

General Terms and Conditions

1. General

- 1.1 These General Terms and Conditions shall apply without exception to all current and future supplies and services as well as offers and payments from and to incubed IT GmbH even if no reference is explicitly made thereto.
- 1.2 Any other different general terms and conditions shall only apply if incubed IT expressly accepts them in writing.
- 1.3 These General Terms and Conditions by incubed IT are deemed accepted unless the CUSTOMER disagrees with them at the earliest opportunity possible.

2. Offers

- 2.1 An offer made by incubed IT is binding, when it states for how long it will remain open for acceptance. Price offers can vary especially as a result due to fluctuations in exchange rates and commodity prices (e.g. oil and steel market) as well as in the case of technical adaptations and may be adapted accordingly by incubed IT.
- 2.2 Details about weight, dimensions, price, performance etc. stated, including without limitation on the internet, in catalogues, on diagrams, in presentations or in price lists shall be non-binding, unless the offer made by incubed IT refers explicitly on it.

3. Conclusion of contract

- 3.1 The contract shall be deemed concluded when incubed IT receives an order by the CUSTOMER based on incubed IT's offer. Any kind of assurances, collateral agreements, supplements and modification of any type shall be valid only if confirmed in writing by the respective other party.
- 3.2 In case of inconsistencies, incubed IT's offer including its annexes shall take highest priority; followed by the present General Terms and Conditions.

4. Projects and documents/services

- 4.1 Both parties of the contract may rely on the correctness and completeness of the documents and information provided to them by the other party. It is agreed that the CUSTOMER transfers and provide all necessary data to incubed IT. Moreover, it is agreed that the CUSTOMER shall make available to incubed IT any applicable country-specific statutory provisions, standards as well as implementation guidelines, if needed, and shall inform incubed IT about their changes during the term of the contract.
- 4.2 If the CUSTOMER informs incubed IT about desired revisions or changes after receipt of documents and/or during project implementation, incubed IT shall analyse them for technical feasibility and feasibility in terms of costs and time and make a corresponding offer, if necessary.
- 4.3 Any final planning documents shall be valid only if authorized by both parties of the contract.
- 4.4 The customer shall obtain any necessary official permits in due time and at CUSTOMER'S costs. incubed IT shall and will obtain permits if this has explicitly been identified in advance as incubed IT's obligation. Costs and risks of issuing those permits shall always be borne by the relevant responsible party.
- 4.5 incubed IT is entitled to have the contractual services (fully or parts of them) performed by Subcontractors commissioned by incubed IT.

5. Delivery or performance periods/delays

- 5.1 All binding delivery and/or performance dates must be agreed on expressly as such. Agreed deadlines are only valid if the final planning documents are forwarded in time and authorized in due time by both parties of the contract. If delivery or performance cannot be fulfilled in due time the CUSTOMER has not the right to withdraw or any compensation claims. Any kind of adverse effects of such delays shall be borne by the party responsible for the delay.
- 5.2 When delays occur the parties of the contract shall inform each other immediately and in writing form, specifying the reasons for the delay. In cases of delays any deadlines shall be reasonable extended by incubed IT. If the CUSTOMER delays the execution of the project, additional costs may arise that incubed IT can charge for correspondingly. The CUSTOMER is responsible for and shall ensure that all construction activities related to the building that are necessary for the proper erection of the system have been concluded (as stated in the offer and/or in the contract). When these conditions are not achieved at that time, the delay will be coordinated together from both parties of the contract. Furthermore, incubed IT reserves the right to charge any additional costs because of the delay.
- 5.3 In case of not accepting the delivered good on the agreed date by the CUSTOMER, the CUSTOMER shall pay the relevant part of the purchase price due as delivery had taken place. In such cases incubed IT shall ensure that the delivery item is stored at the costs and risk of the CUSTOMER.

6. Price/payment conditions/transfer of ownership

- 6.1 Payment conditions according to the offer must be made without deduction. Any additional costs especially but without limitation such as alteration of works, arising after the contract was entered due to amendments to relevant laws, regulations or directives or any other changes within the regulatory approval after the contract was closed will be refunded to incubed IT. The right to price changes due to currency fluctuations shall be preserved.
- 6.2 The CUSTOMER may only offset claims that have been finally adjudicated or accepted in writing form.
- 6.3 If the CUSTOMER is in default with an agreed payment, incubed IT is entitled to charge default interest. The statutory interest rate is deemed agreed. Furthermore, in the case of late payment incubed IT is entitled to withhold performance of its own obligations until receipt of the outstanding payments.

7. Ownership/transfer of risk

- 7.1 Until the full payment of the system by the CUSTOMER, all supplies remain to property of incubed IT.
- 7.2 The parts of the systems shall be delivered according to the latest edition of the INCOTERMS and as defined in the latest offer, in absence of any other agreement, DAP (place of delivery) inside of the EU and EXW outside of the EU unloaded. If dispatch is delayed by circumstances for which the CUSTOMER is responsible, the risk shall pass to the CUSTOMER from the date of readiness of dispatch and the CUSTOMER shall bear all related additional costs.
- 7.3 The CUSTOMER abandon after ordering the right of withdraw relating to all delivery items as well as all replacement parts.

8. Use of software

- 8.1 After ordering the CUSTOMER receives a license to use the software. The ordered version of the software is licensed, and the license presents a simple right of usage (one license per Shuttle).
- 8.2 The CUSTOMER shall be granted the non-exclusive, non-transferable right to use the software (including PLC) - related to and solely regarding the system in question - for an unlimited period. The CUSTOMER is not permitted to, including, without limitation, copy, distribute, edit, modify, decompile, rent out, lease, sell or publish the software or otherwise make

- it available for use by third parties, either for consideration or gratuitously, or to grant any sublicenses or other rights of use.
- 8.3 incubed IT remains the owner of the copyrights and of all other intellectual property rights as well as the owner of the software. If the CUSTOMER infringes contractually agreed rights of use, incubed IT is entitled to withdraw these rights. Further statutory claims shall remain unaffected.
 - 8.4 incubed IT warrants that the contractual use of the software by the CUSTOMER does not infringe any rights of third parties.
 - 8.5 In case that the CUSTOMER does not pay the license in time, the right of usage forfeits. incubed IT will maybe take up technical steps to deactivate the use of the software.
 - 8.6 incubed IT does not assume, so far as it is legally permitted, any liability or warranty concerning errors of the software or any other errors or damages, which may reveal out of the usage or the inability of use concerning the software. Furthermore, this also excludes any compensation concerning lost profit, any compensation concerning the interruption of business processes, any compensation concerning any loss of data as well as no compensation in any case of material or non-material losses and their consequential damages. In any case, incubed IT is only liable for the amount limited, the CUSTOMER did perform out of the contractual relationship.
 - 8.7 incubed IT reserves the right to name the customer, integrator and/or end user of the software in all media as reference customers and to refer to their websites. Furthermore, incubed IT may publicly reproduce or refer to the services rendered and purposes of use of the software for demonstration purposes, unless the Customer can assert a conflicting legitimate interest.
- 9.
- 9.1 The acceptance or takeover of the system by the CUSTOMER is conducted through proof of the contractually agreed requirements. The parties shall prepare and sign certificates for all stages of the acceptance. The tests designed to provide the evidence for the contractually agreed requirements shall take place within the period agreed on between the parties, starting with incubed IT Hand-Over of the system to the CUSTOMER and ending upon the Take-Over of the system by the CUSTOMER for testing.
 - 9.2 Minor defects shall not preclude the Take-Over of the system by the CUSTOMER. These defects are recorded in writing, deadlines for the remedying are mutually set and their remedying is processed correspondingly by incubed IT.
 - 9.3 It is the CUSTOMER's own responsibility to carry out the tests, in cooperation with incubed IT, and the CUSTOMER will do the preparation and follow-up processing of test and must make available all necessary operating resources and operating media as well as trained staff at no cost and in sufficient quantity and quality.
 - 9.4 If the CUSTOMER does not carry out the tests by the agreed date for its own reasons for which incubed IT is not responsible, or does not comply with the obligations stipulated under 9.3, incubed IT shall have the possibility to obtain and document reasonable evidence of the contractually agreed requirements on its own and without the presence of the CUSTOMER but at the CUSTOMER's cost.
 - 9.5 If the supplies and services of incubed IT meet the contractually agreed requirements, the Take-Over of the system by the CUSTOMER shall be deemed to have taken effect.
 - 9.6 If the CUSTOMER does not or cannot take-over or accept the system by the agreed date for its own reasons for which incubed IT is not responsible; the system is deemed to have been taken-over/accepted at the latest 14 days after the agreed date.
10. **Warranty for defects / impairment of the performance of an obligation**
- 10.1 incubed IT is responsible for the complete and correct provision of the contractually agreed requirements for supplies and services at the time of the Take-Over of the system, but not for satisfying any additional requirements. Wear and tear parts are excluded from the warranty.
 - 10.2 incubed IT shall not be liable for defects if the CUSTOMER uses or modifies the system contrary to the contractual requirements or if the CUSTOMER does not, including, without limitation, monitor, clean and maintain the system with due diligence. Furthermore, the warranty obligation does not extend to defects, damage or failures resulting from customary wear and tear, incorrect handling or handling not in accordance with the intended use, excessive use, the utilization of inappropriate operating resources, or in any other ways not intended, at the instigation of the CUSTOMER or third parties attributed to the CUSTOMER.
 - 10.3 The warranty is excluded unless the CUSTOMER notifies incubed IT in writing of any identified or identifiable defects immediately but at the latest 3 days after a defect has become identifiable and describes the defect in as much detail and as comprehensively as possible. If incubed IT warrants for a defect, incubed IT shall, within a reasonable period and at its discretion, remedy the defect either on site through repair, by replacing the defective part or by mending the part sent back by the CUSTOMER at incubed IT's premises. incubed IT shall only dismount and remount the defective or mended part if this requires special know-how and/or if the CUSTOMER is not trained to carry out activities of this kind. Should the first attempt to remedy the defect fail, incubed IT shall be granted a reasonable extension of time.
 - 10.4 The warranty period is 12 months and shall start at the Take-Over of the system by the CUSTOMER. For products not manufactured by incubed IT, the CUSTOMER is granted the relevant warranty period of the supplier. If it is necessary, the shuttle is shipped to Hart bei Graz in order to replace defect parts. Transport costs are borne together. One direction of the transport costs are covered by incubed IT and the other direction of the transport costs are covered by the CUSTOMER. The warranty for parts replaced or repaired within the warranty period shall end 6 months after replacement or repair, but not earlier than at the time of expiry of the warranty for the entire system. The warranty period for spare parts shall start upon delivery on site.
 - 10.5 If it is found that incubed IT was not responsible for the defect, the CUSTOMER shall reimburse incubed IT for the costs incurred by the search for defects and/or remedy of defects.
 - 10.6 The CUSTOMER's right to avoidance for reasons of mistake is excluded.
11. **Liability**
- 11.1 Incubed IT shall be liable to the CUSTOMER for personal injury (especially injuries to life, limb and health), as well as in case of intent, fraudulent concealment of defects and in the event of claims under the Product Liability Act (Produkthaftungsgesetz) in accordance with statutory provisions.
 - 11.2 For damages to property and any financial losses derived from personal injury or damage to property that incubed IT causes through negligence in the execution and implementation of its supplies and services, the liability of incubed IT shall be limited to 25% of the net contract value for each damaging event, and in total limited to a maximum of 50% of the net contract value.
 - 11.3 For any financial losses not derived from personal injury or damages to property, and for loss of profit, loss of production, indirect damages as well as damages resulting from third-party claims, incubed IT shall only be liable, to the extent permitted by law, in case of intent. Further claims for damages shall be excluded.

Reserving the points 11.1 – 11.3 is the liability of incubed IT out of this contract limited to 20% of each contract value (excluding hardware), maximum limited to 1.000.000,00 Euro.

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 - 11.5 Any claims for damages by the CUSTOMER shall expire within six months of the discovery of the damage and the damaging party. The CUSTOMER must prove any fault on the part of incubed IT.
 - 11.6 When using the range of supplies and services provided by incubed IT, the CUSTOMER shall observe all relevant regulations, technical provisions as well as operating and user instructions and shall employ only authorized and adequately trained personnel. incubed IT cannot be made responsible for damage that was caused by operating errors on the part of the CUSTOMER, non-compliance with operating and user instructions, the omission of the maintenance work required from the CUSTOMER, any other breaches of duty of care on the part of the CUSTOMER or the impairment of the CUSTOMER's or incubed IT's software as a result of computer viruses.
 - 11.7 The CUSTOMER acknowledges that the systems may only be operated and maintained by trained personnel. The introductory training is carried out by incubed IT and its scope is defined by incubed IT. The CUSTOMER is responsible for the training of further personnel and for compliance with the standards taught in the training.
 - 11.8 If the CUSTOMER uses the system for commercial purposes before Take-Over and/or without incubed IT's consent, incubed IT shall assume no liability whatsoever for the functioning of the system or any other consequences.
- 12. Termination clause**
- 12.1 If one of the parties to the contract commits a material breach of substantial contractual obligations and, despite a written and specific notice to remedy specifying a reasonable period, allows the period to lapse, the respective other party may either insist on performance of the contract and withhold its own performance during this time or rescind the contract after having specified another period, on pain of termination. In addition, each party to the contract can terminate the contractual relationship if insolvency proceedings have been opened regarding the assets of the respective other party or if a petition for the opening of such proceedings is dismissed due to a lack of assets to cover the costs.
- 13. Force majeure**
- 13.1 Both parties are entitled to suspend the fulfilment of their contractual obligations to the extent to which this fulfilment is rendered impossible or is inappropriately impeded by circumstances beyond the control of the respective party or its sub-suppliers. The party concerned shall immediately make a statement as to the start and cause and, as far as possible, the consequences to be expected and the estimated duration of the delay. Dates and time limits shall be extended by at least the period of the delay. After the impediment ceases to exist, the parties to the contract shall agree on new dates.
 - 13.2 If the suspension of the contract persists over a period of more than six months, each party to the contract may cancel the contract. The services rendered by incubed IT up to this date shall be charged for according to the cost incurred so far. Other than that, neither party shall be liable to the other party for the consequences of impairments to the fulfilment of the contract arising from force-majeure.
- 14. Confidentiality / data protection**
- 14.1 The parties to the contract undertake to treat as confidential all circumstances and information obtained by or through the relevant other party to the contract in the context of this contract, including, without limitation, all information customarily deemed to be trade or business secrets.
 - 14.2 To the extent permitted by law, the parties to the contract shall also commit their employees and other third parties commissioned regarding this contract to fulfil this obligation.
 - 14.3 In the case of breaches, it shall be expressly agreed that the breaching party shall reimburse the other party for all damage that has actually occurred and been proven.
 - 14.4 Both parties to the contract shall use personal data that were made accessible to them within the context of their contractual relationship for the sole purpose of fulfilling their respective contractual obligations and protect them against access and knowledge by third parties. Both parties to the contract undertake to comply with all relevant provisions concerning data protection (including, without limitation, the Data Protection Directive of the European Union 95/46/EG) and shall also oblige their business partners to comply with this obligation.
- 15. Applicable law / place of jurisdiction**
- 15.1 This contract is exclusively governed by the law of the Republic of Austria without regard to conflict-of-laws principles of private international law and the UN Sales Convention (CISG).
 - 15.2 If disputes arise relating to or as a result of this contract, the parties to the contract shall strive to achieve an amicable settlement within 30 days from the beginning of informal negotiations.
 - 15.3 The exclusive place of jurisdiction for any dispute arising under, out of or in connection with this contract (or subsequent amendments thereof), including without limitation, disputes regarding its existence, validity, interpretation, performance, breach or termination, shall be the city of Graz, Austria.
- 16. Severability / general provisions**
- 16.1 If individual provisions of these General Terms and Conditions are or become invalid or unenforceable in whole or in part or if provisions are lacking, the remaining provisions shall remain valid. The invalid or unenforceable provisions shall be replaced by valid provisions that best meet the commercial purposes intended by the parties through the ineffective provisions.
 - 16.2 The rights and obligations listed in this contract shall apply to all legal successors of the parties. The parties shall inform each other about legal succession in due time. Without the prior written consent by incubed IT, the CUSTOMER shall not have the right to assign individual claims arising from this contract to third parties.