

# GENERAL TERMS AND CONDITIONS AS AT: 01.01.2010

## A. GENERAL STIPULATIONS

### 1. Scope of Application

**1.1** These General Terms and Conditions (GT&C) shall apply for the duration of the business relationship between FERCHAU and the Client in respect of all services to be rendered by FERCHAU, particularly services under a service agreement or under a contract for work, as well as services within the framework of employee transfer. They shall also apply to all future transactions with the Client.

**1.2** These GT&C apply exclusively. GT&C of the Client which conflict with or deviate from these GT&C are not recognised, unless FERCHAU has given its express written consent to their applicability.

### 2. Offers and Documents

**2.1** Offers from FERCHAU shall be subject to change without notice, until the order is finally confirmed.

**2.2** The Client's purchase order shall be a binding offer.

**2.3** FERCHAU shall fully retain rights of title and exploitation rights under copyright law in respect of cost estimates, drawings and other documents. These documents may only be made accessible to third parties with FERCHAU's prior written consent. The respective data and information contained in the documents shall not constitute guarantee undertakings. Guarantee undertakings shall, in any event, require FERCHAU's express written confirmation.

### 3. Prices/Payment Terms

**3.1** FERCHAU's price list, as amended, shall apply supplementarily. Prices may be agreed upon as a binding fixed price, as a recommended price, according to hourly outlay or according to a measurement. In principle, prices shall be subject to the addition of statutory value-added tax.

**3.2** If the scope of the service under the respective order is altered, particularly extended, by mutual agreement during the handling of the order, FERCHAU may demand a corresponding adjustment of the agreed prices and remunerations, particularly an increase therein. FERCHAU shall be entitled to temporarily discontinue implementing services under an order, until agreement is reached on a corresponding adjustment of the prices and remunerations, provided that FERCHAU has pointed this out to the Client in writing beforehand. Delays occurring as a result thereof shall not be to the detriment of FERCHAU. Unilateral change of the service under an order by the Client is excluded.

**3.3** Except where otherwise agreed upon, FERCHAU shall be entitled, according to reasonable discretion, to demand a reasonable advance and issue, in stages, sub-invoices for services already rendered under an order and/or in relation to performance progress.

**3.4** All invoices from FERCHAU shall be due and payable, strictly net cash, immediately upon receipt.

**3.5** The Client shall only be entitled to rights of set-off, if its counterclaims have been declared valid by a final and non-appealable court judgement, are undisputed or have been recognised by FERCHAU. The Client shall only be authorised to exercise a right of retention, in so far as its counterclaim is based on the same contractual relationship.

### 4. Fixed Dates/Duties of Co-operation

**4.1** Where no fixed dates are agreed upon, FERCHAU shall stipulate dates according to its own reasonable discretion.

**4.2** If the Client fails to comply with its duties of co-operation in due time, particularly in respect of the submission of essential documents, information and data, delays resulting therefrom shall be to its detriment.

**4.3** The Client shall be liable to FERCHAU that the services provided by it and the documents, information, data and items made available within the framework of co-operation are free from third-party property rights which preclude or impair use by FERCHAU in conformity with the contract.

**4.4** In the event of default, the Client shall be entitled to demand, for every full week of delay, lump-sum compensation for default at the rate of 0.5 % of the order value, but not exceeding 5 % of the order value. Further claims on the part of the Client to compensation for damages and reimbursement of expenditures due to default are excluded. The stipulations under section 6. apply accordingly to exemptions from this exclusion of liability.

**4.5** In the event of force majeure, the performance period shall be extended by the duration of the hindrance and a reasonable start-up period. If performance or implementation of the service becomes impossible or unreasonable due to the said circumstances, FERCHAU shall be released from the obligation to render the service.

### 5. Confidentiality

**5.1** The Client and FERCHAU shall be mutually obliged to treat with strict confidentiality all information concerning the business and/or operational affairs of the respective other Party and use such information merely for the purpose intended under the respective order placed. Within the framework of this intended purpose, FERCHAU shall be entitled to pass on the information to third parties.

**5.2** The Client and FERCHAU mutually undertake to refrain from enticing away employees, or attempting to entice away employees, of the respective other Party.

### 6. Liability/Compensation for Damages

**6.1** FERCHAU shall, regardless of the legal basis, pay compensation for damages exclusively in accordance with the principles set forth below.

**6.2** In cases of intent or gross negligence, FERCHAU shall be fully liable for damages ensuing from a breach of the duty of care.

**6.3** In cases of breach of material contractual duties due to ordinary negligence, FERCHAU shall be liable for damages typical of this type of contract and foreseeable at the time of the conclusion of the contract. Additionally, liability shall be limited to 5 million EUR per violation in the case of property damages and pecuniary damages. In the case of damages negligently caused due to the same violations, liability shall be limited to 5 million EUR in total, even if the violations are committed over several years.

**6.4** Liability to compensate for damages beyond the foregoing is excluded, regardless of the legal nature of the claim asserted. In particular, therefore, FERCHAU shall not be liable for unforeseeable damages, consequential damages caused by a defect, other indirect damages or damages arising from loss of profit.

**6.5** Claims of the Client to compensation for damages shall be subject to a 24-month limitation period.

**6.6** The restrictions and limitations under sections 6.3, 6.4 and 6.5 do not apply to injury to life, body or health, to liability arising from guarantees given in writing or to liability under other mandatory statutory stipulations.

**6.7** In so far as FERCHAU's CAD systems are used within the framework of an order or are rented out to the Client, the Client shall be liable for all direct and indirect damages occurring due to improper handling of the CAD systems, as well as for their loss or destruction and for any and all damage to the CAD systems used within the framework of the order.

### 7. Rights of Use

**7.1** For all works and work results developed by FERCHAU on behalf of the Client, FERCHAU shall grant the Client, upon full payment, the exclusive and permanent right to use them to the extent described in the respective order.

**7.2** If employees of FERCHAU make any employee inventions or suggestions for improvement in the course of carrying out individual orders, FERCHAU shall be obliged, at the Client's request, to lay claim to the invention, with or without limitation, and transfer the rights resulting therefrom to the Client concurrently against indemnification against any and all financial obligations which result, in relation to FERCHAU's employees, from an employee invention. The Employee Inventions Act [Arbeitnehmererfindungsgesetz] applies accordingly.

## B. EMPLOYEE TRANSFER CONTRACTS

### 8. Special Terms and Conditions for Employee Transfer Contracts

The following terms and conditions apply supplementarily to employee transfer contracts between the Client and FERCHAU:

**8.1** FERCHAU shall be responsible that the employee seconded is generally suitable for the job agreed upon, has been carefully selected and has been checked in respect of essential qualifications. A duty of scrutiny over and above the foregoing shall not apply.

**8.2** FERCHAU itself shall not owe to the Client performance of work or any particular success in respect of the work. The employee seconded shall be neither an authorised representative of FERCHAU, an assistant of FERCHAU with employee or independent contractor status for the purposes of vicarious liability in contract nor an assistant of FERCHAU with employee status for the purposes of vicarious liability in tort. The employee seconded shall not be entitled to collect payment or issue or take receipt of contractual declarations with effect for or against FERCHAU.

**8.3** The Client shall be obliged to introduce the seconded employee to the job and instruct and supervise him during the work. Furthermore, the Client shall ensure that all statutory, official and other regulations are complied with. In particular, the Client shall be responsible for compliance with the duties ensuing from section 618 of the German Civil Code [BGB] and section 11 (6) of the Employee Transfer Act [AÜG] (law on health and safety at work). If health and safety stipulations are not complied with, the employee seconded shall be entitled to refuse to work, without FERCHAU losing its entitlement to the contractual remuneration.

**8.4** FERCHAU shall not be liable for the type, scope, execution or quality of the work performed by the seconded employee for the Client. In this connection, the Client indemnifies FERCHAU against all third-party claims which may result to FERCHAU in connection with execution of the activities assigned to the seconded employee and/or are asserted in relation to FERCHAU.

**8.5** If there is a strike at the Client's business establishment, FERCHAU shall not be obliged to provide labour for leasing.

**8.6** FERCHAU's remuneration shall be calculated on the basis of the contractually agreed hourly rate plus value-added tax at the respective valid rate. The following surcharges shall apply in this respect:

A 25 % surcharge shall be levied for every further extra hour of work. A 50 % surcharge shall be levied for hours of work on a Saturday, a 70 % surcharge shall be levied for hours of work on a Sunday and a 100 % surcharge shall be levied for hours of work on a public holiday. If work is carried out under radiation protection conditions, the regular

hourly rate shall rise by 5 %. Regular hours are deemed to be the hours which are likewise deemed to be regular hours within the working hours internally laid down at the Lessee, in so far as they are within the limits laid down in the collective agreement. Unless otherwise agreed in an individual contract, 40 hours per week are considered to be the agreed basis. All job-related travel costs incurring due to the Client's demands shall be calculated separately. All job-related travel times are classified as regular working hours.

**8.7** If the Client concludes an employment contract with the seconded employee whilst the employee is under lease or within less than 3 months after discontinuation of the lease and if the employment contract relates to the seconded employee's abilities and activities specified in the leasing contract, this shall be deemed to be personnel placement. In each individual case, FERCHAU shall invoice to the Client an appropriate fee, plus statutory value-added tax.

**8.8** Without prejudice to the right to terminate an employee transfer contract with immediate effect, employee transfer contracts may be terminated by either Party to the contract with 14 days' notice effective end of month.

## C. CONTRACTS FOR WORK

### 9. Special Terms and Conditions for Contracts for Work

The following special terms and conditions shall apply supplementarily in the event that contracts for work are concluded between the Client and FERCHAU.

**9.1** In principle, the order shall be carried out in FERCHAU's Technical offices. Full or partial execution at the Client's business establishment may be agreed upon, if work documents cannot be handed over and/or if this is necessary for continuous specialised tasks and/or technical co-ordination.

**9.2** The right to issue directives to its assistants with employee or independent contractor status and to its employees, particularly induction, instructing and supervision, shall fall exclusively to FERCHAU, even if the order is carried out at the Client's business establishment. The Client's right to issue order-related instructions on execution relating to the result of the work in the individual case shall remain unaffected by this.

**9.3** The progress of performance shall be confirmed by the Client by means of signing the project progress reports submitted to it. Over and above the foregoing, the following stipulations apply to acceptance of services:

**9.3.1** Upon successful execution of a function test, but no later than 2 weeks after hand-over of the result of the order, the Client shall declare acceptance in writing without undue delay. The function test shall be deemed successfully executed, if the result of the order fulfils in all material points the requirements provided for in the contract.

**9.3.2** The Client shall be obliged to notify FERCHAU in writing without undue delay, if it becomes aware of defects during the function test. In the event of material defects in performance, FERCHAU shall, excluding claims over and above this, first be given the opportunity to rectify the defects within a reasonable period.

**9.3.3** If, despite its duty to accept, the Client fails to declare acceptance without undue delay, FERCHAU may set the Client in writing a 2-week time limit for submission of this declaration. In so far as FERCHAU has pointed this out when setting the time limit in writing, acceptance shall be deemed effected, unless, within a 1-week period, the Client specifies in writing the reasons for refusal of acceptance. Furthermore, acceptance shall be deemed effected, if and when the Client begins to productively use the result of the order.

**9.4** FERCHAU shall provide warranty for any and all defects in the results of the order initially by rectification or re-performance, at its own option. If rectification/re-performance fails despite at least two attempts at supplementary performance, the Client may demand abatement or rescission as well as compensation for damages, subject to the limitation of liability as per section 6. In the case of only minor defects, the Client shall not be entitled to any right of rescission. The warranty period for defects not caused by intent is 24 months from commencement of the respective statutory limitation period.

## D. SERVICE AGREEMENTS

### 10. Special Terms and Conditions for Service Agreements

The following special terms and conditions apply supplementarily to service agreements between Client and FERCHAU:

Without prejudice to the right to terminate a service agreement with immediate effect, service agreements may be terminated by either Party to the contract with 14 days' notice effective end of month.

## E. CLOSING STIPULATIONS

### 11. Place of Performance/Place of Jurisdiction/Applicable Law

**11.1** The place of performance for FERCHAU's services under the order is FERCHAU's respective place of establishment or the location of FERCHAU's Technical office where the services under the order are rendered. The place of performance for the Client's payment obligation is the location of FERCHAU's registered office.

**11.2** The place of jurisdiction is the location of FERCHAU's registered office. However, FERCHAU shall be entitled to also bring an action against the Client at any other statutory place of jurisdiction.

**11.3** The contract is subject to the law of the Federal Republic of Germany, excluding the rules of private international law.