

CONVERTING CHALLENGES INTO SOLUTIONS

GINZINGER
electronic systems

GENERAL TERMS AND CONDITIONS
OF GINZINGER ELECTRONIC SYSTEMS GMBH FOR
THE PERFORMANCE OF DEVELOPMENT SERVICES

JUNE 2017

GENERAL TERMS AND CONDITIONS FOR THE PERFORMANCE OF DEVELOPMENT SERVICES

1 PREAMBLE

1.1 Ginzinger electronic systems GmbH of Austria, 4952 Weng im Innkreis, Gewerbegebiet Pirath 16, FN 364958d, hereinafter also referred to as Contractor, is a specialised company in the area of electronics, hardware and software development, which conducts innovative research and development works on a scientific technical level. The Contractor performs development works for the Client in the latter's business areas. The Contractor and the Client are independent companies and remain so at all future times regardless of this cooperation.

1.2 These General Terms and Conditions (GTC) set out the framework for the award and performance of development services carried out between the Client and the Contractor and at the same time serve as the basis for tenders, development contracts and order confirmations.

1.3 The Contractor shall submit to the Client a written tender for the specific development services. The Contractor shall issue an order confirmation upon being awarded a development contract by the Client. This entire process is subject to the present GTC.

2 PERFORMANCE OF THE DEVELOPMENT SERVICES

2.1 The development contract shall be performed on the exclusive basis of the performance specifications in the respective version that has been versioned by the Contractor.

2.2 The Contractor and the Client shall each nominate a contact person for commercial issues (responsible for contractual matters, costs and billing) as well as a contact person for technical issues (technical questions and project management) and shall exchange the names of these persons among themselves. The parties shall immediately notify one another in writing of any changes.

2.3 The contact persons for technical issues will determine in writing a schedule for each individual development contract. The parties shall immediately notify one another in writing of any changes.

2.4 The Client acknowledges that documents, objects and technical aids provided by the Client to the Contractor may be modified, damaged or destroyed during development works. The Contractor shall not be liable for such modifications, damages or destroyed property.

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2.5 Samples provided by the Contractor to the Client in the course of performing the development services are not quality assured series products. They may be untested and may have been modified manually. They do not necessarily meet the required specifications and are not suitable for use in the Client's series products. The provisions related to warranty and liability do not apply to such samples.

2.6 The Contractor shall perform the development services at its business premises.

2.7 Requests for changes to the originally contracted scope of performances (costs, dates, quality) shall be submitted by the Contractor to the Client in writing. The changes will be implemented upon receipt of an order.

2.8 The parties shall jointly prepare written specifications for the scope of documentation of the result of the development services.

2.9 The Contractor is permitted to subcontract partial performance of the ordered development services to third parties.

3 SCOPE OF USE

3.1 Use entitles the Client to carry out, apply, analyse, adapt to its own requirements and pass on the development services, even after modification thereof. The parties expressly agree that this also applies to development services that are subject to the Contractor's copyright.

4 ACCEPTANCE AND COMPENSATION

4.1 Acceptance of the development result: The Contractor shall notify the Client upon contractually compliant completion of the development services. The result shall be deemed accepted by the Client and achieved by the Contractor and all services of the Contractor shall be deemed properly performed after the expiry of four weeks from receipt of such notification of completion. An earlier in-fact acceptance by the Client shall be recorded in writing. Any services to be rendered after this period shall be considered support and/or maintenance services. They do not form part of the development services and must hence be provided for in separate agreements.

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4.2 Acceptance of other performances and services: The Contractor shall notify the Client of their contractually compliant completion. Acceptance by the Client shall be recorded in writing. In the event the Client fails to accept the performance/service despite the Contractor's written request to do so, such performance/service shall be deemed accepted by the Client after the expiry of four weeks from the written request.

4.3 Compensation: The costs incurred in relation to the deliverable development services, costs of documentation, reproduction, postage and freight, support, customer-specific (order) development, maintenance, consultancy, training and so forth shall in any case be reasonably compensated. Usage and/or license fees will be specified separately.

4.4 Invoices are issued upon acceptance of the development result and of any other performances and/or services.

5 INDUSTRIAL PROPERTY RIGHTS

5.1 Retention of title in industrial property rights: Industrial property rights in the results of the contracted development services shall be transferred to the Client and/or usage and usufructuary rights shall only be granted to the Client upon full payment of the price agreed for the performance of the development services.

5.2 Subsequent use: The Contractor is granted a right for free subsequent use of the development result. The Client further expressly consents to the Contractor being entitled to use codes and hardware components generated or used as part of the contractual development services in other projects, in which the Client is not involved.

5.3 Any deviating stipulations relating to industrial property rights shall be set out in a separate agreement.

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6 WARRANTY / COMPENSATION

6.1 The Contractor warrants that it will use scientific diligence and observe the accepted technical rules.

6.2 In light of the continuous and rapid technical progress, the warranty period shall be limited to 6 months from acceptance or handover. The warranty period for subsequent improvements is 4 weeks. Warranty claims become time-barred after 6 months from a notice of defects lodged in due time.

6.3 The Contractor shall be notified immediately or within 8 days from the commencement of the warranty period at the latest of any recognisable defects or missing scopes, or in the case of concealed defects within 8 days from their detection, by way of registered letter with immediate suspension of any work. Failure to do so will result in the performance being deemed accepted unreservedly and as having been rendered in an orderly and defect-free fashion.

6.4 In cases where devices, materials or other objects supplied by a third party (third party products) have been used in research or development works and have caused a defect in the research results and development results handed over to the Client, the Contractor shall assign any claims against third parties to the Client if the latter so wishes.

6.5 The liability of the Contractor, its legal representatives and vicarious agents for breach of contract or based on tort is limited to cases of gross negligence.

6.6 Claims for compensation in the meaning of Article 12 PHG (Product Liability Act) are excluded, unless the claimant provides substantiated evidence that the Contractor is at fault and the damages were caused by gross negligence.

6.7 The Client is responsible for evaluating whether its use will infringe upon industrial property rights of any third party. The Client shall exempt the Contractor from claims for damages, enrichment and all other claims, to the extent such claims result from project-related research and development works and have not been caused by the Contractor's willful intent or gross negligence.

7 DUTY OF CONFIDENTIALITY

7.1 The parties shall enter into a separate non-disclosure agreement.

8 TERM AND TERMINATION

8.1 The Client and the Contractor enter into their contractual relationship for an indefinite term. It ends by termination at the end of a quarter by the Client or the Contractor giving 1 month notice by way of registered letter, with the date of the postmark determining whether such notice has been given within due time.

8.2 The Client or the Contractor may at any time prematurely terminate the contractual relationship for good cause without observing a notice period, in particular on the grounds of a party's failure to satisfy a material contractual obligation within 30 days of being served with a written notice, or in the event of insolvency proceedings being commenced against the assets of one of the parties.

8.3 If, during the course of the project, it becomes apparent that the Contractor is unable to render the development services in a timely fashion due to reasons that are technically outside of its sphere of influence, or if the proper execution cannot be warranted for inevitable organisational or staff-related reasons, the parties shall consult on the reasons and enter into a separate agreement concerning the continuation of the project. In the event the parties are unable to come to an agreement, the Client is entitled to terminate the contractual relationship at the end of each calendar month by giving one month notice.

8.4 In the event of a termination, the Contractor shall surrender the currently achieved development result to the Client as soon as possible. Point 4 applies accordingly. The Client must compensate the Contractor for its costs incurred up to the effective termination date, with such payment also including profits in an amount that corresponds to the progress of the works.

8.5 Cancellation of a development contract: A development contract that has already commenced may be cancelled by the Client at any time. All costs incurred prior to and as a result of such cancellation of a development contract shall be billable.

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9 ORDER OF PRIORITY

9.1 In the event of a dispute between the Client and the Contractor, the following order of priority shall apply:

1. Order confirmation
2. Tender
3. Performance specifications
4. Requirement/Functional specifications
5. Non-disclosure agreement
6. Agreement concerning industrial property rights
7. GTC of the Contractor
8. GTC of the Client
9. Discretionary Austrian contract law

10 MISCELLANEOUS

10.1 The respective other party shall promptly be informed of any change of address. Until such time, service of process shall be deemed effected at the address advised most recently.

10.2 Unless agreed otherwise, the Contractor reserves the right to apply for a research grant in relation to the contracted development services.

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10.3 The parties have not entered into oral collateral agreements. Modifications and amendments to these GTC are only effective if made in writing. The written form is also required in regards to the waiving of the requirement of the written form.

10.4 In the event of individual provisions being or becoming ineffective, or in the case of contractual gaps (lacunae), the effectiveness of the remaining provisions remains unaffected. The ineffective provision shall be replaced by such lawful and effective provision as comes closest to the original intention of the parties. The same applies in the case of a contractual gap (lacunae).

10.5 Austrian law is to be applied exclusively. This also applies to questions in regards to the conclusion of a contract and the legal consequences of the aftereffects. Jurisdiction is held by the factual and local competent court responsible for 4952 Weng, Austria.

The General Terms and Conditions of Supply of the „Fachverband der Elektro- und Elektronikindustrie Österreichs“ (Austrian Association for the Electrical and Electronics Industries) apply supplementary and subordinately.