

## A. IN GENERAL

### 1. Scope of Application

1.1 These General Terms and Conditions (GTC) shall apply to all present and future legal transactions between Softwerk Automation GmbH (FN 177304 t) on the one hand and the contractual partner (CP) on the other hand. In particular, the CP are Softwerk's customers, employees of the employees provided by Softwerk, seminar participants, as well as suppliers and contractors of Softwerk. The version of these General Terms and Conditions that is valid at the time of the conclusion of the contract shall be authoritative in each case.

1.2 These GTC shall apply exclusively. Conflicting or deviating GTCs of the CP shall not be recognized unless Softwerk has expressly agreed to their validity in writing.

### 2. Offers and Documents

2.1 Softwerk's offers, price lists, cost estimates and descriptions shall remain subject to change until final acceptance of the order. Side agreements and all promises made by representatives of Softwerk shall require the written confirmation of Softwerk in each case to be valid.

2.2 An agreement with the Contract Partner shall be based on an order from the Contract Partner corresponding to Softwerk's offer. If the Contract Partner's order differs from Softwerk's offer, the Contract Partner must inform Softwerk of this in writing. In this case, an agreement shall only come into being if Softwerk accepts the Contract Partner's order, which differs from Softwerk's offer. If the Contract Partner does not point out that the order differs from Softwerk's offer in its order, an agreement with Softwerk that solely corresponds to the content of Softwerk's offer shall come into being in accordance with the express will of the Contract Partner.

2.3 Softwerk reserves all ownership and copyright exploitation rights with respect to cost estimates, drawings and other documents without restriction. These documents may only be made available to third parties with the prior, written consent of Softwerk. The data and information contained in such documents do not constitute guarantees. Softwerk's guarantees must be designated as such in every case or shall require the express written confirmation of Softwerk.

### 3. Prices/Payment Terms

3.1 The prices and the compensation for Softwerk's goods and services and the payment terms are tailored to the particular project and are contained in Softwerk's offer.

3.2 Any prices/compensation and/or payment terms proposed by the Contract Partner shall only be binding if Softwerk expressly agrees to such prices/compensation and/or payment terms in writing.

3.3 If the scope of the respective contractual services is changed by mutual consent during order execution – particularly if the scope is expanded – Softwerk shall be entitled to demand an appropriate adjustment of the agreed-upon prices and compensation, i.e. an increase. Softwerk shall be entitled to temporarily stop providing the contractual services until agreement is reached on an appropriate adjustment to the prices and compensation if Softwerk gives the Contract Partner advance notice of this in writing. Any resulting delays shall not be to the detriment of Softwerk. The Contract Partner may not unilaterally change the contractual services.

3.4 Unless otherwise agreed in an individual case, all prices and fees are understood to be *ex works* 4600 Wels.

3.5 The Contract Partner shall only be entitled to withhold payment if and to the extent that its claim is based on the same contractual relationship. The

amount that may be withheld shall be limited to the (anticipated) costs of a reasonable improvement. The Contract Partner shall only be entitled to a right of set-off if its counter-claims have been legally established or acknowledged by Softwerk in writing.

### 4. Deadlines, Mutual Duty of Cooperation

4.1 Softwerk shall provide the goods and services in accordance with mutually agreed-upon schedules, e.g. those on which the offer is based or those mutually agreed upon in the course of providing services. Interim deadlines are only binding if they are expressly agreed upon. The Contract Partner may not make unilateral changes to the deadlines. If deadlines are postponed for reasons that are not the responsibility of Softwerk, Softwerk shall establish new deadlines for making deliveries and providing services to the Contract Partner as soon as possible. Business that is to be settled on a fixed date [Fixgeschäfte] shall be excluded or only permitted by express written mutual consent.

4.2 The Contract Partner agrees to provide all the prerequisites so that the provision of goods and services by Softwerk can be properly commenced and smoothly carried out. If the Contract Partner does not meet its duty of cooperation, e.g. by properly furnishing the necessary documents, information and data in a timely manner, the resulting delays shall be to the detriment of the Contract Partner. The Contract Partner shall compensate Softwerk for any losses and additional costs resulting from the Contract Partner's breach of its duty of cooperation.

4.3 The Contract Partner shall be liable to Softwerk for ensuring that the documents and services it provides are free of third-party industrial property rights and that Softwerk is permitted to use them as contemplated by the agreement.

4.4 In the event of force majeure, the deadline for performance shall be extended by the duration of the impediment plus a reasonable start-up time. If the aforementioned circumstances make it impossible or unreasonable for Softwerk to perform or to provide services, Softwerk shall be released from the duty to perform.

### 5. Liability/Compensatory Damages

5.1 Softwerk shall only pay compensatory damages in accordance with the following principles:

5.2 Softwerk shall only be liable to the Contract Partner for lost profit in cases of wrongful intent and gross negligence. The burden of proving wrongful intent and gross negligence shall be borne by the Contract Partner. In cases of slight negligence, Softwerk shall only be liable to the Contract Partner for the direct losses suffered by the Contract Partner.

5.3 Softwerk shall not be liable for errors, malfunctions or losses attributable to improper installation or operation or abnormal operating conditions on the part of the Contract Partner or third parties whose actions are attributable to the Contract Partner.

5.4 Softwerk agrees to always use up-to-date firewalls, virus protection and spyware programmes in processing orders. Beyond this obligation to use up-to-date protective software, Softwerk assumes no liability for the occurrence of viruses, worms and/or other spyware and malware.

5.5 In general, Softwerk is not obliged to examine the materials supplied by the Contract Partner or a third party or their instructions with respect to suitability. Softwerk is only obliged to examine the materials and the instructions and warn the Contract Partner if they are unsuitable in cases where the unsuitability of the materials provided or the instructions issued is apparent, i.e. the unsuitability of the materials provided or the instructions issued is discernible without special inspection and specialised knowledge, or if Softwerk's duty to inspect has been agreed upon in writing.

5.6 In any case, Softwerk's liability for damages shall be limited to the insured sum per loss event under its liability insurance. In cases without insurance coverage, the liability for damages shall be limited to the agreed-upon net amount of Softwerk's fee.

5.7 Otherwise, Softwerk shall have no liability for damages – regardless of the legal nature of the claim asserted. In particular, Softwerk shall not be liable for unforeseeable losses, consequential damages due to defects, other indirect damages, damages from production downtime, etc. Moreover, to the extent legally permissible, liability under the Product Liability Act (PHG) is excluded. In particular, recourse claims against Softwerk within the distribution chain are excluded.

5.8 The Contract Partner's claims for compensatory damages, on whatever ground, shall be time-barred in 24 months.

### 6. Retention of Ownership, Assumption of Risk

6.1 All goods or services provided by Softwerk shall remain the sole property of Softwerk until the fee agreed upon by Softwerk and the Contract Partner is paid in full. As long as the aforementioned retention of ownership is in effect, any sale, pledge, transfer for purposes of security, rental, lease or other transfer of components of the goods and services covered by the retention of ownership without the express prior written consent of Softwerk is impermissible. In the event of a violation, the Contract Partner shall indemnify Softwerk and hold it harmless against all resulting financial detriments.

6.2 In the event that the Contract Partner resells components of the goods and services covered by the retention of ownership to third parties in violation of the prohibition on resale codified in 6.1, the Contract Partner hereby irrevocably assigns all claims to which it is entitled, based on the resale, to Softwerk, and Softwerk hereby accepts this assignment of claims. In this case, the Contract Partner shall be obliged to note the assignment of claims in its books when the claims arise.

6.3 The risk of accidental loss shall pass to the Contract Partner upon delivery of the goods to the freight carrier, etc., even if freight or transport or other costs are to be borne by Softwerk.

6.4 If the Contract Partner refuses to accept the goods or alleges that they are defective, the risk shall pass to the Contract Partner at the time of the Contract Partner's first use of the delivered goods or the services provided, at the latest, regardless of whether the Contract Partner has formally accepted the goods or services.

6.5 In case the goods subject to retention of ownership are lost after transfer of risk, the Contract Partner hereby assigns all insurance or other damage claims to which it is entitled, based on the destruction of or damage to the goods subject to retention of ownership, to Softwerk in advance.

### 7. Rights of Use

7.1 Softwerk shall grant the Contract Partner a non-exclusive, open-ended right that is transferable to third parties to use all the works and work products developed by Softwerk for the Contract Partner upon full payment of the contractually agreed-upon fee.

### 8. Non-Disclosure

8.1 The Contract Partner and Softwerk are mutually obliged to keep all information regarding the business and company matters of the other Party strictly confidential and to only use this information for the intended purposes of the order that has been placed. Softwerk shall be entitled to forward the information to third parties for these intended purposes.

8.2 The Contract Partner and Softwerk mutually agree to refrain from soliciting or attempting to solicit the employees of the other Party.

## 9. Changes in the Prices of Raw Materials

**9.1** Softwerk shall be entitled to adjust the agreed-upon prices of goods and services up or down (surcharge for materials) depending on changes in the prices of raw materials. The surcharge for materials that is in effect at the time of delivery shall always control the actual price of a product, regardless of the surcharge for materials that was in effect when the offer was made or the order was placed.

## B. ENGINEERING

### 10. Special conditions for contracts for work and services

When contracts for work and services are entered into by the Contract Partner and Softwerk, the following special conditions shall apply as a supplement:

**10.1** The order shall generally be fulfilled on site on the Contract Partner's business premises. In particular, this shall apply if work documents cannot be released and/or if ongoing technical discussions or technical coordination with the Contract Partner is necessary.

**10.2** Softwerk shall have the exclusive right to issue instructions to its agents and employees, particularly with respect to familiarisation, guidance and supervision, even if the order is fulfilled on the business premises of the Contract Partner. This shall not affect the Contract Partner's right to issue order-related performance guidelines relating to the work product in individual cases.

**10.3** The Contract Partner shall confirm performance progress by signing the installation reports submitted to it. In other respects, the following provisions shall apply to the acceptance of performance:

**10.3.1** The Contract Partner shall promptly accept the order results in writing after a successful function test, but no later than three days after delivery of the order results. The function test shall be deemed to have been passed if the order results meet the contractually agreed-upon requirements in all main points.

**10.3.2** The Contract Partner shall promptly inform Softwerk in writing if it becomes aware of defects in the course of the function test. If there are material defects in performance, Softwerk shall initially be given the opportunity to rectify the defects within a reasonable period of time – to the exclusion of other claims.

**10.3.3** If the Contract Partner does not promptly accept the order results despite its duty of acceptance, Softwerk can set a grace period in writing of one week to make a declaration of acceptance. If Softwerk has informed the Contract Partner of this in the written notice establishing the grace period, acceptance shall be deemed to have been given if the Contract Partner fails to specify the grounds for refusing acceptance in writing within an additional week. Moreover, acceptance shall also be deemed to have been given if the Contract Partner begins putting the order results to productive use.

**10.4** Softwerk shall initially fulfil its warranty for any defects in the order results, by repair or replacement at its own option. If the attempts at repair/replacement are unsuccessful despite at least two attempts at supplementary performance, the Contract Partner can demand a reduction in the price or rescission and compensatory damages within the limits of liability specified in Item 5. If the defects are minor, the Contract Partner shall have no right of rescission. The warranty period for defects shall be 12 months from acceptance in accordance with Item 11.3.3.

### 11. Special conditions for employee leasing agreements

The following conditions shall apply to employee leasing agreements between the employer and Softwerk as a supplement:

**11.1** Softwerk shall be liable for ensuring that the leased temporary workers are generally suitable for the agreed-upon work and are carefully selected and checked for the necessary qualifications. There shall be no other duty of examination.

**11.2** Softwerk does not owe the employer any particular work performance or success *per se*. The leased temporary workers are not authorised agents, vicarious agents or servants of Softwerk. The leased temporary workers are not authorised to collect debts or make or receive legal declarations with effect for and against Softwerk.

**11.3** The employer shall familiarise the leased temporary workers with their duties and give them instructions and supervise them in their work. The employer shall also ensure compliance with all statutory, regulatory and other provisions. In particular, the employer shall be responsible for compliance with all occupational health and safety provisions. If there is no compliance with occupational health and safety provisions, the leased temporary employees shall be entitled to refuse to work – without Softwerk losing its right to the contractually agreed-upon compensation.

**11.4** Softwerk shall not be liable for the nature, scope, execution or quality of the work performed by the leased temporary employees for the employer. In this regard, the employer shall indemnify Softwerk against any and all claims that may be asserted by third parties in connection with the performance of the duties delegated to the leased temporary employees or that are asserted against Softwerk.

**11.5** If there is a strike at the employer's business, Softwerk shall not be obliged to supply temporary employees.

**11.6** Softwerk's offer shall form the basis for calculating and paying compensation to Softwerk.

**11.7** The notice periods for terminating employee leasing agreements shall be specified in Softwerk's offer.

### C. Maintenance

**12.1** The following special conditions shall apply as a supplement to any maintenance agreements and maintenance orders between the Contract Partner and Softwerk:

**12.2** These STBs shall apply to telephone authorisations of maintenance measures without restriction.

**12.3** To document the order and the provision of services, the Contract Partner shall sign an installation report from Softwerk before and after the provision of services, indicating the date, time of day and confirmation of the order.

### D. Supply Services

#### 13. Special Conditions for Supply Services

**13.1** The following special conditions shall apply as a supplement to any contracts between the Contract Partner and Softwerk to supply spare parts or other technical components:

**13.2** Products in the original packaging with the original seal of Softwerk and packages with the original seal of Siemens can also contain used products repaired by Siemens or products from the spare parts pool.

**13.3** If goods are returned, the prerequisite for acceptance by Softwerk is that the seals placed on the goods by Softwerk or Siemens and the goods themselves are undamaged. If the seals on the goods have been broken, the goods shall be considered used. In this case, Softwerk shall be entitled to refuse to accept the goods or to charge the Contract Partner a flat fee of 50% of the value of the goods for inspecting them.

**13.4** The warranty period for new goods shall be 12 months from delivery to the customer. Softwerk gives no warranty for used performance items, unless otherwise agreed upon in writing in an individual case.

**13.5** If the goods or services provided by Softwerk are defective, Softwerk shall meet its warranty obligations in the form of improvement/replacement or price reduction/rescission, when possible. The Contract Partner shall have no further claims in connection with Softwerk's goods or services.

#### 14. Duty to Inspect and Notice of Defect

**14.1** The Contract Partner shall inspect the deliveries made by Softwerk for completeness and defects immediately after receipt. The Contract Partner shall complain of any defects in the supply services provided by Softwerk promptly after receipt by sending a registered letter or making an annotation to Softwerk on the shipping note/bill of lading. In so doing, the Contract Partner shall indicate the specific defects and describe them as precisely as possible. An unsubstantiated allegation of defects, not specified in detail, does not satisfy the Contract Partner's duty to give notice of defects. The same shall apply to defects discovered at a later date.

**14.2** If the Contract Partner fails to meet its duty to inspect and give notice of defects promptly after receipt, Softwerk's performance shall be deemed to be defect-free or accepted with all defects. If there is no formal acceptance by the Contract Partner, Softwerk's performance shall be deemed to be delivered and accepted no later than one week after Softwerk's notification of completion.

**14.3** If, after receipt of a notice of defect, it should turn out that the error or defect in Softwerk's performance does not constitute a defect under warranty law, but resulted from incorrect or improper use by the Contract Partner or from other circumstances attributable to the Contract Partner, Softwerk can charge the Contract Partner a reasonable fee (including expenses incurred) for investigating or examining the complained-of defects.

#### 15. Restitution and refund

**15.1** The buyer does not have any right for restitution and refund, except for claims. A claim is justified, if

- New goods exhibit a defect that already existed at the time of transfer (warranty period, see point 13.4 of standard terms of business) or
- the delivered goods differ from the goods ordered ("incorrect delivery").

New goods which are defect can be returned 12 months from delivery and incorrect deliveries must be sent back to Softwerk Professional Automation GmbH, Maria-Theresia-Straße 51, 4600 Wels within 7 days after delivery of the goods by the latest.

Before sending back the goods, the buyer has to download the form „Customer-Supplier\_Claim-Form.pdf“ from

<https://www.softwerk.at/info/downloadcenter> and enclose it to the goods to be returned.

**15.2** Softwerk checks the returned goods after receiving them. Softwerk only accepts the return of incorrect deliveries under the precondition that the goods were not used and/or damaged by the buyer. Precondition for the acceptance of returned (new) goods in the case of a defect is, that the defect has already existed at the time of handing-over the goods. The buyer bears the full burden of proof. If the previously mentioned preconditions are not met (= unjustified claim), Softwerk is entitled to refuse acceptance. In this case, no claim on guarantee or exchange of the wrong delivery or monetary return exists.

**15.3** In case of an justified claim the costs for dispatch are taken over by Softwerk. The risk of loss during delivery has to be borne by the buyer. If Softwerk accepts returns on goodwill (no justified claim), the return occurs at the expenses of and danger of buyer.

**15.4** In the case of justified complaint, Softwerk is entitled either to repair (i) the product, to transmit (ii)

a new, non-defective product or the right product to the buyer or (iii) to refund the purchase price to the buyer. In the latter case, the purchase price is refunded within 30 days after the product was received and checked by Softwerk to a bank account indicated by the buyer.

**15.5** Please refer to [office@softwerk.at](mailto:office@softwerk.at) or +43 5 7889-0 for further questions concerning restitution and refund.

**15.6** Additionally, consumers under the terms of the consumer protection act have the right according to § 11 FAGG to withdraw from the distance contract within 14 days without giving reasons as follows: The revocation period is fourteen days from the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires the material possession of each of the goods ordered. In order to exercise the withdrawal, the buyer has to inform Softwerk about the withdrawal of the contract with a clear explanation e.g. by email: [office@softwerk.at](mailto:office@softwerk.at). Therefore, the sample withdrawal form below can be used and transmitted. To observe the revocation period, it is sufficient to inform Softwerk about the withdrawal from the distance contract before the revocation period ends. If the buyer withdraws from the contract, Softwerk has to return all payments including delivery cost (excluding further costs resulting e.g. due to choosing a more expensive delivery method than standard delivery offered by Softwerk) within fourteen days from receiving the buyer's information about withdrawal of the contract. For returns, Softwerk uses the same payment method like the buyer in the original transaction, unless differently agreed. However, in no case any charges for return payments are invoiced.

Softwerk may withhold the reimbursement until it has received or collected the goods back, or the consumer has supplied evidence of having sent back the goods, whichever is the earliest. The consumer shall send back the goods or hand them over to Softwerk Professional Automation GmbH, Maria-Theresia-Straße 51, 4600 Wels at the latest within 14 days from the day on which he communicates his withdrawal. This deadline is met, if the consumer sends the goods back before expiration of 14 days. The consumer must pay for the immediate costs of the return shipment. The consumer shall only be liable for any diminished value of the goods resulting from the handling other than what is necessary to ascertain the nature and functioning of the goods.

**15.7.** sample withdrawal form

If you want to withdraw from the contract, please fill in the following form and return it to Softwerk Professional Automation GmbH, Maria-Theresia-Straße 51, 4600 Wels

Hereby, we/I withdraw (\*)

- from the contract concluded with me/us (\*) about
- the purchase of the following goods (\*)/the performance of services (\*)
- ordered at (date) (\*)
- name of consumer(s)
- address of consumer(s)
- date

(\*) Delete as applicable.

The right to cancel shall not apply to goods that were produced according to customer specifications or that were clearly cut to the customer's personal requirements. For goods that are sealed and directly bear signs of breaking of the seal and/or opening, or goods which are not suited for return due to reasons of health and hygiene protection, a cancellation right also does not exist.

## E: Seminars

**15.1** All seminars organised by Softwerk shall be conducted under the Seminar Terms and

Conditions, which are available on the Internet at [www.softwerk.at](http://www.softwerk.at), menu item "Seminars", sub-item "Softwerk seminars".

## F. Final Provisions

**16.Place of performance/Jurisdiction/Applicable Law/Data Processing/Miscellaneous**

**16.1** The place of performance for Softwerk's contractual services shall be the site of the respective registered office of the branch or Technical Office of Softwerk at which the contractual services are provided. The place of performance for the client's payment obligation shall be the site of the registered office of Softwerk in 4600 Wels.

**16.2** The competent courts at the site of the registered office of Softwerk in 4600 Wels shall have jurisdiction. However, Softwerk shall also be entitled to assert claims against the Contract Partner in any other legal jurisdiction.

**16.3** The agreement shall be subject to Austrian law, excluding the rules of international private law and the UN Convention on Contracts for the International Sale of Goods.

**16.4** The data necessary for order execution and accounting purposes, such as the customer's name, address, order and booking data, shall be stored in Softwerk's EDP system. Softwerk shall only use the stored data in accordance with the provisions of law.

**16.5** Unless otherwise provided in these STBs, the applicable version of the Software Terms issued by the Fachverband der Elektro- und Elektronikindustrie Österreich (FEEI) shall apply to the goods and services relating to software.

**16.6** If individual provisions of these Standard Terms of Business are and/or become invalid, this shall not affect the validity of the remaining provisions and the contracts entered into based on them. The invalid provision shall be replaced by a valid provision, which comes closest to it in meaning and economic purpose.