

1. SCOPE, OFFERS

- 1.1** The “Standard Terms and Conditions for Purchase and Freelance Service Contracts” (hereinafter “Standard Terms”) shall apply whenever FH JOANNEUM Gesellschaft mbH (hereinafter “FHJ”) acts as a purchaser resp. orderer of works, goods, deliveries or services in relation with a contractor. They shall form an integral part of all these contracts. The Standard Terms as amended from time to time shall apply to all further business dealings with the contractor even if no explicit reference is made thereto. The contractor shall keep him/herself informed of any amendments to the Standard Terms on FHJ’s website.
- 1.2** A contractor’s General Terms and Conditions shall not apply, even if FHJ does not expressly object to their application in particular cases. Departures from the Standard Terms and individual agreements shall require the express written consent of FHJ.
- 1.3** The present Standard Terms are also available in English for non-German-speaking contractors. In the event of contradictions, ambiguities, doubts or the like the German version shall prevail.
- 1.4** Offers by the contractor shall be binding for 3 months unless specified otherwise by FHJ. Orders by FHJ are only binding if they are in writing and signed in a legally valid manner. Orders by fax shall be deemed to comply with the written form requirement. The contractor shall return the order signed in a legally valid manner and without any amendments or additions within 3 working days.
- 1.5** The provision of deliveries or services shall be taken as unconditional acceptance of the order including the Standard Terms; this shall also apply if no order confirmation has been issued by the contractor or if it deviates from the order.

2. EXECUTION, DELIVERIES AND AGENTS

- 2.1** The provision of services includes all requisite and appropriate services, even if they are not mentioned explicitly in the contract. In case of a freelance service contract the agreed activities shall include all tasks usually associated therewith in consideration of business development and the organisational and technical environment according to FHJ’s factual demands or the specific tasks.
- 2.2** The place of fulfilment shall be FHJ’s domicile, unless provided otherwise in the order.
- 2.3** Indivisible performance of deliveries and services shall be agreed.
- 2.4** All deadlines shall be considered as fixed dates. They have to be observed by the contractor under any circumstance, including in the case of unforeseeable events. If the day of performance is or can be identified in the contract, the contractor shall be in default at the end of the respective day without the need of a reminder. FHJ is entitled to claim a penalty of 0.5% of the remuneration excl. VAT per calendar day or part thereof up to 10 % of the remuneration regardless of the contractor’s negligence or fault. It shall not be necessary for FHJ to substantiate any loss to rightfully claim the penalty. The penalty shall not affect further claims of FHJ. This shall also apply if FHJ accepts partial deliveries/services.
- 2.5** The contractor shall solely be responsible for the performance of the contract and shall perform his/her services independently of FHJ. He/She shall not be subject to personal instructions, particularly with regard to working hours, place of work, and work schedule. However, the contractor is obliged to keep him/herself informed about and

comply with FHJ’s relevant provisions and other non-employee-specific regulations.

- 2.6** Additionally to his/her duties to inspect and warn based on a contract for work and services the contractor shall be obliged to give advice concerning correction or improvement. The aforesaid as well as duties to inspect and warn shall apply accordingly to all other contracts.
- 2.7** All objects, tools, drawings, data, other documents and the like provided to the contractor, irrespective of whether they are physical objects or not, remain the property of FHJ. The rights pertaining to them are not affected by their provision. They have to be returned, or destroyed, upon request by FHJ, but at the latest when they are no longer needed for the performance of the contract or upon expiry of the contract.
- 2.8** The contractor shall be entitled to make use of agents (especially subcontractors, employees) to perform his/her contractual obligations at her/his own risk. He/She shall conclude with such agent, in his/her own name and for his/her own account, a written agreement that shall ensure compliance with all the provisions of the contract and the Standard Terms.
- 2.9** The contractor shall inform FHJ of the involvement of subcontractors early enough to enable proper examination by FHJ. FHJ is entitled to refuse subcontractors for objective reasons. The contractor shall upon request at any time assign to FHJ all his/her claims against a subcontractor based on default or non-performance.
- 2.10** If insolvency proceedings are initiated against the contractor or in the event of default or defective performance, FHJ shall be entitled to enter into existing agreements with subcontractors in place of the contractor. The contractor shall agree with his/her subcontractors that FHJ may at any time enter into such agreements under the same terms and conditions.
- 2.11** The contractor confirms that he/she possesses, or will acquire at his/her own expense all commercial and other permits necessary for the performance of the contract. If such permit is not available FHJ is entitled to terminate the contract immediately, preserving its claims.
- 2.12** The contractor waives all his/her rights to refuse performance, retention and satisfaction and the respective objections unless the exercise of such rights is based on a legally binding decision or written confirmation of FHJ. The contractor shall, under the same conditions, especially not be entitled to cease performance of the contract or terminate the contract if FHJ is in default or does not collaborate.
- 2.13** In the event of creditor default the contractor shall be liable for slight negligence and the impossibility of performance due to chance. FHJ shall not be liable for any other adverse consequences. FHJ has no duty of acceptance or approval. § 373 of the Austrian Commercial Code (UGB) shall not apply.
- 2.14** The contractor shall ensure at his/her own cost that his/her contractual activities are adequately covered by a (liability) insurance and shall, if requested by FHJ, furnish relevant evidence within 2 working days.

3. PAYMENT

- 3.1 The contractor shall always provide offers, estimates, plans and the like at no cost. Estimates are always provided with a warranty of correctness.
- 3.2 The stipulated payment shall cover all claims for remuneration by the contractor for contractual performance (all-in fee), including all expenditure incurred by him/her in making the work or performing the service as well as all expenses for delivery, unloading, transport, and packaging. The remuneration shall constitute a fixed price, which is not subject to any adjustment. The contractor has to take back packaging if requested.
- 3.3 Travel costs or other expenditure shall be refunded if FHJ has accepted the reason and amount of such costs in writing and if the contractor has handed in the original receipts.
- 3.4 The contractor shall be entitled to render account on successful final formal acceptance of the entire work or service if such is stipulated or otherwise after full delivery. The terms of payment shall be 30 working days from receipt of the invoice. FHJ does not make advance payments. Payments by money order shall be considered to have been made on time if the transfer order is received by FHJ's bank before the expiry of the period specified for payment.
- 3.5 FHJ is entitled to retain all payment resulting from the present contract in case of non-performance or if the work or service is not delivered in the stipulated form, quality or quantity or at the stipulated time. FHJ is not obliged to accept works or services prior to the stipulated time.
- 3.6 In the event of default of payment FHJ is obliged to pay annual interest to the amount of 4%. § 1335 of the Austrian Civil Code (ABGB) shall apply. The contractor waives all statutory rights of lien.
- 3.7 If a contract is later qualified as being subject to the Austrian General Social Security Act (ASVG), then the remuneration shall be reduced to such amount that cost-neutrality is achieved. The contractor shall repay FHJ the differential amount within 7 working days of the request. The provision applies correspondingly if a freelance service contract is later qualified as a contract of employment.
- 3.8 FHJ is entitled to retain 10% of the payment for 2 years as a non-interest bearing retainer, covering the contractor's obligations resulting from non-performance, default and/or compensation for damages. The contractor's liability and obligations as well as FHJ's claims shall not be limited to the retainer.

4. CANCELLATION/TERMINATION

- 4.1 FHJ reserves the right to terminate the contract in whole or in part without giving reasons. FHJ may terminate contracts for the performance of a continuing obligation at 14 days' notice with effect from the end of any month. Otherwise FHJ is entitled to terminate the contract with immediate effect. FHJ may also terminate only part of the contract.
- 4.2 Notwithstanding item 4.1 the following shall apply to freelance service contracts: During the first month the contract may be terminated daily by either party without giving reasons. If a freelance service contract is prolonged indefinitely after the first month, termination is possible according to the applicable rules of the ABGB.
- 4.3 The right to terminate the contract for good cause and associated claims of FHJ shall not be affected by these provisions. FHJ may terminate the contract only in part. Good cause shall include but not be limited to the breach of an essential contractual obligation, risk of contractor's insolvency or the inability of the contractor to perform the contract.
- 4.4 In the event of early termination payment shall be restricted to the contractual work and services actually provided and useful to FHJ, irrespective of the form of termination or the reason. The contractor shall not be entitled to any further claims. He/She is obliged to

deliver to FHJ the full results of his/her activity. § 1168 ABGB shall not apply.

5. WARRANTY

- 5.1 The acceptance, receipt or payment of work and services and the like shall not constitute a waiver concerning claims resulting from non-performance or other claims.
- 5.2 The contractor is obliged to keep appropriate spare parts and to make repairs for a period of 5 years after final acceptance or receipt.
- 5.3 FHJ may choose freely between the remedies. FHJ shall also be entitled to revoke the contract in the case of minor defects. If it is not possible or not reasonable for FHJ to remedy defects immediately, FHJ may demand provisional remedy at the contractor's expense, followed by a prompt final remedy at FHJ's request. If the contractor is incapable of remedying the defect, including but not limited to fruitless expiry of a reasonable period of time set for remedy or replacement, utmost urgency or a failed attempt at remedy or replacement on the part of the contractor, FHJ shall be entitled to entrust a third party with remedying the defect at the contractor's expense, preserving its claims against the contractor.
- 5.4 The warranty period shall start with final formal acceptance resp. full delivery, even if parts of the contractual work or services have been accepted, received or used earlier. In the case of hidden defects the warranty period shall start as soon as such defects can be detected by FHJ.
- 5.5 If defects are notified within the warranty period, it shall be assumed that they existed at the commencement of the term according to item 5.4. The running of the warranty period shall be suspended from notification until successful remedy. Any replaced and repaired parts or services shall be subject to the full warranty period.
- 5.6 If it is necessary to hire an expert to detect or measure defects or damage caused by the defect, the relating expenses shall be borne by the contractor irrespective of his/her fault.
- 5.7 §§ 377 and 378 UGB shall not apply.
- 5.8 The right of recourse according to § 933 ABGB may be exercised by FHJ within one year of fulfilment of the warranty obligations. This right shall not be limited to warranty claims of consumers and shall be subject to an absolute limitation period of 8 years. The claim to compensation shall include all losses sustained.

6. LIABILITY AND RISK

- 6.1 FHJ shall only be liable for gross negligence and intent unless otherwise stipulated by mandatory statutory provisions.
- 6.2 Unless otherwise stipulated by mandatory statutory provisions, FHJ shall not be liable for loss of profit, consequential losses, indirect damage, financial losses, third-party damage, non-material damage, savings not achieved, loss/damage of data and programs and their restoration, loss of interest and losses resulting from third-party claims against the contractor.
- 6.3 § 1014 ABGB to the benefit of the contractor shall not apply.
- 6.4 § 2 of the Product Liability Act (PHG) shall not apply to products delivered to FHJ. FHJ shall not be obliged to pay deductibles.
- 6.5 § 6 of the Employee Liability Act (DHG), if applicable, shall not apply to freelance workers.
- 6.6 The contractor acknowledges that, especially in the case of funded projects where he/she acts as a subcontractor, supplier, etc. no contractual relationship exists between him/her and the funding authority and that he/she shall not be able to make any claims against the funding authority, irrespective of the legal ground. It is not possible to make claims against funding authorities for damage suffered by the contractor or third parties.
- 6.7 The contractor's sphere of risk includes all events not falling into FHJ's sphere unless otherwise stipulated by mandatory statutory

provisions, including neutral events. The contractor bears the risk of transport. He/she is obliged to take out transport insurance at his/her expense and to arrange for proper packaging. The risk shall be transferred to FHJ only upon formal acceptance or receipt at the point of destination. If individual parts of the service have been received/accepted earlier, the risk is not transferred until final receipt/acceptance of the entire service. The terms of delivery are "DDP" according to Incoterms 2010.

7. RESULTS/SOFTWARE

- 7.1 In case of standard software FHJ is entitled to use the number of acquired licences for its business purpose, without limitations especially concerning territory or practical scope. The contractor shall provide a full, reproducible documentation (e.g. handbook, manual).
- 7.2 The following items 7.3, 7.4, 7.5, 7.6, and 7.7 shall apply to contracts for works and services, freelance service contracts, or consulting contracts and the like.
- 7.3 Upon conclusion of the contract, FHJ acquires exclusively and irrevocably, without any limitations concerning purpose, territory or time, the rights and known as well as future exploitation rights – including but not limited to the right to transfer and license under any terms – to all results (e.g. inventions, technical know-how, works according to copyright law, signs, designs, etc.) created by the contractor in execution of the contract, irrespective of their protectability through IPRs, and FHJ shall be granted all other rights required for the unrestricted use of the results. The results have to be fully documented in writing in a comprehensible way. Software source code must be delivered in an editable form together with documentation which allows a skilled developer to edit the source code within a reasonable time. The documentation must incorporate a handbook for user training. The transfer of rights is fully covered by the payment. FHJ alone shall decide over any designation of authorship or identification of the contractor.
- 7.4 Objects incorporating the results including documentation are the sole property of FHJ from the time of their creation.
- 7.5 The contractor shall support FHJ's applications for IPRs without a further claim to payment according to FHJ's instructions. He/She shall refrain from any acts compromising the registration or protection.
- 7.6 The contractor undertakes to fully notify FHJ of such invention immediately in writing, and to separately identify the features that he/she regards as new or inventive in the light of the state of the art.
- 7.7 The inventors of service inventions shall be remunerated by the respective employer.

8. INFORMATION, COOPERATION AND RETENTION REQUIREMENTS

- 8.1 FHJ shall at any time be entitled to demand that the contractor submit a report on the progress of the contractual work or service, irrespective of the previously agreed reports, and such demand shall be complied with within 2 working days. The contractor shall, without being requested to do so, immediately inform FHJ of any circumstances that may impede or prevent the successful performance of his/her contract or the result desired by FHJ, or may affect FHJ's rightful economic and other interests.
- 8.2 In case of inspections and audits performed by FHJ or third parties appointed by FHJ, courts of audit, federal ministries, provincial governments, the EU, EU agencies and representatives, the European Anti-Fraud Office (OLAF), judicial or other governmental investigations and the like, the contractor shall fully cooperate with these authorities and shall provide any information requested,

including electronic data, and shall keep accounting and tax records for this purpose for a period of at least 10 years.

9. CONFIDENTIALITY

- 9.1 The contractor undertakes to maintain permanent confidentiality with respect to trade and business secrets, and all other information disclosed to him/her or otherwise becoming known to him/her. The contractor is obliged to use the information obtained exclusively for contract performance. The disclosure to agents or other third parties is only allowed on a need-to-know basis. The contractor warrants that the confidentiality obligation hereby agreed shall also be imposed fully on his/her agents or other third parties.
- 9.2 Breaches of the obligations under item 9.1 shall entitle FHJ to terminate the contract immediately and to claim a penalty of 15 % of the total payment. It shall not be necessary for FHJ to substantiate any loss to rightfully claim the penalty. The penalty shall not affect any further claims of FHJ.

10. INDEPENDENCE/CONFLICTS OF INTEREST

- 10.1 The contractor shall be fully entitled to undertake activities for third parties. He/She guarantees that he/she is not subject to any obligation or restriction with respect to the contractual activities, nor shall he/she assume any such obligation or restriction that might in any way interfere with the performance of the contract or be incompatible with it.
- 10.2 The contractor undertakes to take all the necessary measures to prevent any situation which could affect the impartial and objective performance of the contract. A conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional reasons, or any other shared interest. Any (potential) conflicts of interest must be brought to the attention of FHJ in writing without delay. The contractor shall take whatever steps are necessary to end such conflicts of interest. FHJ reserves the right to check the measures taken and demand that additional measures be taken within a specified period of time.

11. NON-TRANSFERABILITY AND SET-OFF

- 11.1 The contractor shall not without the written consent of FHJ assign individual or all rights under this contract to third parties or permit a third party to enter into the contract in his/her stead.
- 11.2 FHJ is entitled to offset the contractor's claims against its own in advance and without restriction, notably also during performance of the contract. It shall not be possible to offset FHJ claims with counterclaims of any kind.

12. DATA PROTECTION

- 12.1 The contractor is obliged to protect all data provided to him/her by FHJ or by third parties or otherwise becoming known to him/her during execution of the contract in accordance with § 6 DSG (Data Protection Act). The contractor shall also comply with the data protection provisions applicable to FHJ and applicable to him/her, including but not limited to the General Data Protection Regulation (GDPR) and DSG as amended. FHJ shall be granted the rights of data subjects according to the GDPR (including but not limited to Chapter III of the GDPR) mutatis mutandis and free of charge. The contractor may thus process FHJ's data only according to the principles specified in Art. 5 GDPR.
- 12.2 The contractor shall take all technical and organisational measures required and immediately demonstrate such to FHJ upon request. The contractor shall observe all of FHJ's data protection regulations and documents applicable to him/her as specified in item 2.5.

12.3 In his/her capacity as data processor the contractor shall have the following obligations which he/she shall fulfil without additional remuneration:

- Personal data may only be processed according to the contract and on documented instructions from FHJ unless the contractor is required to do so by Union or Member State law to which he/she is subject; in such a case, the contractor shall inform FHJ of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- The data processing activities are carried out exclusively within the EU or EEA.
- The contractor ensures that the persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- The contractor shall take all measures required pursuant to Art. 32 GDPR, at least according to ISO 27001, and must demonstrate such to FHJ without being requested to do so.
- The contractor shall respect the conditions referred to in Art. 28 (2) and (4) GDPR for engaging another processor; the contractor may only engage another processor with the express written consent of FHJ.
- The contractor shall assist FHJ by appropriate technical and organisational measures for the fulfilment of FHJ's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR. If the contractor receives such a request he/she must immediately forward the request to FHJ and notify the requester thereof.
- The contractor shall assist FHJ in ensuring compliance with the obligations specified in Art. 32 to 36 GDPR.
- After the end of the provision of services relating to processing, the contractor shall, at FHJ's choice, either verifiably delete all personal data or return them in a format specified by FHJ.
- The contractor shall promptly make available to FHJ all information necessary to demonstrate compliance with the obligations laid down in Art. 28 GDPR and shall at any time and free of charge enable and contribute to audits (including inspections) conducted by FHJ or another auditor mandated by FHJ.
- The contractor shall immediately inform FHJ in writing if, in his/her opinion, an instruction infringes the GDPR or other Union or Member State data protection provisions.
- The contractor shall maintain records of processing activities according to Art. 30 GDPR and demonstrate such to FHJ to the extent requested by FHJ.

The type and purpose of processing and the categories of data subjects/data are defined in the contract documents.

12.4 If the contractor breaches any of the obligations specified in sections 12.1 to 12.3, item 9.2 shall apply mutatis mutandis.

12.5 Further information about the processing of data by FHJ is available at: www.fh-joanneum.at/hochschule/organisation/datenschutz/ and www.fh-joanneum.at/hochschule/organisation/service-abteilungen/personal-und-recht/.

13. MISCELLANEOUS, EXPIRY, LIMITATION PERIOD

- 13.1** The contractor shall not without the written consent of FHJ use the company name, logo, designation or trademarks, or refer to FHJ directly or indirectly in connection with goods, advertising or publications.
- 13.2** The present contract sets aside any and all previous contracts and agreements concluded between the parties concerning the contractual work or service. No oral agreements have been concluded.
- 13.3** Amendments and/or additions shall be invalid unless stipulated by both parties in writing. Any departure from the written form requirement must also be in writing to be valid.
- 13.4** The contract shall be governed and construed in accordance with Austrian law without giving effect to any principles of conflicts of law. The application of the UNCITRAL United Nations Convention on Contracts for the International Sale of Goods shall be excluded. All disputes arising from the contract – including such concerning its validity – shall be exclusively settled by the courts having jurisdiction over such matters at the domicile of FHJ.
- 13.5** The invalidity of individual parts of the Standard Terms shall not affect the validity of the remaining provisions. The invalid provisions shall be replaced by such valid provisions that come closest to the invalid provisions in the legal and commercial sense. § 915 ABGB, 2nd sentence shall not apply; the aforementioned shall apply correspondingly instead.
- 13.6** The parties expressly do not intend to conclude a contract of employment. Thus collective bargaining agreements and other labour laws, including but not limited to provisions regarding continued remuneration in case of sickness, paid holidays, leave of absence for care, bonuses, etc., shall not apply to the present contract. The Standard Terms and the contract shall strictly be construed under this point of view.
- 13.7** All of the contractor's claims arising from the contract shall be asserted in writing to FHJ within six months of their becoming due, failing which they will expire. Claims for damages on the part of the contractor shall lapse within 6 months of discovery of the damage or identification of the damaging party, or in any event within 3 years of the damage occurring (absolute limitation period).