



# GENERAL TERMS AND CONDITIONS OF CELUM GROUP

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## 1. SCOPE AND VALIDITY

The following Conditions govern all deliveries and services provided by CELUM Group (hereinafter "Contractor") on the basis of an agreement with the Client. All orders and agreements are only legally binding if made by the Contractor in writing and duly signed by an authorised representative, and shall only be binding to the extent set forth in the order confirmation. Purchasing terms of the Client are hereby excluded for the legal transaction and for the entire business relationship. All offers are subject to change without notice and non-binding.

## 2. PERFORMANCE AND TESTING

### 2.1 The subject of an order can be:

- supply of standard programs
- purchase of exclusive licences for the use of software product
- purchase of non-exclusive licences for the use of software product
- support for system start-up (transition assistance)
- consultation by telephone
- program maintenance
- hosting services
- development of organisational concepts
- global and detailed analyses
- creation of individual programs
- creation of program carriers
- other services

2.2. The Contractor also provides software support and maintenance services that require the conclusion of a separate maintenance agreement, which also shall include the elimination of possible errors. An error that requires intervention is present if the software program covered by this Agreement does not function as set down in the relevant

performance specifications/documentation in its latest version, and the Client is able to reproduce the error. Complaints should be sent in writing to the Contractor. For purposes of careful investigation of possible errors, the Client is obligated to make available to the Contractor at no cost the relevant computer system (for systems connected online with other computers, including the relevant connection), software programs, protocols, diagnostic backup, and sufficient data for test purposes during the usual business hours and to provide support to the Contractor. Identified errors for which the Contractor is responsible shall be rectified within an appropriate period of time. The Contractor is freed of this responsibility when solutions are hindered by deficiencies for which the Client is responsible and which are not eliminated. Errors shall be corrected by a software update or by appropriate workaround solutions.

**2.3.** The preparation of individual organisational concepts and programs is based on the nature and extent of the binding information, documents and tools provided in full by the Client. This also includes practical test data as well as sufficient testing possibilities, which the Contractor shall make available on a timely basis, during normal business hours, and at his expense. If the system made available for tests is already in live operation and used by the Client, the Client shall be responsible for the backup of live data.

**2.4.** The basis for creating custom-designed programs is the written performance specifications that are either provided by the Client or prepared by the Contractor and charged to the Client on the basis of the documentation and information provided by the latter. This performance catalogue shall be checked by the Client for correctness and completeness and marked with his approval. Any subsequent requests for modifications can result in separate deadline and price agreements.

**2.5.** Individually created software or program adaptations require that each program is accepted by the Client at the latest four weeks after delivery by the Contractor. This shall be confirmed in a report by the Client (inspection for correctness and completeness in line with the performance specifications accepted by the Contractor on the basis of the test data made available to him, as described in 2.2). Should the Client allow four weeks to pass without accepting the program, the delivered software shall be deemed to have been accepted as at the last day of the stated time period. If the Client uses the software in real-time operations, the software shall be deemed to have been accepted by the Client. Possible defects – deviations from the written performance specifications – shall be reported to the Contractor with sufficient supporting documentation. If there are serious defects that have been reported in writing, i.e., if real-time operations have not commenced or cannot be continued, a renewed acceptance of the work following correction of the deficiency is required. The Client is not entitled to refuse the software due to immaterial defects.

**2.6.** When standard programs have been ordered, the Client confirms by virtue of the order his knowledge of the scope of performance of the ordered program.

**2.7.** Should, in the course of the work, it prove to be actually or legally impossible to complete the order in line with the performance specifications, the Contractor is obliged to immediately inform the Client thereof. If the Client does not change the performance specifications accordingly or create the conditions to make completion of the order possible, the Client is entitled to reject performance of the order. If the impossibility of carrying out the order is due to an omission on the part of the Client or to a later change by Client in the performance specifications, the Client is entitled to withdraw from the order. Any costs and expenses incurred by the Contractor for the services performed up to this date as well as possible costs for dismantling shall be reimbursed by the Client.

**2.8.** The shipment of program carriers, documentation, and performance specifications shall be at the expense and risk of the Client. Should the Client request further training and elucidation, these shall be billed separately. Insurance shall be taken out only at the request of the Client.

### 3. SERVICES NOT COVERED BY THE LICENSING OR MAINTENANCE AGREEMENT

The following services shall be charged separately:

- costs of travel, accommodation and travel time of the persons charged with the execution of the contract by the Contractor;
- services that result from changes in the operating system or in hardware and/or from changes in mutually dependent software programs and interfaces not covered by this contract;
- individual program adjustments and new programming;
- program changes due to changes in statutory requirements, if they require a change in the program logic;
- elimination of errors caused by the Client or third parties;
- losses or damages to the operation of the system that result either directly or indirectly from actions or omissions on the part of the Client or user;
- data conversions, data recovery, and interface adjustments.

The Contractor shall be freed of all responsibilities under the present Agreement if employees of the Client or third parties carry out changes to the software programs covered by this Agreement without prior agreement from the Contractor, or if the software programs have not been used as designated.

### 4. PRICES, TAXES AND FEES

**4.1.** All prices are quoted in Euros excluding VAT. If an amount does not include a currency denomination, it is quoted in euros. Prices only apply to this Agreement. Prices quoted are understood to be prices ex works of the Contractor, without installation, training or other services beyond the transfer of the licensed material and granting of the license. The costs of program carriers (e.g., magnetic tapes, magnetic disks, magnetic tape cassettes, etc.) as well as documentation and any contract fees shall be invoiced separately.

**4.2.** For standard programs, the price list valid at the date of the delivery shall apply. All other services (organizational consultancy, programming, training, support during changeover, telephone advisory services) shall be charged at the rates in effect on the day the services are performed. Any additional expenses for which the Contractor is not liable, which are not covered by the prices fixed in the contract, shall be invoiced based on the actual time and effort involved.

**4.3.** The Client shall be charged separately for transportation expenses, daily allowances, and overnight expenses according to the valid rates. Travel times shall be considered hours of work. Travel expenses in connection with the services ordered shall be reimbursed following presentation of supporting documents. Travel expenses shall be reimbursed at the rate EUR 0.42/km. The "CELUM Travel Expenses Form" is used for the settlement of travel expenses. A staggered km flat rate per day is agreed for travel time there and back:

Up to 50 km	EUR 49.00
Up to 250 km	EUR 249.00
Up to 500 km	EUR 499.00
Over 500 km	EUR 699.00

**4.4.** If labour and material costs, or other costs and charges, increase after conclusion of the contract, the Contractor is entitled to increase the lump sum amounts listed in the overleaf accordingly and to charge Client at the higher rate from the beginning of the month following the cost increases. These increases are deemed to be accepted by the Client in advance if they do not exceed 10% per annum.

**4.5.** All fees and taxes (especially VAT) are calculated in accordance with the laws in effect at the time. Should the tax authorities subsequently impose additional taxes or levies, these shall be borne by Client.

**4.6.** In case of default, the Contractor is entitled to charge default interest amounting to 9.2% (nine point two per cent) p.a. or to charge reminder fees.

## 5. DELIVERY DATE

**5.1.** The contractor shall endeavour to observe the agreed dates of performance (completion) to the best possible extent or to provide answers to inquiries of Client within a reasonable period of time during the usual business hours of the Contractor.

**5.2.** The targeted completion dates can only be met if Client provides in full all the necessary preliminary work and documents, in particular the performance specifications accepted by him in accordance with Section 2.3, and fulfils his obligation to cooperate to the extent necessary. Delays in delivery and cost increases arising from incorrect, incomplete or subsequently changed data and information or documents provided by the Client are not responsibility of Contractor and cannot result in the Contractor being in default of delivery. Additional costs so arising shall be borne by the Client.

**5.3.** In the case of orders that encompass a number of units or programs, the Contractor is entitled to make partial deliveries and to submit partial invoices.

**5.4.** The Client is not entitled to withdraw from the contract nor is he entitled to damages if a prospective delivery date is not adhered to.

## 6. PAYMENT

**6.1.** The invoices submitted by the Contractor, inclusive of sales tax, are payable at the latest 14 days from receipt of the invoice without any deductions and free of charges. For partial invoices, the terms of payment for the entire order shall apply analogously.

**6.2.** The agreed lump sum cost are payable in advance by the Client for the calendar year/part year.

**6.3.** Where orders encompass a number of units (e.g., computer programs and/or training sessions, completion in stages), the Contractor is entitled to submit an invoice after the delivery of each unit or service.

**6.4.** Compliance with the agreed payment dates is an essential condition for delivery and for fulfilment of the contract by the Contractor. Failure to comply with the agreed payment schedule entitles the Contractor to discontinue current work and, after setting a reasonable grace period, to withdraw from the contract. All costs connected therewith as well as loss of profit shall be borne by the Client. In case of delayed payment, interest at the rate of 9.2% over the

base rate shall be charged. In case two consecutive instalments are not paid on time, the Contractor is entitled to enforce default of due date and correspondingly demand payment for acceptances.

**6.5.** The Client is not entitled to withhold payment because of incomplete total delivery, guarantee or warranty claims, or complaints.

## 7. CONTRACT TERM

In case of a software support agreement, which presupposes a professional installation of a properly acquired software program covered by this Agreement, the contractual relationship shall begin with signature of the contract and is concluded for an indefinite period. This Agreement may be terminated in writing with a notice period of 3 months to the end of a contract year by one of the Parties.

## 8. COPYRIGHT AND USE

**8.1.** All copyright, trademark and other intellectual property rights, inventions, techniques, confidential information on the agreed services (programs, documentation, etc.), which were created by CELUM, are property of the Contractor or its licensors. The Client receives only the non-transferable, non-exclusive right, during the validity of the License Agreement, to use the software strictly for his own purposes simultaneously at several workstations, after payment of the agreed remuneration and only for the hardware specified in the contract and for the number of licenses acquired. With this Agreement, the Client merely acquires a non-exclusive license for the use of software product. It is forbidden to sell, lease or lend the Licensed Material (or parts thereof) or make it available in any other way to third persons free of charge or for a fee, without express written consent of Licensor. Companies or persons charged with the direct maintenance of server operations or database operations of the production machine who are bound to a confidentiality agreement, for example as part of a service contract with Licensee, shall not be deemed to be third parties. Any involvement of the Client in producing the software shall not give rise to any rights beyond the rights of use specified in this Agreement. Any infringement of the copyrights of the Contractor shall result in the right to claim damages in which case the Contractor is entitled to full satisfaction.

**8.2.** It is forbidden to recreate the object code or parts thereof or the program logic or parts of the product, or otherwise simulate – in any form whatsoever – parts of the product, such as routines, program logic, etc. Any processing or modification whatsoever of the product is prohibited.

**8.3.** The transfer of the license by way of universal or singular succession to a third party is only possible after prior express written consent of the licensor.

**8.4.** The Client is allowed to make copies for archival and backup purposes only if the original software does not contain any explicitly mentioned prohibit of licensors or a third party, and only if all copyright and proprietary notices are transmitted unmodified to the copied version.

**8.5.** Should disclosure of the interfaces be necessary to produce the interoperability of the software covered by this Agreement, the Contractor will request this of the Client against reimbursement of costs. If the Contractor does not comply with this stipulation and decompilation follows in accordance with copyright law, the results shall be used exclusively for the establishment of interoperability. Misuse shall result in claims for damages.

## 8.6. Both parties undertake

- to indemnify and hold harmless the other party with regard to all claims and lawsuits by third parties for infringement of copyrights, patents and other intellectual property through their supplies of materials, products, etc.;
- to inform the other party immediately of such claims and lawsuits and to assist them in defending and enforcing their rights and to send all the necessary information.

It is the sole decision of the obligated party

- to acquire the right to use the delivered materials, products, etc., and thus to enable a lawful use,
- to replace the infringing materials, products, etc. by others that do not infringe such rights;
- to demand the return of the infringing materials, products, etc. and to reimburse any fees (pro rata) to the other party.

Neither party shall be responsible for

- an unforeseen type of use or unauthorised combination with products or services from a third party;
- changes in the products/services by the other party or any unauthorised third parties.

## 9. RIGHT OF WITHDRAWAL

**9.1.** Should the expressly agreed delivery period be exceeded due solely to the fault or unlawful conduct of the Contractor, the Client is entitled to withdraw by registered letter from the contract in question, if essential parts of the agreed service are not performed within a reasonable grace period and the Client is not at fault.

**9.2.** Force majeure, industrial disputes, natural disasters and transportation stoppages and other circumstances that are beyond the control of the Contractor relieve the Contractor from the obligation to deliver or entitle him to fix a new delivery date.

**9.3.** Cancellation by the Client is only possible with the written agreement of the Contractor. If the Contractor accepts the cancellation, he is entitled to payment by the Client of the services already performed and costs already incurred as well as a cancellation penalty amounting to 30% of the order value of the total project not yet settled.

## 10. LIABILITY, WARRANTY, CHANGES

**10.1** Licensor warrants that the Licensed Material – unmodified and used exclusively for the agreed purpose – can substantially fulfil the functions described in the technical description of the licensed modules at the time of handover. Any warranty and liability of Licensor is excluded if the Licensed Material is not used as agreed or in an unusual manner.

**10.2** The Contractor is liable only for damages insofar as intent or gross negligence can be proven, in accordance with the legal provisions; however, he is only liable for gross negligence up to the amount of the agreed fee. Liability for slight negligence is excluded. Compensation for consequential damages and financial loss, indirect and consequential damages, lost profits, lost savings, loss of interest and damages from third-party claims against the Contractor are in

any case excluded, as far as legally permissible. The burden of proof, i.e. the obligation of the Contractor to prove his innocence in respect of a defect in accordance with § 924 ABGB (Austrian Civil Code) is ruled out; the Licensee is obliged to provide proof of the defect. If corrective action is not possible within a reasonable period, the licensee is entitled to demand a price reduction or, in the event of an essential defect, withdraw from the contract after setting a reasonable grace period. Licensee shall report any defects in writing within 10 business days of noticing the defect, otherwise the relevant rights will be deemed forfeited.

**10.3.** Without an UUM Agreement, the warranty period is three months from handover. The handover shall be deemed to be the date of the transfer of the data carrier or any other provision of the Program. The guarantee shall not extend beyond this period even if any defects emerge later.

**10.4.** The Client is required to comply with the obligation to give notification of defects. However, a notice of defect is valid only if it relates to reproducible defects and if it has been documented in writing within 10 working days from occurrence of the error. In case of warranty, the improvement has precedence over a price reduction or change. In the event of a justified notice of defect, the defects shall be remedied within a reasonable period of time, whereby the Client shall enable the Contractor to undertake all measures necessary for examination and remedy of the defects.

**10.5.** The provisions relating to warranty also apply to recourse claims, claims for damages or claims arising from any legal basis whatsoever for which warranty claims are commonly asserted, such as in particular damages caused by defects.

**10.6.** Revisions and additions that prove to be necessary before the agreed work is handed over, due to organizational deficiencies or technical deficiencies in the program for which the Contractor is liable, shall be carried out free of charge by the Contractor.

**10.7.** The costs for any support, diagnosis and troubleshooting services for which the Client bears responsibility, as well as other corrections, revisions and additions shall be provided by the Contractor against payment. This also applies to the correction of deficiencies, if program changes, additions or other interventions have been carried out by the Client itself or by a third party.

**10.8.** Furthermore, the Contractor assumes no warranty for defects, failures or damages which are the result of improper use, changed components of the operating system, the interface or parameter, the improper use of organizational resources and data carriers (as far as they are prescribed), abnormal service conditions (in particular deviations from the installation and storage conditions) as well transport damages.

**10.9.** No warranty is provided by the Contractor for programs that have been subsequently altered by programmers of the Client or third parties.

**10.10** If the subject matter of the order is the revision or supplementation of existing programs, the warranty covers the revision or supplementation. The warranty for the original program does not thereby again come into effect.

**10.11.** Any liability of the Contractor for the content, especially the images used or other results of the application of the Programs covered by this Agreement, as well as with regard to any infringement of data protection law, is excluded.

**10.12** If the limitations of warranty and liability violate mandatory provisions of law, the warranties and liabilities of the licensor shall at any rate be limited to the greatest extent permitted by law.

## 11. LOYALTY

The parties obligate themselves to reciprocal loyalty. They shall not hire away staff or employ, including by way of third parties, staff of the other party to the contract who have worked on the realisation of the projects, during the duration of the Agreement or for 12 months after the end of the Agreement. The party violating the obligation shall pay lump sum compensation, amounting to an annual salary of such an employee.

## 12. DATA PROTECTION/NON-DISCLOSURE

The Client expressly undertakes to maintain confidentiality about the details of the agreements signed, including prices and royalties. The Contractor shall obligate his employees to observe the provisions of §15 of the Austrian Data Protection Act, as amended.

## 13. FINAL PROVISIONS

**13.1.** Unless otherwise agreed, the statutory provisions applicable to full merchants in accordance with Austrian law shall exclusively apply, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods, even if the order is carried out abroad. All disputes arising out of this Agreement shall be brought before the court of jurisdiction in Linz/Austria.

**13.2.** The applicability of general terms and conditions, purchasing conditions or other general contract templates of the Client is excluded, unless expressly agreed otherwise in the contract. These shall also not be effective additionally.

**13.3.** If a party at any given time does not insist on the performance of a provision of this Agreement by the other party, this is without prejudice to the right of the party to assert the provision in question. Likewise, the waiver by either party to the assertion of claims for breach of a provision of this Agreement, shall not constitute a waiver of the assertion of claims in the event of further violation of the same provision.

**13.4.** The place of payment and fulfilment is the registered office of the Contractor.

**13.5.** The Client agrees to the processing and use of his data. In particular, he also notes that the Contractor must be given external data access to the program for the sake of troubleshooting, remote maintenance and license monitoring.

**13.6.** Changes or additions of to the contract terms must be in writing. This also applies to any deviation from this requirement of written form.

**13.7.** The parties shall waive any right to appeal this Agreement or request an adjustment, for whatsoever reasons, for instance on the grounds of error or laesio enormis.

**13.8.** The costs, fees or charges associated with the establishment and implementation of any agreements shall be borne by both parties from their own resources.

**13.9.** If individual provisions of this Agreement be or become invalid, this shall not affect the validity of the remaining provisions. The parties shall co-operate as partners in order to find a provision that comes legally and economically closest to the invalid provision.