



General Terms and Conditions

ABC Research GmbH, Welthandelsplatz 1, 1020 Vienna, Austria, Commercial Register: 520091s, Vienna

v2 – valid from 1 May 2020

1 Scope of contract and validity

Services and offers of ABC Research GmbH shall be provided exclusively on the basis of these terms and conditions; any terms and conditions of the Client that are contrary to or deviate from these terms and conditions shall not be recognised unless this has been expressly agreed in writing. Verbal collateral agreements shall therefore be considered non-binding. Any waiver of this written form requirement must also be made in writing. The written form requirement shall be deemed to be fulfilled by e-mails if the other contracting party has confirmed receipt thereof. These terms and conditions shall also apply as a framework agreement for all further legal transactions between the contracting parties. By placing the order, the Client expressly acknowledges these terms and conditions and contractual parts.

2 Contract conclusion

Offers made by ABC Research GmbH are subject to change and non-binding. Contracts shall only be deemed concluded if the written order is either confirmed in writing by ABC Research GmbH or actually fulfilled. If offers are addressed to ABC Research GmbH, the bidder shall be bound to the offer within a reasonable period of time, but at least 3 weeks from receipt of the offer.

3 Performance, acceptance

3.1 The fulfilment of the order by ABC Research GmbH shall be based on the type and scope of the binding information, documents and aids provided by the Client. The Client shall bear sole responsibility for the correctness and completeness of such information, documents, etc. The Client shall also make available practical test data and test facilities in sufficient quantity and in good time during normal working hours and at his own expense. A duty of cooperation on the part of the Client exists in accordance with customary practice and reasonableness. The obligation to provide mutual information and coordination is

incumbent on both contractual parties. If the Client is already working in real operation on the system provided for testing, the sole responsibility for securing the real data lies with the Client. ABC Research GmbH shall not be liable for any damage resulting from the test operation, in particular also not for any loss of earnings or loss of profit.

- 3.2 The basis for the provision of services by ABC Research GmbH shall be, insofar as it has been prepared, the written service description, which shall either be prepared by the contractor against calculation of costs on the basis of the documents and information made available to him, or which shall be provided by the Client, as well as those agreements between the contractual partners which have been recorded in writing - in whatever form (e-mail, memorandum, minutes and the like) and which have been brought to the attention of the respective other contractual partner prior to the provision of services (hereinafter referred to as Written Service Description of Any Kind). This Written Service Description of Any Kind, insofar as it is prepared by ABC Research GmbH, shall be checked by the Client for correctness and completeness and shall be marked with his approval. In any case, such consent shall also be deemed to have been granted if the Client has not sent the Written Service Description of Any Kind, including the note of consent, to ABC Research GmbH within two weeks. Any change requests occurring at a later date must be agreed separately. If ABC Research GmbH is to provide the Client with software in source format and/or development documentation, this shall be agreed separately between the parties to the contract. The right to separate agreements on dates and prices shall be reserved in each case.
- 3.3 Individually created software or program adaptations require program acceptance for the respective program package concerned no later than four weeks after completion. Completion shall be assumed in any case if ABC Research GmbH requests the Client to announce an acceptance date or if ABC Research GmbH hands over the work (the individually created software or program adaptation) to the Client. The acceptance and thus the proper performance of services by ABC Research GmbH (measured against the Written Service Description of Any Kind (cf. item 3.2), taking into account any changes that may have been made, as well as the test data provided (cf. item 3.1)) shall be confirmed by the Client in a protocol. If the Client allows the period of four weeks to elapse without acceptance of the program, the delivered software shall be deemed to have been accepted on the day of completion within the meaning of this provision. If the software is used in live operation by the Client, the software shall in any case be deemed to have been accepted at the start of use, provided that this point in time lies before the date of completion.
- 3.4 Any defects which occur, i.e. deviations from the Written Service Description of Any Kind, shall be reported by the Client to ABC Research GmbH in writing and verifiably (e.g. delivery by messenger), sufficiently documented, without delay, at the latest, however, within 3 working days after their detection, unless the duty to minimize damages incumbent on ABC Research GmbH requires notification in another way (in particular in case of imminent danger). In the event of duly notified, significant defects which do not allow the start or

continuation of live operation, a new acceptance in terms of Section 3.3 shall be required after the defects have been remedied.

- 3.5 The selection of suitable employees for the processing of the order, in particular, however, also the determination of the working modalities, shall be at the discretion of ABC Research GmbH.
- 3.6 ABC Research GmbH shall be free to commission a third party with the execution of the order placed with it or parts thereof (subcontracting).
- 3.7 When ordering library (standard) programs, the Client shall confirm his knowledge of the scope of performance of the ordered programs with the order.
- 3.8 Should it become apparent in the course of the work that the execution of the order in accordance with the Written Service Description of Any Kind is impossible in fact or in law, or if the execution is otherwise prevented by circumstances beyond the control of ABC Research GmbH (e.g. because the circumstances are within the sphere of influence of the Client or the Client refuses the execution of the work or if they are due to force majeure), ABC Research GmbH shall be obliged to notify the Client immediately, unless the Client is aware of this anyway. Subsequently, the Client shall, if possible, create the conditions for the execution of the order. Should he fail to comply with this obligation or fail to do so within a period of 4 weeks, ABC Research GmbH shall be entitled to refuse further performance and to withdraw from the contract without setting a grace period. Even in the event of withdrawal from the contract, ABC Research GmbH shall retain the claim to the remuneration actually due. Irrespective of the actual damage, the Client shall also pay ABC Research GmbH an amount equal to 30 % of the total order value not yet invoiced as lump-sum compensation. In addition, the Client shall, however, be obliged to compensate ABC Research GmbH for any damages incurred, in particular for lost profits. A reduction of the claims of ABC Research GmbH in the event of contributory negligence pursuant to § 1304 ABGB (Austrian Civil Code) shall be excluded.
- 3.9 Program carriers, documentation and service descriptions of any kind shall be shipped at the expense and risk of the Client. Any additional training and explanations requested by the Client shall be invoiced separately. Insurance will only be taken out at the request of the Client.

4 Prices, taxes and fees

- 4.1 All prices or hourly rates are quoted in Euro without value added tax. They are only valid for the present order.
- 4.2 P Lump-sum fees shall be understood to be ex domicile of ABC Research GmbH, excluding the costs, fees and charges mentioned in clauses 4.3, 4.4 and 4.5.
- 4.3 The costs for programme carriers or similar materials shall always be invoiced separately.
- 4.4 The costs for travel, daily allowances and overnight accommodation shall be invoiced separately to the Client. Travel time is considered working time.

- 4.5 Any contractual fees shall be paid by the Client, who shall indemnify and hold harmless ABC Research GmbH in this respect.
- 4.6 For library (standard) programs, the list prices valid on the day of delivery shall apply, unless otherwise agreed.
- 4.7 Unless hourly rates have been agreed upon, for all services (organizational consulting, programming, training, conversion support, telephone consulting, etc.) the work involved shall be charged at the hourly rates usually applied by ABC Research GmbH on the day of performance.
- 4.8 Deviations from any lump-sum fee based on time expenditure for which ABC Research GmbH is not solely responsible, such as additional expenditure due to insufficient or untimely cooperation on the part of the Client, or services provided by ABC Research GmbH which relate to the subject matter of the order per se, but which have not been expressly agreed upon and which cause additional expenditure, shall be invoiced according to the actual time incurred.
- 4.9 The estimated prices (in particular also in the lump-sum fee) shall not include hardware and software components and systems which are specifically required for this project and which are not already part of the standard equipment of ABC Research GmbH. The corresponding equipment with these systems over the duration of the project shall be provided by the Client.

5 Date of delivery

- 5.1 ABC Research GmbH shall endeavour to meet the agreed deadlines for performance (completion) as far as possible. Unless otherwise agreed, delivery dates shall not be binding.
- 5.2 The target fulfilment dates can only be met if the Client provides all necessary work and documents, in particular the Written Service Description of Any Kind according to Section 3.2, in full by the dates specified by ABC Research GmbH, and if the Client meets his obligation to cooperate to the extent required. ABC Research GmbH shall not be held responsible for any delays in delivery and cost increases resulting therefrom, as well as for such delays and cost increases caused by incorrect, incomplete or subsequently changed data and information or documents provided, and such delays and cost increases shall not lead to a default of ABC Research GmbH. Any resulting additional costs shall be borne by the Client. In addition, the Client shall be obliged to compensate ABC Research GmbH for any damages, in particular lost profits, irrespective of the fault of the Client.
- 5.3 ABC Research GmbH shall be entitled to make partial deliveries and issue partial invoices.

6 Payment

- 6.1 The invoices issued by ABC Research GmbH shall be paid within 14 days of receipt of the invoice without any deductions and free of charges. For partial invoices, the terms of payment specified for the entire order shall apply analogously.
- 6.2 ABC Research GmbH shall be entitled to issue partial invoices; in particular, ABC Research GmbH shall be entitled to monthly invoicing.
- 6.3 Compliance with the agreed payment deadlines shall be an essential condition for the fulfilment of the contract by ABC Research GmbH. If installments or partial payments have been agreed upon, in the event of non-payment of two consecutive installments or partial payments, all outstanding partial services of the Client shall become due immediately, without invoicing or reminder by ABC Research GmbH; acceptances may be made due.
- 6.4 A delay in payment shall entitle ABC Research GmbH to discontinue current work and to withdraw from the contract after setting a 14-day grace period. In the event of justified withdrawal, the Client shall owe ABC Research GmbH the entire agreed remuneration. In addition, ABC Research GmbH shall be entitled to default interest at a rate of 10% p.a. above the base interest rate, without prejudice to further claims for damages. All damages of ABC Research GmbH in connection with the default of the Client, in particular also lost profits, shall be compensated by the Client, irrespective of fault.
- 6.5 ABC Research GmbH shall be entitled at any time and without limitation to offset against claims of the Client. Offsetting by the Client shall only be permitted if the claim against ABC Research GmbH has been recognised by the latter or awarded by a legally binding judgment. The Client shall not be entitled to a right of retention, be it by plea of non-performance or improper performance of the contract (§ 1052 ABGB), or by refusal to surrender a physical object in order to enforce a claim.

7 Intellectual property and use

- 7.1 All intellectual property rights, such as copyrights, trademark rights, design rights, patent rights, utility model rights and know-how, as well as, in particular, unprotected inventions, industrial experience, trade secrets, etc., irrespective of the time at which they are disclosed to the contracting party, shall in any case remain with ABC Research GmbH or any licensor. Neither contractual party shall be granted any intellectual property rights of the other contractual party by this agreement. The Client shall only be granted the right to use the contractual results for his own purposes after payment of the agreed remuneration, in the case of software only for the hardware specified in the agreement and to the extent of the number of licenses acquired.
- 7.2 The present contract only grants a license to use the results of the contract, including software. In particular, any distribution or exploitation by the Client that goes beyond the use for his own purposes, with the exception of the transfer to an affiliated company within

the meaning of §§ 228 UGB or 15 AktG, is excluded. The cooperation of the Client in the production of the results shall not result in the acquisition of any rights beyond the use specified in the present contract. ABC Research GmbH shall remain the owner of all rights to its services including the respective associated material, even if the Client modifies these - irrespective of whether or not to the extent permitted by the contract - or, in the case of software, combines them with its own programs or those of a third party. In the case of such changes or connections, as well as in the case of the creation of program copies required for the contractual use, the Client shall attach a note referring to the contractor.

- 7.3 The Client may neither change nor remove the contractor's markings, ownership details and property right notices. This also applies to all accompanying materials.
- 7.4 The Client shall guarantee that he is entitled to use and exploit, in particular to pass on, the software or other materials made available to ABC Research GmbH for the purpose of rendering its services, and shall indemnify and hold ABC Research GmbH harmless in respect of all third-party claims.
- 7.5 The Client shall be permitted to make copies in the case of software results for archiving and data backup purposes, provided that the software or any accompanying materials (operating instructions, packaging, etc.) do not contain any express prohibition of the licensor or third parties and that all copyright and ownership notices are transferred unchanged to these copies.
- 7.6 In the event that, in the case of software results, the disclosure of interfaces is indispensable for the interoperability of the individually created software in question, the Client shall commission ABC Research GmbH with the disclosure of interfaces for an appropriate fee. If the Client fails to commission ABC Research GmbH, the latter shall in any case be entitled to the appropriate remuneration within the meaning of the first sentence. If ABC Research GmbH does not accept the order, decompilation may only be carried out in compliance with the relevant provisions of the copyright law and the results may only be used to establish interoperability.
- 7.7 In the event of infringement of the intellectual property of ABC Research GmbH, in particular of copyrights, trademark rights, know-how, industrial inventions or trade secrets, full satisfaction shall be provided.

8 Right of withdrawal

- 8.1 In the event of a delay due to the sole fault of ABC Research GmbH, the Client shall be entitled to withdraw from the order by means of a proven delivery, e.g. by messenger, if the agreed service is not rendered in essential parts within the reasonable grace period and the Client is not at fault.
- 8.2 Force majeure, such as, in particular, natural disasters or fire, as well as other circumstances beyond the control of ABC Research GmbH, shall release ABC Research GmbH from the obligation to deliver, or allow ABC Research GmbH to redefine the agreed

delivery time. In this case, ABC Research GmbH shall immediately inform the Client in an appropriate form about the existence of an obstacle to performance. Force majeure shall be deemed equivalent to currency, trade policy and other sovereign measures, embargos, strikes, lockouts, operational disruptions for which ABC Research GmbH is not responsible, obstructions of traffic routes, delays in import/customs clearance, as well as all other circumstances which, without being the fault of ABC Research GmbH, significantly impede delivery and services or make them impossible. It shall be irrelevant whether these circumstances occur at ABC Research GmbH or at a sub-supplier. Irrespective of whether or not the obstacle preventing the performance of ABC Research GmbH continues to exist, the obligation to perform may only be postponed by 6 months. Thereafter, the Client shall be entitled to withdraw from the contract. However, the Client shall not be entitled to assert claims against ABC Research GmbH, regardless of the legal title. For partial services already rendered, ABC Research GmbH shall also be entitled to the remuneration corresponding to these partial services.

- 8.3 Cancellations by the Client shall only be possible with the written consent of ABC Research GmbH. If ABC Research GmbH has agreed to a cancellation, it shall be entitled to charge a cancellation fee in the amount of 30% of the unbilled order value of the overall project, in addition to the services rendered and accrued costs.

9 Warranty, maintenance, modifications

- 9.1 ABC Research GmbH warrants that its performance does not contain any defects that would significantly impair the usability or value of the product, or that it does not have any warranted characteristics. Should the written service descriptions of any kind, specifications or similar documentation prepared in the course of the performance of the contract contain promises of third party services, this shall only be deemed to be a promise of use by the third party, i.e. only a promise to seek the consent and performance of the third party.
- 9.2 In the case of individual software, the warranty obligation begins with the program acceptance regulated in point 3.3. The warranty period is six months from acceptance. A warranty obligation exists only with regard to reproducible defects. An alleged defect must be reported immediately (within a maximum of three working days) by registered mail, giving a concrete description of the type of defect, otherwise all claims shall be time-barred. In the case of delivery by a carrier (forwarding agent, post office, etc.), the delivered service is to be checked immediately and any defects are to be recorded in writing on any delivery documents, otherwise all claims will be time-barred. The defects shall be notified to ABC Research GmbH without delay (within 3 working days at the most) by means of a concrete description and complete documentation (including the aforementioned delivery documents) by means of proven delivery, e.g. by messenger.
- 9.3 Improvable defects shall be remedied at the discretion of ABC Research GmbH either by improvement or replacement delivery within a reasonable period of time. In any case,

improvement and replacement shall take precedence over price reduction and rescission. Even in the event of a justified notice of defects, the obligation to remedy defects shall not apply if the Client does not enable ABC Research GmbH to take all measures necessary for investigation and remedy of defects. Claims of recourse against ABC Research GmbH pursuant to § 933b ABGB (Austrian Civil Code) shall be excluded.

9.4 The warranty shall be excluded in the following cases:

- a) in the case of minor deviations from the service description which are customary in the trade or technically unavoidable or only avoidable at additional expense (including any changes made by mutual agreement);
- b) in the case of defects which are attributable to material provided by the customer;
- c) in the case of defects attributable to the actions of third parties, atmospheric discharges, overvoltages, natural phenomena and chemical influences.
- d) for third-party components supplied.

9.5 Furthermore, the warranty for software results is excluded in the following cases:

- a) in the event of errors, malfunctions or damage attributable to improper or improper operation of the software or material, non-compliance with the installation, operating or maintenance instructions, the use of any components, interfaces and parameters, the use of unsuitable operating materials, organisational measures and data carriers, abnormal operating conditions (in particular deviations from the installation, use and storage conditions), improper transport or inadequate maintenance
- b) if library (standard) programs are used, for damage to them or damage resulting from them or their use;
- c) for software that is or was subsequently modified, supplemented or otherwise interfered with by the Customer or third parties;

9.6 If the subject of the order is the modification or supplementation of already existing programs by ABC Research GmbH, the warranty shall refer to this modification or supplementation. The warranty for the original program shall not be revived thereby.

9.7 Costs for support, error diagnosis and error and fault elimination which are not or no longer covered by any warranty claim of the Client, as well as other corrections, changes and additions subsequently requested by the Client, shall be carried out by ABC Research GmbH against appropriate remuneration.

9.8 In the event of unjustified notices of defects, i.e. in the absence of a warranty claim, the costs incurred by ABC Research GmbH as a result thereof shall be invoiced and ABC Research GmbH shall be entitled to reasonable remuneration.

10 Compensation for damages

10.1 ABC Research GmbH shall only be liable within the scope of the statutory provisions for damages - with the exception of personal injury - if it can be proven that ABC Research

GmbH acted with intent or gross negligence. The burden of proof shall be borne by the injured party.

- 10.2 The limitation period for claims for damages by the Client shall be 6 months from the time of knowledge of the damage and the injuring party. The period of limitation begins to run even if the damage has not yet occurred.
- 10.3 The liability of ABC Research GmbH shall be limited to the total amount of the order. Compensation for consequential damages and pure financial losses as well as for lost profits and loss of interest shall be excluded. Furthermore, ABC Research GmbH shall not be liable for damages resulting from third-party claims against the Client, nor for unforeseeable damages. In the cases of items 9.4 and 9.5, any liability of ABC Research GmbH shall be excluded; the same shall apply in the case of claims for damages pursuant to § 33 DSG.
- 10.4 The product liability of ABC Research GmbH shall be limited to those cases in which the Product Liability Act (BGBl No. 99/1988 as amended) provides for mandatory liability. Any recourse claims which the contractual partners or third parties may assert against ABC Research GmbH on the grounds of product liability within the meaning of the Product Liability Act shall be excluded, unless the party entitled to recourse proves that the defect was caused within the sphere of responsibility of ABC Research GmbH and was caused by at least gross negligence.
- 10.5 If ABC Research GmbH renders services within the scope of a research program, ABC Research GmbH shall apply all due care to such work which is necessary for a reasonable execution and shall endeavour to achieve the desired result. However, ABC Research GmbH shall not assume any liability or guarantee for the achievement of the desired result. In addition, ABC Research GmbH shall only be liable in cases of intent and gross negligence. ABC Research GmbH shall also not be liable for the industrial and/or commercial exploitation of the desired research result, provided that it is achieved.

11 Loyalty

The contracting parties undertake to be loyal to each other. They will refrain from any enticement and employment, also via third parties, of employees of the other contracting party who have worked on the realisation of the orders, during the duration of the contract and for 12 months after the termination of the contract. The party to the contract who violates this provision shall be obliged to pay lump-sum damages in the amount of one annual salary of the employee.

12 Confidentiality

- 12.1 The contracting parties undertake to keep secret from third parties all confidential knowledge, documents, tasks and business transactions of the contracting party that become known to them during this contractual relationship as well as the results obtained

- even beyond the duration of this contract - unless these have already become generally known in some other way.

12.2 ABC Research GmbH shall, however, be entitled to use the research results obtained within the scope of this contractual relationship for advertising purposes, in particular to publish them in such a way that the activities of ABC Research GmbH are made known to the general public and to potential interested parties in particular. This also applies to the use of the results for general publication, teaching and acquisition purposes. The Client may be quoted by name as a reference in presentations, offers and the like.

13 Place of performance

Unless otherwise agreed, the place of performance for deliveries and services shall be the registered office of ABC Research GmbH.

14 Error

The rescission of the contract concluded between ABC Research GmbH and the Client due to error shall be excluded.

15 Retention of title

Until the purchase price or a service fee has been paid in full, the service delivered by ABC Research GmbH shall remain its property. Retention of title by a contractual partner shall not be recognised. The permission to use the work within the meaning of Section 7.2 or any other rights expressly granted to the Client with regard to the intellectual property of ABC Research GmbH shall only come into existence upon full payment of the purchase price or service fee.

Items delivered to ABC Research GmbH shall be liable for all outstanding claims of ABC Research GmbH.

16 Miscellaneous

Should individual provisions of this contract be or become ineffective, the remaining content of this contract shall not be affected. The contractual partners will work together as partners to find a provision that comes as close as possible to the invalid provision.

17 Final provisions

17.1 Unless otherwise agreed, Austrian law shall apply between the contracting parties, excluding the UN Convention on Contracts for the International Sale of Goods and the conflict of laws rules; this shall also apply if the order is carried out abroad.

17.2 Any disputes shall be exclusively subject to the jurisdiction of the competent court at the registered office of ABC Research GmbH.

17.3 For sales to consumers within the meaning of the Consumer Protection Act, the above provisions shall apply to the extent that the Consumer Protection Act does not necessarily provide for other provisions.

The General Terms and Conditions were drawn up in German with an English translation. In case of doubt, e.g. in the event of deviations or in questions of interpretation, the German version shall apply.