

## **General Terms and Conditions**

### **Linz Center of Mechatronics GmbH (January 2010)**

#### **1. Contract conclusion**

1.1 For service contracts, purchase agreements and other services (in particular consultancy, startup for the Cooperation Partner or the Cooperation Partner's customer, training sessions, workshops, providing of project staff, conducting of projects, etc.) contracted between

Linz Center of Mechatronics GmbH (hereinafter **LCM**),

a company entered in the corporate registry of the Provincial Court of Linz, Austria, under number FN 207547t, and

the customer or client (hereinafter the **Cooperation Partner** or **Partner**),

exclusively the following General Terms and Conditions shall apply.

1.2 These General Terms and Conditions likewise apply for all auxiliary work and services associated with the execution of the contracted Service(s).

1.3 The General Terms and Conditions shall apply likewise to follow-up orders, even if these are not separately agreed orally or in writing or based on an order or order confirmation.

1.4 Oral agreements with the Cooperation Partner shall take effect only if they are confirmed in writing by LCM. Neither the lack of objection to standard form contracts or forms from the Cooperation Partner nor the delivery of goods or performance of services shall constitute recognition of such terms of the Cooperation Partner by LCM. No forms of the Cooperation Partner shall become an integral part of any agreement, regardless of whether LCM has expressly denied such terms or failed to do so.

1.5 Statements by LCM regarding inquiries by the Cooperation Partner always remain subject to confirmation and non-binding, even if they include prices, dates and other specifications. The same applies if LCM responds to an inquiry by the Cooperation Partner with a bid or other specifications or information.

1.6 If the Cooperation Partner submits an order based on a statement or equivalent declaration by LCM, then until order confirmation by LCM, and in any case for a period of 14 days, the Partner is bound to such an order.

1.7 Contract conclusion ensues only with the written order confirmation signed by the management of LCM. If the order confirmation by LCM deviates from the order by the Cooperation Partner, then such deviation shall be deemed as accepted if the Cooperation Partner does not object within 14 days of receipt of such an order confirmation, but at the latest upon delivery of goods and services.

#### **2. Payment and accounting**

2.1 Billing of services provided by LCM shall be on an hourly rate basis at the end of the respective month, whereby LCM reserves the right to require advanced payment. LCM is authorized to adjust the agreed hourly rates on occasion over time.

2.2 All bills are payable upon billing and are to be transferred, without fees or

deductions, to the account specified by LCM.

2.3 Any objections to remuneration claims in the bill are to be submitted in writing by the Cooperation Partner within fourteen days of the billing date; otherwise the bill shall be deemed as acknowledged. Such objections do not delay the due date of the invoice amount.

2.4 All expenses and cash expenditures on the part of LCM in the course of the project as well as travel expenses and per diem allowances are to be reimbursed in full by the Cooperation Partner. Any travel time on the part of LCM staff in the course of the project shall be credited as work time.

### **3. Delay of payment**

3.1 Should the Cooperation Partner fail to meet contractual payment obligations by their due dates, then LCM is entitled, irrespective of further claims for damages, to apply interest on arrears from the date of billing in the amount of eight percent above the respective base interest rate (compare § 1333 Austrian Civil Code).

3.2 LCM is entitled to bill the Cooperation Partner for any and all dunning costs as well as all pre-litigation expenses ensuing due to the arrears.

### **4. Retention of ownership**

4.1 Project results and/or project artifacts and services remain the property of LCM until full payment has been received for all LCM's claims for remuneration. Furthermore, LCM retains ownership of project results and/or project artifacts and services emanating from the cooperation (even if these concrete project results and/or project artifacts and services have been paid for) until all claims for remuneration have been paid in full; such claims for remuneration by LCM include all auxiliary claims such as interest, expenses and reimbursement claims. If LCM invoices the claims for remuneration in a running account, then the retention of ownership covers the respective highest outstanding account balance.

4.2 The retention of ownership by LCM remains in force even if the project results and/or project artifacts are processed, mixed, grouped or transformed into other project results and/or project artifacts of the Cooperation Partner; the same applies if the project results and/or project artifacts are inseparably merged with immovable objects.

4.3 As long as LCM retains ownership of the delivered project results and/or project artifacts, the Cooperation Partner shall not sell, mortgage or transfer such to third parties as collateral without the previous expressed approval of LCM.

4.4 The Cooperation Partner is obliged to inform LCM without delay if third parties should lay claim to project results and/or project artifacts owned by LCM, especially if a third-party asserts right of lien.

4.5 Inasmuch as the Cooperation Partner permissibly resells project results and/or project artifacts delivered with retention of ownership by LCM, the Partner cedes all claims against the purchaser to LCM and obliges himself to immediately inform the purchaser about such cession.

### **5. Exclusion of offset and prohibition of assignment; retention of goods and services**

5.1 The Cooperation Partner is not entitled to counter LCM's invoice for remuneration

with counter-claims of any type, unless such have been court-ordered or expressly acknowledged by LCM.

5.2 The Cooperation Partner is not entitled to transfer claims to third parties without express consent of LCM or to withhold services due for any legal reason whatsoever.

## **6. Project execution**

6.1 Before the start of the project, both the Cooperation Partner and LCM shall identify their respective contact persons who are authorized to represent and sign for them and who are responsible for all matters regarding the project; their contact details shall also be provided.

6.2 LCM shall handle the allocation of staff required for conducting the project as well as the exact definition of work modalities.

6.3 Insofar as required for properly fulfilling the order, the Cooperation Partner is obliged to work collaboratively and to establish organizational conditions to be able to fulfill the contract. In particular, this includes the transfer of all necessary documentation for the execution of the order, including any work results of other engaged consultants and information from company management.

6.4 The individual activities of LCM, especially the analysis of the requirements of the Cooperation Partner, require close cooperation between the Cooperation Partner and LCM. Therefore LCM and the Cooperation Partner shall mutually provide information during the course of the project, especially regarding all significant matters that could be of importance to the completion of the project.

6.5 The Cooperation Partner shall undertake actions and decisions that could influence the execution of the service to be provided only after previous consultation with LCM.

6.6 The Cooperation Partner shall ensure that LCM staff members have controlled access to the Partner's individual systems and their documentation.

6.7 The partners to the agreement shall both do all in their power to avoid schedule delays and to enable their respective partner to complete his tasks on time. Where appropriate, regular project meetings between the contract partners will be scheduled.

6.8 Should project progress be delayed due to unforeseen events, then LCM and the Cooperation Partner will jointly decide in due time about the continuation of the project.

## **7. Transfer of orders**

7.1 In the event of perceived necessity and after consultation with the Cooperation Partner, LCM is entitled to engage third parties to fulfill the order or complete the project or parts of the order or contract.

7.2 LCM's liability toward the Cooperation Partner in this regard is limited to negligence in the selection of a subcontractor.

## **8. Transfer of risk**

8.1 The services to be delivered by LCM in the realm of the project shall be deemed as completed with the transfer of project results to the Cooperation Partner's project manager or the presentation of results at the end of the project.

8.2 All risks associated with the project results or the project artifact(s) transfer to the Cooperation Partner at the time of the delivery of the project results or the project artifact(s) to the Cooperation Partner, on delivery ex works at the time of release for pickup, or on delivery free domicile at the time of the transfer to the first shipping or

freight company.

## **9. Default of acceptance of delivery**

In the event of default or delay of acceptance, the Cooperation Partner shall bear the adverse consequences. After fruitless expiration of a five-day grace period, LCM is entitled to demand immediate payment of all outstanding debts, to deposit the contracted goods or services in accordance with § 1425 of Austrian Civil Code, and to file claim for compensation of damages.

## **10. Obligation to cooperate; guarantee**

10.1 LCM is obliged to provide the Cooperation Partner with diligent collaboration on the project contracted between the Cooperation Partner and LCM. LCM is not obliged to deliver success with regard to the contracted services. LCM is not obliged to review any instructions of the Cooperation Partner. LCM bears no obligation to warn the Cooperation Partner.

10.2 LCM bears no liability for the achievement of the project goals, for the project results themselves or for the project artifact(s), or for the actual exploitability or usability of project results and artifacts, even in the event of complete unusability.

10.3 Guarantee statements by the manufacturer of a product, even if passed on by LCM, justify claims only against said manufacturer. Such guarantee statements shall not serve as a foundation for warranty and guarantee claims against LCM.

10.4 LCM provides no guarantee and accepts no liability for errors, disruptions or damages that result from inadequate settings (e.g., of master data and parameters) that are not due to LCM, or from improper operation. Likewise any defects are precluded from warranty and guarantee that are due to a change in operating system components, interfaces and parameters, or the use of unsuited or defective hardware, storage media, etc. For programs that are subsequently changed by programmers working for the Cooperation Partner or by third parties, LCM shall be under no warranty whatsoever. If an order involves the modification or extension of existing programs, this does not revive the guarantee on the original program.

10.5 The Cooperation Partner is obliged to inspect the delivered goods and services on inspection, transfer or receipt of such. The Cooperation Partner surrenders his right to challenge the lack of conformity to contract on the part of delivered goods and services if he fails to conduct immediate inspection or if the challenge of conformity to contract is not made within 14 days of the time when such should have been detected via proper inspection and accompanied by detailed specification in writing of such lack of conformity.

## **11. Compensation of damages**

11.1 LCM accepts no liability for any damages that ensue at the venue of the Cooperation Partner or third parties and that are not due to intent or gross negligence on the part of LCM, where proof thereof is the duty of the Cooperation Partner.

11.2 An exception to the limitations defined in Section 11.1 is non-waivable no-fault liability for defective products, as defined by Austrian law, in the event that a person is injured, killed or harmed in terms of health. Liability for material damages due to product defects, including for all companies involved in the production, import and distribution of said product, is precluded. Recourse claims are precluded if the damage occurs in the

enterprise chain, unless the recourse claimant can prove that the defect was caused in LCM's sphere and resulted from at least gross negligence. The Cooperation Partner is obliged to transfer this exclusion of liability to subsequent customers.

11.3 The entitlement to compensation of damages expires in any case upon processing of a delivery or its resale without LCM first having the opportunity to inspect the nonconformity to contract. Any liability or recourse claims, including any claims regarding consequential damage caused by defects, are furthermore limited – insofar as permitted by law – to such damages as the Cooperation Partner anticipated or predicted as possible consequences, restricted to at most 50% of the contracted amount. All such claims expire six months after the Cooperation Partner's first opportunity to report the damage to LCM.

11.4 No contract concluded between LCM and a Cooperation Partner shall contain any provisions to safeguard the interests of third parties. This shall apply even if it is expected that a third party shall be the recipient of the product(s) or service(s) or that third parties will come into contact with the product(s) or service(s).

11.5 Excluded are claims for reimbursement of lost profits as well as claims for reimbursement of costs incurred through interruption of operations, recalls and loss of production as well as direct damages due to the delivery of products or services that do not conform to contract.

## **12. Termination for important reasons**

12.1 Both LCM and the Cooperation Partner are entitled to immediately terminate a contract for an important reason without a grace period.

12.2 Important reasons that justify immediate termination of a contract are, in particular:

- if bankruptcy proceedings are initiated that affect the assets of the Cooperation Partner, or bankruptcy proceedings are not initiated for lack of such assets;
- upon nonfulfillment of payments obligations;
- in the event of circumstances (such at least two pending execution proceedings) that give cause to doubt the credit rating or solvency of the Cooperation Partner;
- if the Cooperation Partner, owing a significant payment, falls in arrears and, despite a reasonable deadline extension, fails to meet payment obligations;
- if liquidation proceedings are initiated against the Cooperation Partner;
- if, in the course of project development or project execution, the Cooperation Partner violates statutory regulations, official requirements or contractual provisions.

12.3 The right to premature termination of a contract can be exercised only by the contracting party who is not guilty of the reason for termination.

## **13. Intellectual property rights**

13.1 The Cooperation Partner declares that his contributed preliminary work does not violate the intellectual property rights of any third parties. If a product or prototype is constructed by LCM based on design specifications, drawings, models or other specifications provided by the Cooperation Partner, then the Cooperation Partner shall fully indemnify LCM against any violation of intellectual property rights.

13.2 Implementation documentation prepared by LCM, including drawings, sketches and other technical documentation as well as patterns, images and the like, remain the

intellectual property of LCM. No quotation (offer) or other project documentation may be copied or made accessible to third parties without the expressed permission of LCM.

13.3 LCM is the exclusive owner of all intellectual property rights arising from the project.

#### **14. Marketing**

14.1 After consultation with the Cooperation Partner, LCM is entitled to extensively advertise and market the research results in any medium in order to acquaint other potential cooperation partners with LCM's activities.

14.2 LCM is entitled to identify the Cooperation Partner by name as a reference, especially at presentations and in publications, regardless of the medium.

#### **15. Exploitation of project results**

LCM is authorized to utilize any tools (methods, software tools) and project results created in the realm of a project in subsequent projects with other Cooperation Partners.

#### **16. Nondisclosure**

16.1 LCM and the Cooperation Partner are mutually committed to uphold nondisclosure, in particular concerning technical, commercial and personnel matters of the other respective contract party, and to refrain from providing such information to third parties.

16.2 The Cooperation Partner assures LCM that in particular the written concepts or quotations (offers) sent to them and their content shall be handled confidentially. This precludes that concepts or quotations or parts thereof be revealed or passed on to third parties.

16.3 Both LCM and the Cooperation Partner shall impose the nondisclosure agreements on their staff and, where appropriate, upon commissioned third parties. The nondisclosure agreement also applies for unlimited time after termination of the contractual relationship.

16.4 The nondisclosure agreement expressly does not apply to generally known or accessible information or documents.

16.5 The nondisclosure agreement also applies to person-related data concerning LCM or third parties that become known to the Cooperation Partner in the realm of the cooperation. The Cooperation Partner shall protect information and results especially against access by third parties and shall impose the same nondisclosure upon his staff associated with such.

#### **17. Changes of name or address**

17.1 The Cooperation Partner shall promptly inform LCM in writing of any changes in his company name or address. On failure to report such changes, mail sent to the last known address of the Cooperation Partner shall be deemed as received by the Cooperation Partner.

17.2 In the event of a change of name that LCM does not receive in time, should the Cooperation Partner request an adjusted new bill, LCM will accommodate this request if possible; however, this in no way delays the due date of payment of the original invoice.

#### **18. Severability**

18.1 Should any individual provision(s) of these General Terms and Conditions be found to be illegal or unenforceable, then the remaining provisions shall not be affected or impaired thereby.

18.2 The contract partners are obliged to replace the illegal or unenforceable provision without delay with a covenant that comes closest to the commercial purpose of the ineffective provision and the commercial goals of the contract parties.

**19. Applicable law, jurisdiction, place of performance**

19.1 Regarding all questions of interpretation of these General Terms and Conditions and all contracts made between LCM and the Cooperation Partner as well as the fulfillment of the rights and duties regulated therein, exclusively Austrian law shall apply. Application of UN purchase law is expressly excluded.

19.2 In the event of disputes resulting from these General Terms and Conditions or a contract made with LCM or related to violation, termination or invalidity of a contract, including disputes regarding the existence or nonexistence of these General Terms and Conditions or a contract with LCM, the contracting parties agree to the exclusive jurisdiction of the competent courts in Linz, Austria. Independently thereof, LCM is entitled to file suit against the Cooperation Partner before the competent court with jurisdiction at the headquarters or a branch of the Cooperation Partner. The place of performance is Linz.

**20. Written form**

20.1 Modifications of or amendments to any contract with LCM must be in writing. This provision also applies to a deviation from the requirement of written form.

20.2 Inasmuch as no more stringent provisions are provided, the use of facsimile (with confirmation of successful transmission) suffices to fulfill the required written form.

**21. Miscellany**

21.1 The authentic contract language is German in the context of the Austrian understanding of terminology.

21.2 The rights and duties agreed upon with the Cooperation Partner can be assigned to parties other than those associated with the Cooperation Partner only with expressed written approval of LCM.

21.3 The Cooperation Partner waives any challenge to these General Terms and Conditions or any contract made with LCM, in particular due to errors and changes or to cessation of the business foundation.

21.4 LCM is entitled at any time to suspend or reduce the fulfillment of its own contractual duties if, after signing of the contract, it turns out that the Cooperation Partner will not fulfill a significant part of his duties (a) because of serious deficits in competency to fulfill the contract or because of serious weakness of credit rating, or (b) because of behavior in the preparations for fulfillment or in the fulfillment of the contract or preceding contracts. This prerequisite is met in any case if the Cooperation Partner is in arrears on payment.

21.5 The Cooperation Partner approves LCM's automated storage and processing of person-related data of the Cooperation Partner and staff in fulfillment of the contract.

21.6 The Cooperation Partner gives express permission for LCM to submit a query to the Warenkreditevidenz [Austrian Credit Information Agency] of the Credit Protection Association of 1870. Furthermore, the Cooperation Partner agrees that in the event of payment arrears his name, the company registry number where applicable, the date of birth and gender, the address and profession as well as the open balance and the dates of

reminders be reported to the Austrian Credit Information Agency, which makes such available to other parties.