

# General Terms and Conditions (GTC) of DONAU LAB d.o.o.

## 1. SCOPE AND VALIDITY

- 1.1. These General Terms and Conditions ("GTC") shall govern the contractual relationships between the customer ("Customer") and DONAU LAB d.o.o. ("Donau Lab"). Each referred to as a party ("Party") and commonly referred to as the parties ("Parties").
- 1.2. The GTC shall govern the delivery of products ("Products") and the provision of services ("Services"). They shall apply to all Products and Services which are sourced from Donau Lab by the Customer.
- 1.3. In order for the GTC to apply, it is not necessary that they are referred to in the Contract.
- 1.4. Any general terms and conditions of the Customer shall be excluded.

## 2. CONCLUSION OF THE CONTRACT AND ELEMENTS THEREOF

- 2.1. Quotations by Donau Lab shall be valid for a duration of 30 days, provided that the quotation does not specify a different period of validity. The quotation can stipulate additional provisions concerning its validity.
- 2.2. A contract ("Contract") shall be concluded as follows: a) by issuance of an order confirmation by Donau Lab or b) by mutual execution of a contractual document.
- 2.3. If performance by Donau Lab requires a governmental permit, the Contract shall only enter into effect once such permit has been granted.
- 2.4. Brochures and catalogs shall not be binding. Specifications in plans, drawings and technical documents shall only be binding if they are referred to explicitly in the Contract. In this case, the specifications are subject to the usual margins if Donau Lab did not expressly declare them as being precise.
- 2.5. Regarding the conditions of delivery, the transfer of risk and the allocation of additional costs, the **Incoterms (2010)** indicated in the Contract shall be part thereof. Absent any other agreement to the contrary, the rule **FCA** at the seat of Donau Lab (Ljubljana, Slovenia) shall apply. In

case of contradictions between the Contract and the applicable Incoterms or, as the case may be, the GTC and applicable Incoterms, the Contract or, as the case may be, the GTC shall prevail.

- 2.6. In case of contradictions, a Contract concluded pursuant to clause 2.2 shall prevail over the GTC and such Contract shall replace any contractual relationships concerning its subject-matter.

## 3. PRODUCTS AND SERVICES OF DONAU LAB

The Products and Services of Donau Lab are specified in the Contract in an exhaustive manner.

## 4. OBLIGATIONS OF THE CUSTOMER

- 4.1. The Customer shall – in a timely manner – create the conditions necessary for Donau Lab to deliver the Products and perform the Services pursuant to the terms of the Contract. This shall include in particular the provision of all the necessary information by the Customer so that Donau Lab can effect performance.
- 4.2. If the Customer fails to fulfil his obligations, Donau Lab may – after granting an extension of time in writing – withdraw from the Contract and claim damages, it being understood that Donau Lab retains and reserves any and all other rights.
- 4.3. The Customer may use the Products and Services of Donau Lab only in accordance with their purpose. In this regard, the Customer is obligated to use qualified personnel and observe any and all regulatory provisions which are related to the usage of the Products and the Services.

## 5. DATES

- 5.1. Dates and terms of delivery concerning Donau Lab as debtor are only guidelines, unless they are specified as being binding in the Contract.
- 5.2. Dates and terms of delivery concerning Donau Lab as debtor are extended appropriately, if the Customer or third parties are behind on the works and acts to be performed by them (in particular the provision of all information and subjoined products necessary for the execution of the Contract and the performance of any

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advance payment obligations by the Customer) or if obstacles arise which Donau Lab – despite application of due care – is unable to avert, such as the absence of permissions, the issuance of governmental restrictions on exports or imports and similar measures and in case of force majeure. Donau Lab is obliged to inform the Customer about such delays in a reasonable manner.

## 6. PRICES AND ADDITIONAL COSTS

- 6.1. The Customer shall pay the price specified in the Contract for the delivery of the Products and provision of the Services. Unless agreed to the contrary, the price is in the currency specified in the Contract and exclusive of any applicable Value Added Tax (VAT).
- 6.2. Services (including – with respect to the delivery of Products – the Installation (as defined below) if so agreed) shall be remunerated on a time and material basis at the rates of Donau Lab in force at the respective time, unless agreed to the contrary.
- 6.3. Subject to an agreement to the contrary, the allocation of additional costs shall be governed by the agreed Incoterms (clause 2.5). All prices are quoted without all additional costs, i.e. without packaging, without all other additional costs and without any deductions, unless stated differently.

## 7. INVOICING AND PAYMENT

- 7.1. Subject to an agreement to the contrary, the remuneration for the Products and Services is invoiced by Donau Lab at the time of delivery of the Products or the provision of the Service. If the remuneration amounts to CHF 30'000 up to CHF 150'000, one-third of the total remuneration is due and payable at the time of the conclusion of the Contract. If the remuneration exceeds CHF 150'000, the ad-

vance payment at the time of the conclusion of the Contract shall amount to at least one-third of the total remuneration.

- 7.2. Payment shall be effected at the domicile of Donau Lab without deduction of any discounts, expenses, charges, fees, duties and the like.
- 7.3. Subject to an agreement to the contrary, Invoices of Donau Lab shall be paid with a payment period of 30 days from the date of the issuance of the invoice. Advance payments to be paid at the time of the conclusion of the Contract shall be due and payable immediately.
- 7.4. If the invoice is not paid in such payment period, the Customer shall be in default of payment without further notice and shall owe default interest in the amount of 5% p.a.
- 7.5. The minimum invoicing amount is CHF 100 (strictly net). Thus, the remuneration of Donau Lab amounts to at least CHF 100 (strictly net) in any case.
- 7.6. The dates of payment shall also be observed if the shipping, the transport and the potential Installation (as defined below) or the beginning of operation is delayed due to reasons, which Donau Lab is not responsible for.
- 7.7. If the Customer is in default with respect to a payment or if Donau Lab is forced to anticipate that the Customer will fail to make payments, Donau Lab may, without prejudice to any of its other claims and rights, suspend further execution of the Contract or withhold performance, until new terms of payment and delivery or, as the case may be, securities are agreed. If no respective agreement can be reached within a reasonable amount of time, Donau Lab may withdraw from the Contract and claim damages.

## 8. RESERVATION OF TITLE

- 8.1. Donau Lab shall remain proprietor of any Products until full payment. As long as such reservation of title is in force, the Customer may not sell, encumber or – in any other fashion – dispose of the Products.
- 8.2. The Customer is obligated to cooperate with respect to measures which are neces-

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sary to safeguard Donau Lab's title; in particular, the Customer authorizes Donau Lab herewith to register a reservation of title in public registers at the domicile of the Customer. Any fees arising in relation thereto shall be borne by the Customer.

- 8.3. Should the Customer become aware of measures – or threats of such measures – that encumber the property of Donau Lab in the Products, the Customer shall inform Donau Lab in writing without delay.

### **9. DELIVERY CONDITIONS, PASSING OF RISK AND PLACE OF PERFORMANCE**

- 9.1. Subject to an agreement to the contrary, the delivery conditions, the passing of risk and the place of performance shall be governed by the agreed Incoterms (clause 2.5).
- 9.2. If the shipping is delayed due to the request of the Customer or due to other circumstances, which Donau Lab is not responsible for, the passing of risk to the Customer shall occur at the time originally intended. From this moment onwards, Products shall be stored on the account and on the risk of the Customer.
- 9.3. Subject to an agreement to the contrary, the place of performance for Services shall be at the domicile of Donau Lab.
- 9.4. Subject to an agreement to the contrary, Donau Lab shall be permitted to perform partial deliveries. The passing of risk shall, also for each partial delivery, be subject to the provisions above.

### **10. TRANSPORTATION AND INSURANCE**

- 10.1. Subject to an agreement to the contrary, the transportation and the insurance shall be governed by the agreed Incoterms (clause 2.5).
- 10.2. Transportation is effected on the account and risk of the Customer. Subject to an agreement to the contrary, Donau Lab determines the carrier.
- 10.3. The Customer is responsible for insurance against damages of any nature.
- 10.4. Any special requests concerning shipping, transport and insurance shall be notified to Donau Lab in a timely manner. Any costs

in relation thereto shall be borne by the Customer.

- 10.5. Subject to an agreement to the contrary, packaging is charged additionally by Donau Lab and will not be taken back. If the packaging was specified as being Donau Lab's property, the Customer is required to send the packaging back to the point of departure at its own cost.
- 10.6. Complaints of the Customer in connection with shipping or transport shall be directed – without any delay – to the last carrier upon receipt of the delivery or the freight documents.

### **11. CHANGES TO THE PRODUCTS AND SERVICES**

- 11.1. Both Parties may request changes to the Products and Services. If such change leads to additional costs, expenses, or expenditures, Donau Lab shall be compensated by the Customer in relation thereto.

### **12. INSTALLATION**

- 12.1. The delivery of the Products shall only include their installation by Donau Lab at the point of their delivery ("Installation") if such Installation has been expressly agreed upon.
- 12.2. For any Installations, the Customer shall be obligated to supply the following at his own expense: lighting, water, electric power, and if required (i) access points to compressed air, central heating/cooling, vacuum, and inert gas, (ii) lifting gears and means of transport on Customer's site.
- 12.3. If the Installation is delayed on request of the Customer or due to other reasons that Donau Lab is not responsible for, any additional costs shall be borne by the Customer.

### **13. SOFTWARE AND INTELLECTUAL PROPERTY**

- 13.1. Where a Product includes software, the Customer shall be granted the non-exclusive and non-transferrable right to use the software for the contractually specified purpose. The granting of this non-exclusive and non-transferrable right to use the software shall be effected in accordance with the license terms of the respective

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manufacturer, which shall be applied exclusively. Subject to an agreement to the contrary, the right to use shall neither extend to the source code of the software nor to its independent editing. It is prohibited to copy and to decompile the source code.

- 13.2. Any intellectual property rights relating to the Products and Services shall remain the exclusive property of the respective manufacturer of the Products and Services or, where applicable, of Donau Lab.

### 14. WARRANTY

14.1. In this clause 14, warranty obligations of Donau Lab or, as the case may be, warranty rights of the Customer are specified in an exhaustive manner; thus, any statutory warranty obligation or, as the case may be, rights as well as any statutory obligations or, as the case may be, rights are excluded.

- 14.2. Donau Lab warrants, subject to the following terms, the following regarding the Products:

- Warranted properties as well as the warranty that the Products shall be free from physical or legal defects nullifying or reducing their value or their suitability for the intended use that was disclosed to Donau Lab in writing.
- Cleaning condition: "as manufactured". Any exceeding cleaning, in particular the regular cleaning before the beginning of operation, shall be the duty of the Customer.

- 14.3. Donau Lab warrants the following regarding Products that are made of glass:

- Proper melting points including stressless cooling.
- Undamaged glass surfaces. The guidelines and margins of the standard AD 2000 (N 4 appendix 1) shall apply.

- 14.4. Regarding the Services, Donau Lab warrants that they are performed with due care and diligence.

- 14.5. For normal wear and tear, for expendable items and for consumables, any and all warranty is excluded.

- 14.6. Donau Lab shall advise the Customer to the best of its knowledge – in accordance

with the current state of knowledge and the current state of the art – regarding the suitability of the Products for the intended purpose and regarding the compatibility of materials, it being understood that Donau Lab does not assume any warranty or liability in relation thereto.

- 14.7. The warranty shall not apply and shall thus be void where a defect was caused in part or in full by the Customer, a third party or a random event. This shall also apply in the following cases (irrespective of whether the defect was caused or affected hereby): improper Installation (if such Installation was not assumed by Donau Lab), undue or improper usage (in particular in case of nonobservance of the instruction manual, dedication of personnel without or with inadequate training, excessive usage as well as usage of improper resources or accessories), omitted or insufficient maintenance (if maintenance was not assumed by Donau Lab), improper repairs, usage of inadequate spare parts, chemical or electrolytic effects.

- 14.8. The Customer shall inspect the Products after their delivery as follows:

- Regarding the condition of the packaging and related, obvious damages to the Products: Within 10 days.
- With respect to all other aspects: Within 30 days.

The Customer shall notify Donau Lab of any determined or obvious defects within the above-mentioned deadlines in writing. Any other defects shall be notified to Donau Lab immediately after their discovery in writing. In addition, the Customer shall immediately implement any and all appropriate measures with respect to the mitigation of damages. In the event that the Customer fails to observe the aforesaid obligations, any and all warranty rights shall be excluded.

14.9. Subject to an agreement to the contrary, the warranty period is 12 months. It begins with the shipping of the Products (clause 9). If Donau Lab is responsible for the Installation, the warranty period shall begin upon completion of the Installation. Subject to an agreement to the contrary, if the shipping or the Installation are delayed due to reasons, which Donau Lab is not responsible for, the warranty period

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shall expire 18 months after the notification of readiness for shipment.

14.10. During the warranty period, the Customer shall be entitled to remedy of defects by means of free rectification by Donau Lab. For this purpose, the Customer shall send the Product to Donau Lab, all at its own expense and risk. If such shipping to Donau Lab is unreasonable, Donau Lab shall effect the rectification free of charge at the domicile of the Customer. In any case, Donau Lab is, at its own discretion, permitted to remedy the defect in any other fashion, e.g. by new delivery of the Product in accordance with the provisions of the Contract.

14.11. Replaced parts or Products shall become the property of Donau Lab.

14.12. With respect to remedied defects, the warranty period shall be 6 months. It shall – in any case – amount to 24 months at most, beginning with the original start date of the warranty period (clause 14.9).

14.13. Where Donau Lab is unable to remedy a detected defect, the Customer shall, with respect to proven defects and after setting a reasonable extension of time in writing, be entitled to request a reduction of the price corresponding to the impact in value or – only in the event of significant defects, which impair the respective practical value to an extent that, from a just perspective, renders it unreasonable to expect the acceptance of the respective Product by the Customer – to withdraw from the Contract.

14.14. The Customer shall support Donau Lab with respect to the fulfilment of the warranty obligations.

## 15. MAINTENANCE

Products shall be maintained in accordance with the respective requirements and by personnel qualified for such maintenance. The Customer shall be responsible for maintenance, unless it has assigned this task to Donau Lab.

## 16. READINESS FOR DELIVERY OF SPARE PARTS

Donau Lab aims at delivering spare parts to the Customer – subject to a corresponding order – during the availability periods for spare parts specified by the respective

manufacturer(s). Subject to an agreement to the contrary, Donau Lab assumes no liability concerning the availability of spare parts.

## 17. LIABILITY

17.1. Donau Lab shall be liable for damages incurred by the Customer due to a culpable breach of contract by Donau Lab – regardless of the legal basis – for an amount up to the value of the Contract.

17.2. Liability for loss of profits, unrealized savings, recourse claims asserted by third parties, damages resulting from interruptions of operations as well as for any and all indirect and consequential damages shall be excluded.

17.3. The limitation of liability stipulated in this clause neither applies to personal injury nor to damages caused intentionally or by gross negligence. With respect to such damages, Donau Lab shall be liable without limitation.

17.4. The Customer shall hold Donau Lab harmless for any and all damages resulting from Customer's failure to observe regulatory provisions and the fact that third parties (including the authorities) assert claims against Donau Lab as a consequence thereof.

## 18. FORCE MAJEURE

18.1. Force majeure refers to events over which the Parties have no control. Cases of force majeure include in particular: Disruptions of the public power supply and the communications and transportation infrastructure, governmental measures, malware or hacker attacks, fire, extraordinary weather events, epidemics, nuclear and chemical accidents, earthquakes, war, terrorist attacks, strikes and sabotage.

18.2. Where a Party is prevented from fulfilling its contractual obligations in whole or in part due to force majeure, the Party concerned shall be released from its liability due to non-performance as long as the force majeure event continues.

18.3. In case of a lasting force majeure event, either Party may terminate the Contract retroactively as per the date the force

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majeure started to occur. Products delivered and Services rendered up until this date shall be remunerated.

### 19. CONFIDENTIALITY

- 19.1. Donau Lab and the Customer undertake to maintain confidentiality of all information and data of both Parties that become known to them in connection with or with respect to the Contract (e.g. quotations, drawings, project documentation, samples, models). Information that is generally known or lawfully acquired by the Parties independently of the contractual relationship shall not be deemed to be confidential. Statutory disclosure requirements are reserved.
- 19.2. The duty of confidentiality shall also include the prohibition of use for non-contractual purposes and shall survive the termination of the Contract as long as an interest in confidentiality by Donau Lab or the Customer exists.
- 19.3. Donau Lab and the Customer shall ensure that its employees, associates, subcontractors and suppliers are also bound to confidentiality. The confidentiality obligations shall at least correspond to this clause of the Contract.
- 19.4. Existing confidentiality obligations between Donau Lab and the Customer regarding confidential information are reserved.

### 20. FINAL PROVISIONS

- 20.1. Changes of or amendments to the Contract or the GTC require the written form and the signature by both Parties.
- 20.2. The Customer does not have a right to set-off, unless his claims are acknowledged by Donau Lab in writing or finally established through judicial proceedings.
- 20.3. The invalidity or voidability of any provision or any provisions of a Contract do not render the other provisions invalid. In case of such invalidity or voidability, the Parties seek to replace the invalid or voidable provision with a different valid and enforceable provision, which resembles as close as

possible the legal and economic content of the replaced provision.

- 20.4. Transfer of a contractual relationship or the assignment of claims by the Customer requires the written consent of Donau Lab.
- 20.5. The Contract and any occurrences regarding property law relating to the Contract shall be subject exclusively to the material laws of Slovenia under the exclusion of the United Nations Convention dated 11 April 1980 on the International Sale of Goods.
- 20.6. The courts at the domicile of Donau Lab shall have jurisdiction with respect to any and all disputes arising from or in connection with the Contract. Moreover, Donau Lab shall be entitled to assert its own claims at the Customer's place of domicile.