8010 Graz, shall be subject to these General Terms and Conditions exclusively. The version valid at the time the Contract is concluded shall be applicable.

1.2 These General Terms and Conditions shall also apply to any future Contractual relationships even if these General Terms and Conditions are not expressly referred to in collateral Contracts.

1.3 Any conflicting General Terms and Conditions on the part of the Principal shall be invalid unless they have been explicitly accepted in writing by UPTIME ENGINEERING GMBH.

1.4 If any provision of these General Terms and Conditions is or becomes invalid, the other provisions and any Contracts concluded pursuant to these provisions shall not be affected thereby. The invalid provision shall be replaced by a provision which best corresponds to the intention and economic purpose of the invalid provision.

2. Scope of Consulting Assignments / Representation

2.1 The scope of each particular assignment shall be individually agreed by Contract.

2.2 UPTIME ENGINEERING GMBH shall be entitled to subcontract, in whole or in part, the services for which UPTIME ENGINEERING GMBH is responsible to third parties. Payment of said third parties shall be effected exclusively by UPTIME ENGINEERING GMBH. No Contractual relationship of any kind shall exist between the Principal and said third party.

2.3 During the validity of this Contract and for a period of one year after termination thereof, the Principal shall agree not to enter into any kind of business transactions with persons or organizations UPTIME ENGINEERING GMBH employs to perform its Contractual duties. In particular, the Principal shall not employ said persons or organizations to render consulting services the same or similar to those offered by UPTIME ENGINEERING GMBH.

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3. Principal's Obligation to Provide Information / Declaration of Completeness

3.1 The Principal shall ensure that during the performance of the consulting assignment, organizational conditions in the Principal's place of business allow the consulting process to proceed in a timely and undisturbed manner.

3.2 The Principal shall also inform UPTIME ENGINEERING GMBH in detail about correlated, previously conducted and/or currently active projects.

3.3 The Principal shall, in a timely manner and without special request on the part of UPTIME ENGINEERING GMBH, provide UPTIME ENGINEERING GMBH with all documents necessary to fulfill and perform the consulting assignment and shall inform UPTIME ENGINEERING GMBH of all activities and conditions pertinent to the performance of the consulting assignment. This includes all documents, activities and conditions that become known or available during the performance of the consulting assignment.

3.4 The Principal shall ensure that all employees as well as any employee representation provided by law, if established, are informed of UPTIME ENGINEERING GMBH's activities prior to the commencement of the assignment.

4. Maintenance of Independence

4.1 The Contracting parties shall be committed to mutual loyalty.

4.2 The Contracting parties shall be obligated to take all necessary measures to ensure that the independence of all persons working for UPTIME ENGINEERING GMBH and of any third parties employed by UPTIME ENGINEERING GMBH is not jeopardized. This includes that during the Contract period and for one year after termination thereof no employment offer shall be made by the Principal to said persons and no assignments on their own account shall be accepted by the Principal.

5. Reporting / Obligation to Report

5.1 UPTIME ENGINEERING GMBH shall be obligated to report to the Principal on the progress of services performed by persons working for it and any third parties employed by UPTIME ENGINEERING GMBH.





5.2 UPTIME ENGINEERING GMBH shall deliver the final report in a timely manner, i.e. depending on the type of assignment, two to four weeks after completion of the assignment.

5.3 UPTIME ENGINEERING GMBH shall not be bound by directives while performing the agreed service and shall be free to act at its discretion and under its own responsibility. UPTIME ENGINEERING GMBH shall not be required to work in a particular place or to keep particular working hours.

6. Protection of Intellectual Property

6.1 UPTIME ENGINEERING GMBH shall retain all copyrights to any work done by it and by persons working for UPTIME ENGINEERING GMBH and by third parties employed by it (including but not limited to tenders, reports, analyses, expert opinions, organization charts, programmes, performance descriptions, drafts, calculations, drawings, data media, etc.). During the Contract period and after termination thereof, the Principal may use these materials exclusively for the purposes described under the Contract.

Therefore, the Principal shall not be entitled to copy or distribute these materials without the explicit written consent of UPTIME ENGINEERING GMBH.

6.2 Any violation of this provision by the Principal shall entitle UPTIME ENGINEERING GMBH to prematurely terminate the Contract and to enforce other legal claims, in particular for restraint and/or damages.

7. Warranties

7.1 UPTIME ENGINEERING GMBH shall be entitled and obligated, regardless of fault, to correct any errors and/or inaccuracies in its work which have become known subsequently. UPTIME ENGINEERING GMBH shall immediately inform the Principal thereof.

7.2 This right of the Principal expires six months after completion of the respective service.





8. Liability / Damages

8.1 UPTIME ENGINEERING GMBH shall be liable to the Principal for damages - with the exception of personal injury - only to the extent that these are the result of serious fault (intention or gross negligence). Correspondingly, this also applies to damages resulting from third parties employed by UPTIME ENGINEERING GMBH.

8.2 Any claim for damages on the part of the Principal may only be enforced by law within six months after those entitled to assert a claim have gained knowledge of the damage and the liable party, but not later than three years after the incident upon which the claim is based.

8.3 The Principal shall furnish evidence of UPTIME ENGINEERING GMBH's fault.

8.4 If UPTIME ENGINEERING GMBH performs the required services with the help of third parties, any warranty claims and claims for damages which arise against the third party shall be passed on to the Principal. In this case, the Principal shall primarily refer to the third party.

9. Confidentiality / Data Protection

9.1 UPTIME ENGINEERING GMBH shall be obligated to maintain complete confidentiality concerning all business matters made known to it in the course of services performed, especially trade and company secrets and any other information concerning type and scope of business and practical activities of the Principal.

9.2 Furthermore, UPTIME ENGINEERING GMBH shall be obligated to maintain complete confidentiality towards third parties concerning the content of the work completed, as well as any information and conditions that contributed to the completion of the work, particularly concerning data on the Principal's clients.

9.3 UPTIME ENGINEERING GMBH shall not be obligated to maintain confidentiality towards any person working for it or representatives of UPTIME ENGINEERING GMBH. UPTIME ENGINEERING GMBH is required to obligate such persons to maintain complete confidentiality and shall be liable for any violation of confidentiality on their part in the same way as if UPTIME ENGINEERING GMBH had breached confidentiality.

9.4 The obligation to maintain confidentiality shall persist indefinitely even after termination of this Contract.





9.5 UPTIME ENGINEERING GMBH shall be entitled to use any personal data entrusted to UPTIME ENGINEERING GMBH for the purposes of the services performed. UPTIME ENGINEERING GMBH shall guarantee the Principal that all necessary measures will be taken, especially those regarding data protection laws, e.g. that declarations of consent are obtained from the persons involved.

10. Remuneration

10.1 After completion of the services agreed upon, UPTIME ENGINEERING GMBH shall receive remuneration agreed upon in advance between UPTIME ENGINEERING GMBH and the Principal. UPTIME ENGINEERING GMBH shall be entitled to render intermediate accounts and to demand payment on account as required by the progress of the work. Remuneration shall be due and payable immediately after rendering accounts by UPTIME ENGINEERING GMBH.

10.2 UPTIME ENGINEERING GMBH shall render accounts which entitle to deduct input tax and contain all elements required by law.

10.3 Any cash expenditures, expenses, travel expenses, etc. shall be reimbursed to UPTIME ENGINEERING GMBH by the Principal separately, upon submission of the appropriate receipts.

10.4 In the event that the work agreed upon is not completed due to reasons on the part of the Principal, or due to a premature termination of Contract UPTIME ENGINEERING GMBH for cause, UPTIME ENGINEERING GMBH shall be entitled to claim payment in full of the remuneration agreed upon in advance, less expenses not incurred. In the event that an hourly fee had been agreed upon, the Principal shall pay for the number of hours expected to be required for the entire Contracted assignment, less expenses not incurred. Expenses not incurred shall be calculated as a lump sum consisting of 30% of the fee required for those services that UPTIME ENGINEERING GMBH did not perform by the date of termination of the agreement.

10.5 In the event that intermediate invoices are not paid, UPTIME ENGINEERING GMBH shall be released from its commitment to provide further services. This shall not apply to any further claims resulting from default of payment.





11. Electronic Invoicing

11.1 The Principal agrees explicitly to accept invoices transmitted electronically by UPTIME ENGINEERING GMBH.

12. Duration of the Agreement

12.1 This Contract terminates with the completion of the project.

12.2 Apart from this, this Contract may be terminated for good cause by either party at any time without notice. Reasons for premature termination include the following:

- one party breaches major provisions of the Contract
- one party opens insolvency proceedings or the petition for bankruptcy is denied because of insufficient assets to cover expenses.

13. Final Provisions

13.1 The Contracting parties declare that all information contained herein is accurate and made in good conscience. They shall be mutually obligated to immediately inform the other party of any changes.

13.2 Modifications of and amendments to this Contract or these General Terms and Conditions shall be made in writing. This shall also apply to a waiver of this requirement of written form.

13.3 This Contract is governed by the substantive law of the Republic of Austria excluding the conflict-of-law rules of international private law. Place of fulfillment is the registered business establishment of UPTIME ENGINEERING GMBH. Jurisdiction in all disputes is the court in the place where UPTIME ENGINEERING GMBH is based.

