

General Terms and Conditions (as of 11/2022)

Danube Dynamics Embedded Solutions GmbH

1. Area of application

- 1.1. These General Terms and Conditions ("Terms and Conditions") apply to all services provided by *DANUBE DYNAMICS* in the course of a contractual relationship between Danube Dynamics Embedded Solutions GmbH, Lastenstraße 38/12.OG, 4020 Linz, Austria, FN 536539d (hereinafter referred to as "*DANUBE DYNAMICS*") and the client (hereinafter referred to as "*Client*").
- 1.2. *DANUBE DYNAMICS* offers the *client* IT services in the field of hardware design, AI and software development and sales (on premise), as well as the sale of combined software and hardware solutions. The scope of the services to be provided by *DANUBE DYNAMICS* and the remuneration to be paid for them are agreed in the order placed by the *client* with *DANUBE DYNAMICS*.
- 1.3. These order conditions also apply to new orders or extensions to the existing scope of the order, unless otherwise agreed in writing.
- 1.4. If a specific service agreement is concluded between *DANUBE DYNAMICS* and the client, the more specific provisions of this service agreement shall take precedence over these Terms and Conditions in the event of a conflict. The remaining provisions of these Terms and Conditions shall remain unaffected.

2. Information and cooperation obligations of the client

- 2.1. Once the *order* has been placed, the *client* is obliged to inform *DANUBE DYNAMICS* immediately of all information, documentation and facts that may be of significance in connection with the performance of the order and to provide all necessary documents. *DANUBE DYNAMICS* is entitled to assume that the information, facts, original contractors and documents are correct, unless their incorrectness is obvious.
- 2.2. During the term of the *contract*, the *client* is obliged to notify *DANUBE DYNAMICS* of any changed or newly arising circumstances which could be of significance in connection with the execution of the order as soon as they become known.
- 2.3. For the performance of the contract, the *client shall*, if required and upon request by *DANUBE DYNAMICS*, name a person with overall responsibility for the service used and with the corresponding authority to act and make decisions, who shall be available to *DANUBE DYNAMICS* as a contact person in the context of the performance of the service. If required, *DANUBE DYNAMICS shall* also be provided with the name of an IT or information security officer who is sufficiently familiar with the *client's* IT and information security structures.
- 2.4. Finally, the *client* is obliged to grant the access and entry authorizations required for the provision of services by *DANUBE DYNAMICS*. The *client shall* ensure that *DANUBE DYNAMICS is provided* free of charge with the infrastructure necessary for the provision of services, in particular the necessary technical equipment, electricity, telephone and data transmission lines, if services are provided on the *client's* premises.
- 2.5. The *client shall* indemnify and hold *DANUBE DYNAMICS harmless* for all delays in the provision of services by *DANUBE DYNAMICS resulting from a breach of the client's duty to cooperate.*

3. Principles of service provision and definitions

- 3.1. The provision of services by *DANUBE DYNAMICS* is carried out in accordance with the current state of the art. The fulfillment of other technical norms or standards in the provision of services shall only become part of the contract if this is explicitly agreed in writing.

- 3.2. *DANUBE DYNAMICS* is obliged to maintain confidentiality with respect to all matters entrusted to it and any other facts that become known to it in the course of its work, the confidentiality of which is in the interest of the client.
- 3.3. *DANUBE DYNAMICS* is entitled to commission employees or third parties with the handling of the *client's* affairs, provided that they have been demonstrably instructed about the obligation of confidentiality or have been bound by the corresponding obligations.
- 3.4. *DANUBE DYNAMICS* shall only be released from its obligations under this provision to the extent that this is necessary to pursue claims by *DANUBE DYNAMICS* (in particular claims for *DANUBE DYNAMICS'* fees) or to defend against claims against *DANUBE DYNAMICS* (in particular claims for damages by the client or third parties against *DANUBE DYNAMICS*).
- 3.5. "Customized software" means software solutions to be developed individually, in particular for machine controls, robotics and AI, which are to be created by *DANUBE DYNAMICS* for the *client* as part of a software project contract. These are subsequently to be transferred to the client together with the hardware to be controlled (overall solution) or as source code against payment.
- 3.6. "Standard software" is a standard software package defined in an order that is transferred to the *client* as a one-off software purchase in binary code and implemented on systems if necessary. The sale is made either together with the hardware (complete solution) or by making it available on a device of the *client* and includes the associated ancillary services.
- 3.7. "Software" means the customized or standard software purchased in accordance with an agreement with *Danube Dynamics*.
- 3.8. "System" means the hardware sold by *DANUBE DYNAMICS* to the *customer* or provided by the customer on which the software is made available.
- 3.9. "Software maintenance" refers to the regular maintenance of the software provided in the event of a corresponding agreement as part of a continuing obligation.
- 3.10. "Service" means the provision of programming and consulting services outside of a software purchase agreement or a software maintenance agreement. For the purposes of the provisions of these Terms and Conditions, a service is always deemed to exist if *DANUBE DYNAMICS* does not owe a result (contract for work or lease) but a service (service contract).

Conditions for software development
(Customized software - Software project contracts)

4. Planning phase (customized software)

- 4.1. Prior to the development of customized software, the parties shall carry out a planning phase in order to define the more detailed technical, commercial and time-related framework conditions of the project in a binding manner. Before the start of the planning phase, the contracting parties shall sign a mutual non-disclosure agreement.
- 4.2. *DANUBE DYNAMICS* is obliged to obtain a comprehensive picture of the *client's* existing system requirements in the course of the planning phase and to inform the *client* in writing if there are doubts as to whether the project development is possible on the basis of these system requirements. Reference is made to the information and cooperation obligations of the *client* (in accordance with 2. of these terms and conditions).

- 4.3. After completion, the framework conditions of the project shall be bindingly defined and signed by both clients in a project plan, if necessary on the basis of a specification sheet and a functional specification sheet, and shall become an integral part of the contract between DANUBE DYNAMICS and the *client*.
- 4.4. If it becomes apparent during the planning phase that the implementation of the project is not possible within the parameters planned by the *client*, the client is entitled to withdraw from the project with a written declaration. In this case, *DANUBE DYNAMICS shall* receive an appropriate one-off payment to compensate for the services provided during the planning phase, but at least 20% of the budgeted project costs.

5. Development and granting of rights (customized software)

- 5.1. *DANUBE DYNAMICS* is obliged to create the customized software in accordance with the agreed framework conditions or to provide it to the *client* against payment.
- 5.2. After implementation of the project, the *client* is entitled to use the customized software within the agreed scope (right of use).

6. Acceptance of the customized software and operation (customized software)

- 6.1. Acceptance of the customized software takes place after initial provision on a system in the form of final acceptance. Ongoing tests on test systems shall only serve to check the progress of the project. The acceptance test shall be recorded and the record signed by the contracting parties.
- 6.2. The project deadline shall be deemed to have been met if the acceptance test has been completed by then without errors or if any errors that have occurred have been rectified before the deadline. If a delay is due to a circumstance for which *DANUBE DYNAMICS* is not responsible, the project end date shall be postponed by the period of this delay.
- 6.3. The acceptance test checks whether the customized software fulfills the agreed functions and specifications. *DANUBE DYNAMICS* is responsible for carrying out the acceptance test in the presence of the *customer*. If the *client* refuses to participate in an acceptance test despite a grace period of two weeks, the customized software is deemed to have been accepted without defects.
- 6.4. If defects are detected during a test run, *DANUBE DYNAMICS shall* repeat this test run and, if in the opinion of the *client* this is technically necessary, further test runs.
- 6.5. After the third unsuccessful repetition of the acceptance test, the *client* is not obliged to accept the customized software, unless the defects that have occurred are class 3 or 4 defects in accordance with these terms and conditions.
- 6.6. In the event of successful completion of the acceptance test, the *client* must declare acceptance of the customized software in writing. If the *client* fails to accept the customized software for reasons for which *DANUBE DYNAMICS* is not responsible, despite a written request with a grace period of two weeks from the successful completion of all tests, the customized software shall be deemed to have been accepted at the time of successful completion.

Conditions for the purchase of software (standard software)

7. Software purchase (standard software)

- 7.1. The *client* acquires from *DANUBE DYNAMICS* the software as binary code together with any associated databases and, if applicable, the system on which the software is located and the application documentation in printed and electronic form in German.
- 7.2. The source code is only part of the subject matter of the contract if this has been explicitly agreed between the *client* and *DANUBE DYNAMICS*.

- 7.3. Unless otherwise agreed, *DANUBE DYNAMICS* shall grant the *client* a simple license to use the *software* and user manual for an unlimited period of time.
- 7.4. The *client* may use the software exclusively for its company and the agreed business cases arising there; thus the *client* may not (i) make the software available to third parties - in whatever form - and/or use it for business cases of third parties.
- 7.5. The *client* may only make copies of the software to the extent that this is absolutely necessary for the agreed use of the software. The *client* shall also have the right to edit the software in order to adapt it to its own needs or those of third parties commissioned by it within the scope of the use to which it is entitled under this contract. However, during an ongoing maintenance contract, the client is only entitled to the latter after the client has explained the need for customization to *DANUBE DYNAMICS* in detail in writing and has unsuccessfully requested *DANUBE DYNAMICS* to make the customization within a reasonable period of time, in any case not less than one month, against payment.
- 7.6. The *customer* may make copies of the software for backup purposes (backup copies) insofar as this is necessary for the use of the software, whereby backup copies on movable data carriers must be marked as such and provided with the copyright notice of *DANUBE DYNAMICS*.
- 7.7. The *Client* shall have the right to decompile within the meaning of Section 40e UrhG, i.e. to reproduce and (re)translate the source code of the software ("decompilation"), provided that the following conditions are met: (i) the decompilation is essential for the *Client* to obtain the information necessary to establish the interoperability of the Software, but solely within the scope of the use granted by this Agreement, with other, independently created programs; (ii) the decompilation is carried out by the *Client* or on its behalf by a person authorized to do so by the *Client*; and (iii) the decompilation is limited to those parts of the Software that are necessary to establish interoperability. (iv) The decompilation may not - and the *client* shall be obliged to provide evidence of this - (a) be used for purposes other than to establish the interoperability of the software; (b) be passed on to third parties, unless this is necessary for the interoperability of the software; (c) be used for the development, reproduction or distribution of a software product with an essentially similar form of expression or for other acts that infringe copyright.
- 7.8. Furthermore, the *client* is only entitled to decompile the software if *DANUBE DYNAMICS* has not provided the necessary data and/or information to establish interoperability with other, independently created software products within 14 days of a written request by the *client* containing all information necessary and appropriate for the establishment of interoperability. The said period shall be reasonably extended if *DANUBE DYNAMICS* demonstrates within the 14-day period that compliance is not possible or reasonable.
- 7.9. *DANUBE DYNAMICS* shall - if commissioned - install the software within the period agreed in the order on systems sold with the software or on the *client's* systems and make it executable for the *client* for use in accordance with this contract ("integration"). The installation on the *customer's* systems requires that the *customer* fulfills all requirements, in particular with regard to the minimum necessary hardware and software environment and access to the *customer's* systems, at its own expense.

Conditions for software maintenance

8. Scope of services (maintenance contract)

- 8.1. Software maintenance according to these Terms and Conditions is the provision of services by *DANUBE DYNAMICS* in connection with the maintenance of the software as well as the application support of those persons employed by the *client* who work with the software; this includes exclusively the following areas:
- the provision and implementation of patches and bug fixes for the software;
 - the provision and implementation of updates for the software;
 - application support, namely the provision of event-related information and instructions on the operation of the software as well as answering questions from the client in connection with the software;
- 8.2. Services other than those listed above shall only become part of the contract between the parties if they are provided as part of a separate order on terms to be agreed by the parties. This includes, for example, training courses

and training, individual further development of the software, insofar as this does not serve to rectify errors, processing of the software for the purpose of adapting it to new hardware or software, data backup measures or the removal of malware.

9. Service Level Agreement (maintenance contract)

- 9.1.** *DANUBE DYNAMICS* is obliged to remedy all errors in the software duly notified by the *customer* in accordance with these Terms and Conditions. Errors within the meaning of these Terms and Conditions are all faults in the software which would qualify as defects. Faults in the software resulting from unauthorized modification or processing of the software by the *customer* shall not be deemed to be faults whose elimination is covered by *DANUBE DYNAMICS'* obligation to perform.
- 9.2.** For the purpose of troubleshooting, *DANUBE DYNAMICS* shall, as required, set up a remote maintenance access secured against misuse according to the current state of the art and maintain it during the term of the software maintenance contract or carry out maintenance on the systems. In any case, *DANUBE DYNAMICS* shall ensure that an appropriately staffed, competent team of service specialists is available to rectify errors. Error reports will be accepted by *DANUBE DYNAMICS* during maintenance hours on working days from 8.00 a.m. to 12.00 noon and 1.00 p.m. to 5.00 p.m.
- 9.3.** If an error occurs, the *customer* is obliged to immediately provide *DANUBE DYNAMICS* with a concrete, comprehensible and precise error report, which must contain all information that enables *DANUBE DYNAMICS* to narrow down the cause of the error and to determine strategies for troubleshooting. This includes, in particular, information about the type of error, the description of the system status when the error occurred, the components affected by the error and the frequency of occurrence of the error. This must be reported via the e-mail address provided by *DANUBE DYNAMICS*; as far as possible, further information (photos, error logs, etc.) must be included.
- 9.4.** *DANUBE DYNAMICS* will carry out troubleshooting as far as possible by means of remote maintenance. Only if an error cannot be rectified in this way or cannot be rectified within a reasonable time, *DANUBE DYNAMICS* is obliged to rectify the error at the *customer's* premises.
- 9.5.** Should the *client* request on-site troubleshooting, although troubleshooting would have been possible by telephone, e-mail or remote maintenance, the client shall bear the associated costs. If *DANUBE DYNAMICS* incurs costs in connection with remote maintenance or on-site maintenance due to incorrect error messages, these costs shall be borne by the *customer* regardless of fault.
- 9.6.** The service and response times agreed for software maintenance are based on the service or performance agreement agreed between the *client* and *DANUBE DYNAMICS*, depending on the product. The response time guaranteed by *DANUBE DYNAMICS* commences with the complete error message from the *client*.
- 9.7.** Unless otherwise agreed for a specific product in a service or performance agreement, the following definition is decisive for determining the service classes.
- **Minor:** The software can be used for its intended purpose without restriction. The error has no or only an insignificant impact on the functionality and/or security of the software. Use of the software remains possible without restriction.
 - **Medium:** The appropriate use of the software is slightly restricted. The error has an insignificant impact on the functionality and/or security of the software and allows further use of the software with only minor restrictions.
 - **High:** The appropriate use of the software is seriously restricted. The error has a significant impact on the functions and/or security of the software, but allows further use of the software.
 - **Critical:** Use of the software is not possible or is unreasonably restricted. The error has a serious impact on essential functions and/or the security of the software; the software cannot continue to be used.

- 9.8. The assignment of faults to the above-mentioned classes shall be made by mutual agreement. If the parties are unable to reach an agreement, *DANUBE DYNAMICS* shall take measures to remedy the defect on the basis of the customer's assessment. However, if it turns out subsequently that this assessment was incorrect, *DANUBE DYNAMICS* shall be entitled to compensation for the additional costs incurred due to incorrect classification.

10. Maintenance (maintenance contract)

- 10.1. *DANUBE DYNAMICS* shall provide the *client* with all generally released updates, patches and bug fixes and install them on the client's systems. *DANUBE DYNAMICS* shall ensure that new program parts are fully compatible with the software and the known system environment of the client and is also responsible for ensuring the greatest possible compatibility with the known interfaces used by the *client*. If compatibility cannot be achieved with reasonable effort due to the IT infrastructure used by the *customer*, the *customer* shall reimburse *DANUBE DYNAMICS* for any additional expenses.
- 10.2. *DANUBE DYNAMICS* is completely free to decide whether to install the program parts or new versions covered by this provision; if the *client* refuses to carry out an update, patch or bug fix, he loses his claim to the correction of those errors that would have been corrected by them.
- 10.3. *DANUBE DYNAMICS* is not obliged to install and deliver upgrades. Upgrades are software components with considerably extended functionality or modified architecture.
- 10.4. However, a completely error-free or uninterrupted system cannot be guaranteed for technical reasons alone. When calculating the contractually owed service and response times, cases of force majeure and times of interruption of usability due to periodic maintenance and updating of the software or systems shall not be taken into account.
- 10.5. In the event that the agreed service and response times are violated or exceeded, the *client* is only entitled to an aliquot refund of the contractually owed maintenance fee for the duration of the violation or overrun. A claim does not exist if *DANUBE DYNAMICS* can prove that the violation or overrun is a consequence of one or more of the aforementioned circumstances:
- grossly negligent or intentional acts of the client or third parties;
 - Errors in hardware and/or software components whose maintenance or operation is not part of the subject matter of the contract;
 - external force, such as water damage, fire or damage caused by electricity and magnetism;
 - force majeure.
- 10.6. The assertion of claims for damages for the lack of availability of software or systems beyond the aliquot reimbursement of the contractually owed maintenance fee is excluded, unless these were caused intentionally by *DANUBE DYNAMICS*.
- 10.7. Penetration tests or other checks of the security and stability of the system on which the customized software is installed by the *client* are only permitted during an upright maintenance contract with the consent of *DANUBE DYNAMICS*.

11. Contract term and termination (maintenance contract)

- 11.1. Unless explicitly agreed otherwise for a specific project, the contractual relationship is concluded for an indefinite period and may be terminated by either party subject to six months' notice to the end of each calendar year. In any case, *DANUBE DYNAMICS'* claim to remuneration shall remain in force.

- 11.2.** The right of the contracting parties to terminate the contractual relationship for good cause shall remain unaffected by this provision. Good cause shall be deemed to exist in particular if one of the parties
- a. is declared bankrupt or the opening of bankruptcy proceedings is rejected for lack of assets.
 - b. breaches obligations arising from these Terms and Conditions of Contract and continues to act in breach of contract despite a reminder and the setting of a reasonable deadline.
 - c. another reason or breach of contract that makes it unreasonable to expect the other party to maintain the contractual relationship.
 - d. initiates legal proceedings against *DANUBE DYNAMICS*, regardless of whether this is justified or unjustified, provided that no attempt has been made to reach an amicable settlement in a personal meeting with the involvement of professional party representatives.

12. Lock (maintenance contract)

- 12.1.** *DANUBE DYNAMICS* is entitled to temporarily refuse the provision of services in whole or in part (blocking) if there is reasonable suspicion that the *client*, when using the service, violates laws or essential contractual obligations, namely those which serve to ensure the functionality of even just one service or the protection of third parties, or takes actions which entitle *DANUBE DYNAMICS* to terminate the contract immediately in accordance with these Terms and Conditions.
- 12.2.** A reasonable suspicion of unlawfulness and/or infringement exists in particular if courts, authorities and/or other third parties inform *DANUBE DYNAMICS* thereof. *DANUBE DYNAMICS* shall immediately inform the *client* of the blocking and the reason for it. The block shall be lifted as soon as the suspicion is invalidated and the conditions for it are no longer given.
- 12.3.** *DANUBE DYNAMICS* is also entitled to suspend the provision of the contractual services in whole or in part in the event of default of payment by the client after a single unsuccessful written reminder with notice of the other suspension and setting a grace period of 7 days.
- 12.4.** The *client* shall not be entitled to any claims arising from a justified suspension of services.
- 12.5.** The costs associated with the disconnection, including those of reconnection, shall be reimbursed by the *client* if the client is responsible for the disconnection. A block for which the *client is responsible shall* not release the client from the obligation to pay the monthly fees.

Conditions for the provision of services (consulting and programming services)

13. Scope of services & definitions

- 13.1.** The scope and content of the order placed with *DANUBE DYNAMICS* as well as the specific subject matter of the service or consultancy are set out in the agreed scope of the order. The transmission of an order confirmation or the unconditional provision of commissioned services shall in any case be deemed as acceptance of the offer by *DANUBE DYNAMICS*.
- 13.2.** *DANUBE DYNAMICS* is entitled and obliged to provide all services that are necessary and expedient for the fulfillment of the contract. If the situation changes after the end of the contractual relationship, *DANUBE DYNAMICS* is not obliged to inform the client of any changes or consequences resulting therefrom.
- 13.3.** The provision of services by *DANUBE DYNAMICS* in the course of a consulting activity takes place in particular through programming activities or the contribution of methodical knowledge, the use of proven methods and tools, the analysis of existing processes, the sensitization and discussion with responsible employees of the *client* and the preparation and holding of workshops. *DANUBE DYNAMICS* does not provide legal advice.

- 13.4. It is expressly stated that *DANUBE DYNAMICS* owes only the provision of the services defined in the order in accordance with the respective order, but never a concrete project success.

General terms and conditions

(Valid for all *DANUBE DYNAMICS* services)

14. Fee

- 14.1. Unless otherwise agreed, *DANUBE DYNAMICS* is entitled to a reasonable fee.
- 14.2. *DANUBE DYNAMICS* accepts orders for the development of customized software on the basis of a flat rate agreed in advance and/or an hourly rate agreed in advance (also for additional and supplementary services).
- 14.3. The *client* acknowledges that any estimate made by *DANUBE DYNAMICS* regarding the amount of the anticipated fee which is not expressly designated as binding is non-binding and not to be regarded as a binding cost estimate (within the meaning of Section 5 (2) KSchG) because the extent of the services to be provided by *DANUBE DYNAMICS* - with the exception of pure software purchases - cannot by its nature be reliably assessed in advance.
- 14.4. The amount and billing periods for the provision of services under a software maintenance contract are determined by the scope of the order placed.
- 14.5. *DANUBE DYNAMICS* provides consulting and programming services on the basis of an hourly rate agreed in advance. The contractual partner has the option of booking a fixed monthly contingent of hours in advance, which is not transferable to subsequent months and is invoiced monthly in advance.
- 14.6. Billing takes place in units of 15 minutes or part thereof, whereby a detailed time recording takes place at *DANUBE DYNAMICS*, which can be transmitted to the contractual partner if required.
- 14.7. Agreed fees shall be adjusted at the beginning of each calendar year by the increase in the consumer price index (CPI 2020) that has occurred in the last 12 months, but by at least 2%. A temporary non-valorization does not constitute a waiver by *DANUBE DYNAMICS* of this increase; this can also be claimed for the past during the entire term of the contract.
- 14.8. The contractual services are generally provided by *DANUBE DYNAMICS* during business hours on working days from 8.00 am to 12.00 pm and 1.00 pm to 5.00 pm.
- If the *client* commissions a different service provision, time surcharges shall be recorded for the respective services provided. Commissioned services outside the specified time periods shall be charged at a factor of 1:2. Services provided by *DANUBE DYNAMICS* at its own discretion outside the core opening hours shall be charged at a factor of 1:1.
- 14.9. If *DANUBE DYNAMICS* is to use or implement third-party software products for the client, the associated costs are not included in the fee. All costs associated with the use of these software products, such as license fees, expenses and other costs, shall be reimbursed by the *client* to *DANUBE DYNAMICS* within 7 days of invoicing or paid directly to the third-party provider.
- 14.10. Any expenses incurred by *DANUBE DYNAMICS* in connection with the exercise of the *client's* rights of inspection and control shall be remunerated appropriately.
- 14.11. If the *client* defaults on payment of all or part of the fee, the client shall pay *DANUBE DYNAMICS* default interest at the statutory rate, but at least 12% above the respective base interest rate. Further legal claims (e.g. § 1333 ABGB) remain unaffected.

15. Liability of *DANUBE DYNAMICS* and warranty

- 15.1. *DANUBE DYNAMICS'* liability for defective performance or other breaches of contractual obligations is limited to the sum insured under *DANUBE DYNAMICS'* business liability insurance available for the specific claim.

- 15.2. If the liability insurance does not cover a specific claim, *DANUBE DYNAMICS'* liability is limited in any legally permissible case to the amount paid by the *client* in the previous calendar year for the services provided by DANUBE DYNAMICS.
- 15.3. This maximum amount includes all claims against *DANUBE DYNAMICS* for defective performance and/or other breach of contractual obligations, in particular claims for damages and price reduction. This maximum amount does not include claims by the client to reclaim the fee paid to *DANUBE DYNAMICS*, whereby the *client* may only reclaim the fee agreed for the respective service component.
- 15.4. *DANUBE DYNAMICS shall* only be liable for damages in all cases of intent or gross negligence. In the event of slight negligence, *DANUBE DYNAMICS shall* only be liable for personal injury. *DANUBE DYNAMICS shall* not be liable for indirect damage, loss of profit, loss of interest, failure to realize savings, consequential damage or financial loss.
- 15.5. *DANUBE DYNAMICS* assumes no liability for the suitability of the software for the purpose intended by the *client*, but only for the performance of the service in accordance with the agreement. *DANUBE DYNAMICS shall* not be liable for optical deviations that do not impair the proper use of the software.
- 15.6. The burden of proof for any fault on the *part of DANUBE DYNAMICS* lies with the *client*.
- 15.7. If *DANUBE DYNAMICS* is commissioned, all limitations of liability shall also apply in favor of all employees and sub-contractors working on behalf of *DANUBE DYNAMICS*.
- 15.8. *DANUBE DYNAMICS is* only liable to its *client*, not to third parties. The *client* is obliged to expressly inform third parties who come into contact with *DANUBE DYNAMICS'* services as a result of the client's actions of this fact.
- 15.9. *DANUBE DYNAMICS* provides warranty according to §§ 922 ff ABGB. In any case, the *customer must* prove the existence of a defect, whereby a material defect must be reproducible in any case; the presumption of defectiveness according to § 924 ABGB does not apply.
- 15.10. With respect to all services provided by *DANUBE DYNAMICS* in the performance of this contract, the *client* assumes a duty to inspect and give notice of defects in accordance with § 377 UGB, failing which the legal consequences standardized therein shall apply. In any case, the client shall notify *DANUBE DYNAMICS* in writing of any deficiencies in performance.
- 15.11. In the event of material defects, *DANUBE DYNAMICS shall* in any case initially have the option of rectification (repair or replacement of the missing part) or replacement; for this purpose, *DANUBE DYNAMICS shall*, at its discretion, provide the customer with a new, defect-free system and/or software or rectify the defect directly at the *customer's* premises; rectification shall also be deemed to be rectification of the defect if *DANUBE DYNAMICS* demonstrates to the *customer* reasonable possibilities to prevent the effects of the defect (reasonable work-around).
- 15.12. Even in the case of defects of title, *DANUBE DYNAMICS shall* in any case first have the option to provide warranty by improvement and shall have the choice to provide the customer with a legally unobjectionable possibility to use the subject matter of the contract or a replaced or modified equivalent subject matter of the contract (reasonable work-around).
- 15.13. The *client* must accept a new or modified contractual object within the scope of the warranty if the contractual scope of functions is retained and the acceptance does not lead to significant disadvantages, which must be proven by the *client*.
- 15.14. If third parties assert claims which prevent or hinder the *client* from using the subject matter of the contract in accordance with the contract, the *client* must inform *DANUBE DYNAMICS* immediately and comprehensively in writing. If the *client is* sued by third parties due to the use of the subject matter of the contract, the client shall coordinate all steps in this connection with *DANUBE DYNAMICS* and shall only take legal action, in particular acknowledgements and settlements, with the consent of *DANUBE DYNAMICS*. In this context, *DANUBE DYNAMICS* is obliged to

indemnify and hold the *client harmless* unless the claims are based on conduct of the *client* in breach of duty; in this case, the *client shall* indemnify and hold *DANUBE DYNAMICS harmless*.

- 15.15. If *DANUBE DYNAMICS* provides services, e.g. troubleshooting or fault rectification, without a defect being present, a reasonable fee may be demanded. This applies in particular if a defect cannot be proven/reproduced or is not attributable to *DANUBE DYNAMICS*.
- 15.16. If a defect can be remedied by the installation or other provision of a new or improved version of the software, the *client* is obliged to accept the remedy of the defect by such a new installation, unless it can assert any weighty reasons to the contrary.
- 15.17. The *client* loses all claims to warranty and compensation if he modifies or edits the software without authorization.
- 15.18. Due to the risk of data loss and/or unavailability of the software, the *client* is obliged to regularly, but at least weekly, make or have made backup copies of the data processed using the software in order to fulfill its duty to mitigate damages. In case of breach of this obligation, *DANUBE DYNAMICS shall* not be liable for any resulting damage suffered by the *customer*.

16. Statute of limitations/preclusion

Unless a shorter limitation or preclusive period applies by law, all claims shall lapse if they are not asserted in court by the client within six months of the time at which the *client* becomes aware of the damage and the person causing the damage or of any other event giving rise to the claim. However, the claims shall lapse after a maximum of three years.

17. Non-solicitation and employment ban

- 17.1. The *client* is not entitled to entice away and/or employ employees or subcontractors of *DANUBE DYNAMICS* during the term of the contractual relationship and twelve months thereafter. The employment of an employee or subcontractor by a company affiliated under company law shall be deemed equivalent to employment by the *client*. (e.g. parent company, subsidiary or sister company)
- 17.2. The *client shall pay DANUBE DYNAMICS* a no-fault contractual penalty of € 50,000.00 for each case of breach of this non-solicitation and non-employment clause, even if only an attempt has been made. In the event of payment of the contractual penalty, *DANUBE DYNAMICS reserves the* right to assert a claim for injunctive relief resulting from this agreement as well as a claim for damages exceeding the contractual penalty.

18. Copyrights and data protection

- 18.1. Documents provided by *DANUBE DYNAMICS* in digital or physical form, in particular sample documents, guidelines and directives, source codes, test scripts and program codes as well as other documents shall remain the intellectual property of *DANUBE DYNAMICS* unless otherwise agreed in these Terms and Conditions or the respective order. Any use, in particular the disclosure, reproduction and publication by the *client*, requires the express written consent of *DANUBE DYNAMICS*. Unless otherwise agreed in writing, *DANUBE DYNAMICS grants* the *client* a non-exclusive and non-transferable license to use the software.
- 18.2. The *client* shall store the software carefully in order to prevent misuse, in particular unauthorized duplication and/or use. The *client* shall ensure that the access authorization to the software and the protection of the systems against inspection and use by unauthorized persons is regulated, that the authorization to use the software is defined by technical measures and that each device on which the software can be called up is secured by precautions against unauthorized commissioning. The *client shall* take appropriate precautions to prevent malfunctions of the software as far as possible or to minimize their consequences.
- 18.3. The *customer* shall refrain from changing or removing any copyright notices, marks etc. of *DANUBE DYNAMICS* on or in connection with the software or systems.

- 18.4.** The *customer* shall keep a record of the backup copies of the software made by him in accordance with the contract and their use or storage location and shall provide *DANUBE DYNAMICS* with information and inspection thereof within five working days upon written request.
- 18.5.** If the *customer* passes on hardware on which the software or parts thereof are stored (i) to third parties, the *customer* undertakes to first irretrievably delete the software completely or have it deleted. The *customer* shall also keep a record of this and provide *DANUBE DYNAMICS* with information and access to this information within five working days upon written request.
- 18.6.** In summary, it is expressly agreed with regard to the provisions of §40c UrhG that a transfer of the rights of use to the software or the software without the consent of *DANUBE DYNAMICS* is not permitted.
- 18.7.** If *DANUBE DYNAMICS* uses open source libraries for the development of customized software, *DANUBE DYNAMICS* will inform the *client* of this by disclosing the respective license terms. The *client* is obliged to comply with the license terms of any open source libraries used.
- 18.8.** If *DANUBE DYNAMICS* has to provide conceptual planning and/or development services to prepare an offer for the *client*, an appropriate fee shall be deemed to have been agreed if an order is not placed. The non-remuneration of conceptual planning and development services must be agreed in writing.
- 18.9.** *DANUBE DYNAMICS* declares to fully comply with all obligations associated with the DSG and the EU-DSGVO as well as other data protection laws in the course of the provision of services and to process the personal data provided exclusively for the contractually agreed purpose, unless otherwise agreed or required by law.

19. Choice of law and place of jurisdiction

- 19.1.** The Terms and Conditions of Contract and the contractual relationship governed by them are subject to Austrian substantive law to the exclusion of the conflict of laws rules.
- 19.2.** For legal disputes arising from or in connection with the contractual relationship governed by these Terms and Conditions, including disputes regarding its validity, the exclusive jurisdiction of the competent court at the registered office of *DANUBE DYNAMICS* is agreed, unless this is contrary to mandatory law.
- 19.3.** However, *DANUBE DYNAMICS* is entitled to bring claims against the *client* before any other court in Austria or abroad in whose jurisdiction the *client* has its registered office, domicile, branch or assets. For clients who are consumers within the meaning of the Austrian Consumer Protection Act (Konsumentenschutzgesetz), the jurisdiction provision of § 14 Konsumentenschutzgesetz applies.
- 19.4.** Unless otherwise agreed in writing, the contract language is German. If *DANUBE DYNAMICS* provides the customer with a translation of the German version of these Terms and Conditions, the German version alone shall prevail in the event of any discrepancies.

20. Final provisions

- 20.1.** Amendments or additions to these terms and conditions must be made in writing in order to be valid, unless the *client* is a consumer within the meaning of the Consumer Protection Act.
- 20.2.** *DANUBE DYNAMICS* may correspond with the *client* in any way *DANUBE DYNAMICS* deems appropriate.
- 20.3.** The invalidity of one or individual provisions of these Terms and Conditions of Contract or of the contractual relationship governed by the Terms and Conditions of Contract shall not affect the validity of the remaining agreement.