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General terms and conditions of frootion GmbH.

The General Terms and Conditions in this form
shall be applicable from October 2023.

1. SCOPE OF VALIDITY

1.1. The IT service provider frootion gmbh referred to herein-after as frootion shall provide its services exclusively on the basis of the present General Terms and Conditions. This shall also apply to all future business relations, even if mention is not explicit made of this.

1.2. Subsidiary agreements, caveats, amendments or additions to these General Terms and Conditions must be made in writing in order to be valid - this also applies to the decision to dispense with the requirement for the written form.

1.3. Any terms and conditions of the contractual partner which contradict or differ from these terms and conditions, even if we are aware of them, must be explicit recognized in writing by frootion in order to become effective.

2. CONCLUSION OF CONTRACT

2.1. The basis for concluding a contract shall be the respective quotation from frootion and the customer's order, in which the scope of services and the remuneration are specified. Quotations from frootion remain subject to change and non-binding.

2.2. If the customer issues an order, then he shall be bound by this two weeks after it is received by frootion. The contract shall come in to existence through frootion accepting the order. Acceptance must take place in writing (e.g. by means of an order confirmation) unless frootion makes it known unambiguous that it accepts the order (e.g. by undertaking activities on the basis of the order).

2.3. Minor meanderings of product informations shall be automatically applied if they are not unacceptable from customer's side.

3. SCOPE OF DELIVERY AND SERVICES, ORDER PROCESSING AND THE CUSTOMER'S OBLIGATIONS TO COOPERATE

3.1. The scope of the services to be provided shall derive from the customer's order and the specification of services, or from the contract details. Subsequent amendments to the contents of the services must be made in writing form.

3.2. The customer will immediately provide frootion with all the information and documents which are necessary for providing the service. The customer will inform frootion of all events which are of significance for carrying out the order, even if these circumstances only become known when the order is already being carried out. If the customer supplies frootion with information which is incorrect, incomplete or subsequently changes and as a result work has to be repeated or delayed by frootion, the customer shall bear any costs which arise.

3.3. The customer is further obliged to check all documents made available for undertaking the order (licenses, access etc.) for any existing copyright, trademark rights or any other third party rights. frootion shall not be liable for any breach of such rights. If any claim is made against frootion on account of any such breach of rights, then the customer shall indemnify frootion and hold it harmless - for all disadvantages arising from any claim by a third party the customer must compensate frootion.

3.4. If individual services of frootion can be accomplished by remote control without any disadvantage for the customer, the service can be also provided this way. In this regard the trained frootion employees will verify if the service can be fulfilled in a remote session.

3.5. frootion shall be entitled to deliver partial shipments.

4. EXTERNAL SERVICES / INSTRUCTING THIRD PARTIES

4.1. frootion has full discretion to decide whether to carry out the service itself, to make use of the services of third parties in providing the contractual services and/or to substitute such services ("auxiliary support").



4.2. The commissioning of such auxiliaries may take place either in its own name or in the name of the customer, but in any event at the expense of the customer. The General Terms and Conditions of the commissioned supplier shall apply – even if the processing work is to be invoiced on via frootion to the customer. The full invoice amount shall be paid on the due date. No reduction in the invoice amount will be permitted until a credit note from the supplier has been received on frootion premises – should the invoice already have been transferred, we will reimburse the difference.

4.3. frootion will select such auxiliaries with care and ensure that they have the necessary professional qualifications.

5. APPOINTMENTS AND DEADLINES

5.1. All agreements on deadlines and time limits are to be recorded and confirmed in writing. frootion will make every effort to meet deadlines. However, if a deadline is not met, this shall only entitle the customer to enforce his/her statutory rights if he grants frootion an appropriate period of grace, which shall be at least fourteen (14) days. This period shall start when a reminder letter is received by frootion.

5.2. If the period of grace expires unproductively, the customer may withdraw from the contract. An obligation to provide compensation by reason of the contract shall exist only in the event of intent or gross negligence by frootion.

5.3. Unavoidable or unforeseeable events – in particular delays by frootion's subcontractors – shall in any case release frootion from complying with the agreed delivery deadline. The same shall apply if the customer is late in meeting his/her obligations which are necessary for carrying out the order (e.g. providing documents or information). In this case the agreed deadline shall be put off at least for the extent of the delay.

6. WITHDRAWAL FROM THE CONTRACT

6.1. frootion is entitled to withdraw from the contract in particular if – it is impossible to carry out the service for reasons for which the customer is responsible or if it is further delayed despite a period of grace being set – justified



concerns exist as to the customer's creditworthiness and the latter provides neither payment in advance nor a valid security at the request of frootion before frootion provides its services.

6.2. In the event that it turns out during the execution of the contract that the execution thereof is factually or legally impossible, frootion shall be obliged to inform the customer with immediate effect. In this case, each party shall be entitled to withdraw from the concluded contract. Any costs and expenses incurred due to activities on the part of frootion until that time shall be reimbursed by the customer upon presentation of the internal project settlement, unless there is gross negligence on the part of frootion for the occurred impossibility.

7. PAYMENT

7.1. All prices and remunerations payable by the customer shall be in EURO and subject to value added tax at the prevailing rate.

7.2. Payment shall be considered to have taken place on the date, on which frootion can dispose of it.

7.3. Invoices from frootion are due for payment from the date of invoicing net cash without any deductions and unless otherwise agreed are to be paid within fourteen (14) calendar days from receipt of invoice. In the event of late payments, interest on late payments shall be taken as agreed. Goods supplied remain in the ownership of frootion until full payment has been made.

7.4. The customer undertakes to bear all costs and expenses associated with recovering the debt, such as in particular collection expenses or other necessary costs for adequate legal prosecution.

7.5. In the event of late payment by the customer, frootion may make all other services and partial performances provided in the context of other contracts concluded with the customer immediately due for payment.

7.6. The customer is not entitled to offset any claims by frootion against his/her own claims unless the customer's claim has been acknowledged in writing by frootion or established by law. Any right of retention by the customer is excluded.



8. RETENTION OF TITLE

8.1. The customer shall acquire the ownership of products and other items supplied by frootion as well as of all other rights only upon full payment of the agreed prices. Previously, the customer shall hold an exclusively provisional right of use under the law of obligations.

8.2. The customer shall not be entitled to pledge reserved items or to assign them as security. In case of a delay in payment, the risk of cessation of payments or in the event of execution upon the customer's assets, frootion shall be entitled to dismantle the reserved items and/or otherwise require them to be returned without resulting into the cancellation of the contract. The customer shall be obliged to return said items.

8.3. In the event of attachment or any other claim of the items by third parties, the customer shall be obliged to assert frootion's right of ownership and notify frootion immediately. The customer shall bear any costs and damages incurred to frootion due to such third-party attachment.

9. GUARANTEE AND COMPENSATION

9.1. The customer must assert and justify all complaints immediately in writing, and in any event within ten (10) days of the performance by frootion. In the event of justified complaints which are made in good time the customer shall only be entitled to the right to improvement or exchange of the performance.

9.2. In the event of justified written notification of defects, the defects shall be rectified within an appropriate period of time, whereby the customer shall make it possible for frootion to carry out all steps necessary to investigate and rectify the defect. frootion is entitled to refuse to improve the performance if this is impossible or if it would be associated with a disproportionately high cost for frootion.

9.3. The shifting of the burden of proof at the expense of frootion in accordance with § 924 of the Austrian Civil Code [ABGB] is excluded. It is up to the customer to prove the existence of any defect at the time of handover, the time at which the defect was established and the fact that the defect was notified in good time in writing.



9.4. Claims by the customer for compensation, in particular due to delay, the impracticality of the performance, positive violation of a contractual obligation, negligence in concluding the contract, defective or incomplete performance, consequential damages due to defects, or due to unauthorised activities are excluded unless these are based on intent or gross negligence by frootion. No claims for lost profit and/or contribution margin may be asserted.

9.5. Any claims for compensation may only be enforced within six (6) months of becoming aware of the damage.

9.6. Claims for compensation are limited as a maximum to the value of the order excluding VAT.

10. LIABILITY

10.1. The customer shall solely be liable for the legality of the use of documents provided to frootion by the customer. frootion shall not be obliged to review the legality of use. If a claim is made on frootion by third parties due to the use of such documents, the contractual party shall indemnify and hold frootion harmless against claims by third parties.

10.2. frootion shall assume no liability or responsibility that the operation of the delivered software meets the customer's requirements, will be free from errors or that all defects in the software will and may be corrected.

10.3. frootion will carry out the works allocated to it taking account of the generally recognised legal principles and will inform the customer in good time of any risks which are recognizable for it.

10.4. In the context of the statutory provisions, frootion shall be liable for damages only to the extent that it can be proved to have acted with intent or gross negligence. Liability for minor negligence is completely excluded except personal injuries. It is up to the aggrieved party to prove that gross negligence exists.



11. SOFTWARE

11.1. The provisions of the copyright law and, if applicable, the provisions of the respective license agreement apply to the supplied software from frootion

11.2. The customer shall assure that he or she is entitled to all copyrights and/or other rights on the work he or she has provided for the execution of agreed contractual services, and frootion consequently does not infringe the copyrights and/or any other rights of a third party.

12. APPLICABLE LAW

12.1. Austrian law shall apply, with the exception of such legal provisions, which make reference to the law of other countries. The application of the rules of the United Nations Convention on Contracts for the International Sale of Goods shall in any case be excluded.

12.2. Disputes, in particular those relating to the formation of contract or any claims arising thereunder, shall be exclusively decided by the appropriate court of the frootion branch. However, frootion shall also be entitled to bring proceedings against the customer before any other court, e.g. before the customer's court of general jurisdiction.

13. PLACE OF JURISDICTION

It is agreed that the place of jurisdiction for all disputes immediately arising between frootion and the customer shall be the Austrian court of law with local competence in the matter in respect of the frootion's head office.

14. CONCLUDING CLAUSES

14.1. In the event that individual provisions of these GTC or of the contract are or become ineffective or impracticable, the effectiveness of the remaining regulations shall remain



unaffected. Ineffective or impracticable regulations shall be replaced by mutual agreement by an effective and practicable regulation that serves the commercial purpose of the ineffective and impracticable provision most closely.

14.2. The fulfilment of contract on the part of frootion shall be subject to the provision that there are for the fulfilment of the contract no barriers caused of national or international regulations of the foreign trade legislation as well as no embargos or other sanctions to be opposed.

14.3. The contract shall be negotiated and concluded in the German language. The customer shall agree that technical terminology, documentations as well as software may be provided in the English language.

14.4. In case of discrepancies in translations of these terms and conditions, the German version shall prevail. The same applies to the interpretation of these terms and conditions.

