



# GENERAL TERMS AND CONDITIONS OF CELUM GROUP

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## 1. CONTRACT'S SCOPE AND VALIDITY

The following terms apply to all services undertaken by any member of the CELUM Group within the scope of a contract entered into with a CUSTOMER. All orders and agreements are only legally binding when signed by an authorized representative of the company and apply only to the scope set out in the order confirmation. All of the CUSTOMER's purchasing terms and conditions are excluded from this legal transaction as well as all other business relations. All offers are non-binding.

## 2. PERFORMANCE AND INSPECTION

### 2.1. The subject of an order can be:

- Delivery of standard programs
- Acquisition of rights to use custom-designed software
- Acquisition of a limited license of use of copyrighted material
- Assistance in start up (support during changeover)
- Telephone support
- Program maintenance
- Hosting services
- Development of organizational concepts
- Macro -and - micro analyses
- Creation of custom-designed programs
- Creation of program carriers
- Other services

2.2. In addition to other services, CELUM provides software support and maintenance services that require the negotiation of a license agreement. These services extend to troubleshooting and the elimination of any errors or bugs. Errors that require troubleshooting are considered present when a CUSTOMER can produce evidence of any deviation in the software program covered by the contract from the corresponding documentation of the software's last valid version. All complaints must be addressed in writing to CELUM. To ensure a thorough investigation of any possible errors, the CUSTOMER is required to make available to CELUM the computer system they are using (for systems connected online with other computers they must also include the relevant connection), software programs, protocols, diagnostic documentation, and sufficient data for test purposes during CELUM's normal business hours and at no cost to CELUM, and to provide CELUM with technical support. Any recognizable errors that fall into CELUM's remit must be resolved by CELUM within a reasonable period of time. CELUM is exempt from this obligation if the CUSTOMER hinders CELUM's attempts to troubleshoot through a failure to address errors on their end. Troubleshooting takes place through a software update or reasonable workarounds.

2.3. Custom-designed organizational concepts and programs are developed according to the type and scope of the information, documents, and resources provided in full by the CUSTOMER. These include practical test data as well as sufficiently available testing opportunities, provided in a timely fashion by the CUSTOMER during normal business hours at their expense. If the CUSTOMER is already working on an operating system made available for testing in real time, it is the CUSTOMER's responsibility to secure any real data.

2.4. The CUSTOMER must submit or make available a written performance specification at their own expense in the form of documents and other information, which will serve as the basis for CELUM's custom-designed programs. The CUSTOMER will check the performance specification for accuracy and completeness, and the specification will bear their note of assent. Any subsequent requests for change can result in separate price and deadline agreements.

2.5. The CUSTOMER must formally accept any custom designed software, i.e. any adaptations to the program of a designated program package, no longer than four weeks after delivery. The CUSTOMER must verify the acceptance in an official log. Precision and completeness is verified using the performance specification and by evaluating the test data provided by the CUSTOMER as described in section 2.2. Should the four-week period elapse without acceptance by the CUSTOMER, any software delivered will be deemed a priori accepted, beginning on the final date of the stipulated time period. If the CUSTOMER uses the software in real time, this will also be considered an acceptance of the software. Any errors or bugs that occur, i.e. deviations from the written and agreed-on performance specification, must be reported with sufficient documentation by the CUSTOMER to CELUM, which will endeavor to perform troubleshooting operations swiftly. If significant errors, which prevent the start of live operations or make them impossible to continue, are reported in writing, a new acceptance must be submitted after troubleshooting occurs. The CUSTOMER is not entitled to decline to accept software due to insignificant errors.

2.6. The CUSTOMER confirms their acknowledgment of the standard program's scope of performance when ordering standard programs.

2.7. Should it become de facto or de jure impossible in the course of work to perform an order in accordance with the program specification, CELUM is obligated to notify the CUSTOMER. If the CUSTOMER does not alter the performance specification accordingly, i.e. does not fulfill the necessary preconditions to enable the order to be performed, CELUM may refuse the order. If it is impossible to perform an order due to an omission on the part of the CUSTOMER or due to any subsequent alterations to the performance specification made by the CUSTOMER, CELUM is entitled to withdraw the order. The CUSTOMER must

reimburse any costs and expenses incurred up to that point through CELUM's activities, as well as any and all rescinded transaction costs.

2.8. All CUSTOMER requests for training sessions or supplementary clarifications will be billed separately.

### 3. SERVICES NOT COVERED BY THE LICENSE AGREEMENT OR OTHER AGREEMENTS

The following services are to be payable separately:

- Costs of travel, lodging, and travel time of any employee performing an order on behalf of CELUM,
- Services arising from changes to the operating system, hardware changes, and/or from modifications made to mutually dependent, program-dependent software programs and interfaces that fall outside of the scope of the license,
- Customized program adaptations i.e. reprogramming,
- Program changes resulting from changes in legal and statutory provisions that require alterations to the program logic,
- Troubleshooting of errors caused by the CUSTOMER or a third party,
- Losses or damages that occur directly or indirectly through actions or omissions by the CUSTOMER or a user operating the system,
- Data conversions, database recovery, or interface adjustments.

CELUM is released from all obligations enumerated in the present contract if a CUSTOMER or third party makes changes to software programs covered by this contract without prior written consent from CELUM's employees, or in the event that the company's software programs are not used as intended.

### 4. PRICES, TAXES, AND FEES

4.1. All prices are given in euros, exclusive of sales tax. They are valid only for the present order. The prices are quoted from CELUM's headquarters and office and do not include installation, trainings, or services going beyond the transfer of licensed materials or concessions granted by the license.

4.2. For standard programs, the list prices valid on the day of delivery apply. For all other services (organizational consulting, programming, training, adjustment support, telephone advisory support, etc.), the fee will be determined by the rates effective on the day the services are performed. Any expenditure of labor deviating from the time expenditure used to calculate the contract price, for which CELUM is not responsible, is calculated according to the actual time spent performing services.

4.3. Travel expenses, per diem, and overnight accommodation shall be billed to the CUSTOMER separately in accordance with applicable rates. Travel time is considered working time. Travel expenses incurred for the performance of services are reimbursed upon presentation of receipts. Travel expenses

are to be reimbursed at 0.42 EUR per kilometer. Travel costs will be billed using CELUM's "travel expense form."

Time for arrival and departures will be fixed at a graduated flat-rate based on the amount of kilometers traveled:

Up to 50 km	69.00 EUR
Up to 250 km	349.00 EUR
Up to 500 km	699.00 EUR
Over 500 km	999.00 EUR

**4.4.** If labor and material costs, or other costs and charges increase after the conclusion of the contract, CELUM is entitled to raise their stated rates accordingly and to charge the CUSTOMER at a higher rate starting at the beginning of the month following the cost increases. If these costs do not exceed 10% per annum, price increases will be considered as accepted a priori by the CUSTOMER.

## 5. DELIVERY DATES

**5.1.** CELUM endeavors to adhere as closely as possible to the agreed on dates for fulfillment (completion) of orders, i.e. to provide information to any CUSTOMER queries within a reasonable timeframe during CELUM's regular hours of business.

**5.2.** The scheduled deadlines for order completions can only be met when the CUSTOMER provides CELUM with all of the required papers and documents by the dates specified by CELUM, in particular their acknowledgment of the accepted performance specification (see section 2.4), and when the CUSTOMER fulfills their obligation to cooperate to the required extent. CELUM is not responsible for delivery delays and cost increases caused by incorrect, incomplete, or subsequently altered data and information, i.e. in documents provided to CELUM, and CELUM will not be considered to be in default in these cases. The CUSTOMER will bear any resulting additional costs.

**5.3.** CELUM is entitled to make partial deliveries for orders consisting of several units or programs.

**5.4.** The CUSTOMER may not withdraw from the contract nor are they entitled to damages due to a failure to meet any proposed deadlines not covered by the contract.

## 6. PAYMENT

**6.1.** Barring any other arrangement, invoices submitted by CELUM, including sales tax, are payable 14 days at the latest from receipt of the invoice without any deductions and free of charges. For partial invoices the terms of payment for the entire order apply analogously.

**6.2.** The agreed on amounts are payable by the CUSTOMER in advance for the calendar year/partial year.

**6.3.** For orders encompassing a number of different units (programs, training sessions, partial completions), CELUM is entitled to invoice each individual unit or service after delivery.

**6.4.** Payment on the scheduled dates of payment is a basic condition for CELUM's delivery and fulfillment of the order, i.e. fulfillment of the contract. Failure to make payment on the agreed upon dates entitles CELUM to discontinue current services and to withdraw from the contract after setting a reasonable extension. The CUSTOMER shall bear all of the resulting costs as well as the loss in profits. In the event of a payment default, a default interest will be set at a rate of 9.2% over the base interest rate and reminder fees will be charged.

**6.5.** The CUSTOMER is not entitled to withhold payment due to incomplete total deliveries, warranty or liability claims, or complaints.

## 7. DURATION OF CONTRACT

**7.1.** The contractual relationship begins with the commission ("the effective date") and extends for a period of thirty-six months after the effective date ("initial period"). An initial termination of the contract, to be submitted exclusively as a written notice, is only possible with a three-month period of notice at the end of the initial period. At the end of the initial period, the contract is extended automatically for another twelve months ("extension period"). This extension of the contract continues until the contract is terminated by one of the parties. The written notice of termination must be submitted to the other party at least three months before the end of the respective extension period, and the termination goes into effect on the date on which the contract would have otherwise been extended.

## 8. COPYRIGHT AND USE

**8.1.** All copyright and trademark rights, as well as all other property, patenting, technological, and confidential information pertaining to the agreed upon services (programs, documentation, etc.) designed by CELUM are reserved solely by CELUM and its licensors. Upon payment of the agreed fee, the CUSTOMER retains a non-transferable, non-exclusive right to use any hardware specified in the contract at multiple workstations during the term of the licensed software's existence for their own purposes exclusively and in accordance with the acquired number of licenses. The present contract only grants the CUSTOMER use of the software. It is prohibited to rent, loan, sublicense, or otherwise transfer the licensed material in any form (total or partial) to a third party for payment or free of charge without prior explicit consent in writing. Third parties do not include companies and persons if and for such time during which they are directly in charge of the maintenance of the server operation, including the database operation of the production systems, and for the length of the term during which they are subject to a confidential agreement, i.e. by entering into a service contract with the CUSTOMER. The CUSTOMER does not gain any rights, outside of the use rights specified in this contract, through participation in the creation of any software. Any infringement of CELUM's IP rights will, in particular, entail claims for damages, where CELUM is entitled to full satisfaction.

**8.2.** It is prohibited to recreate or imitate, in whatsoever form, the object code or parts of the object code, i.e. the program logic, or any product parts, e.g. the routines, or program logic. Any adaptation or alteration of the product, in whatsoever form, is prohibited.

**8.3.** In the event of a universal or singular succession, the transfer of the license to a third party will only be permitted after explicit consent of the licensor is granted in writing.

**8.4.** The CUSTOMER is permitted to make copies of software for archival and data protection purposes only under the condition that the software contains no explicit prohibition from the licensors or third parties, and only if all copyright and proprietary notices are transmitted into the copies unchanged.

**8.5.** Should the disclosure of interfaces be necessary for the interoperability of the software in question, the CUSTOMER must request CELUM do so in return for a fee. If CELUM does not comply with this requirement and if decompilation occurs in accordance with copyright law, the results are to be used exclusively to establish interoperability. Misuse will result in damages.

**8.6.** Both parties undertake,

- to indemnify the respective other party with respect to all third party claims or lawsuits due to an infringement of copyrights, patents, and other intellectual property rights of any of their supplied materials or products,
- to promptly inform the respective other party of such claims and lawsuits and to support them in the defense and enforcement of their rights.

It is the sole decision of the liable party,

- to secure the right of use to supplied materials, products, etc. and thereby enable lawful use,
- to replace any infringing materials, products, etc. with non-fringing alternatives,
- to demand the return of infringing materials, products, etc. and to reimburse the other party with any incurred charges (proportionately).

No party should be responsible for

- any unintended use or an unauthorized combination with products or services from a third party
- alterations of the products/services by the respective other party or unauthorized third parties.

## 9. FORCE MAJEURE

**9.1.** Force majeure, labor disputes, natural catastrophes, and transportation blockages, as well as any other circumstance lying beyond CELUM's influence release CELUM from any of its delivery obligations and CELUM will be entitled to renegotiate any prior agreed on delivery deadline in such cases.

**9.2.** Cancellations by the CUSTOMER are not permitted.

## 10. LIABILITY, WARRANTY, ALTERATIONS

**10.1.** CELUM will only be liable for damages when intent and gross negligence can be proven. CELUM's maximum total liability will, however, be limited to 1,000,000 euros. CELUM is exempt from liability for slight negligence. To the extent permitted by law, CELUM is exempt from any obligation to provide compensation for (a) consequential damages, indirect, or incidental damages and losses; (b) financial loss, lost profits, lost turnover, contractual damages, lost interest, or loss of anticipated savings and (c) damages resulting from third party claims against CELUM.

**10.2.** CELUM is exempt from any liability for content played in its software, specifically for any images used or any outputs resulting from use of programs covered by the contract, or for any violations of data protection.

### **10.3. Warranty**

Unless otherwise agreed, warranty rights will be established in accordance with legal regulations. CELUM is exempt from burden of proof, viz. the obligation to prove its innocence with respect to defective products in accordance with § 924 of the Austrian General Civil Code ("ABGB"); the CUSTOMER is obligated to produce evidence of defects. The CUSTOMER must report this evidence within ten business days after discovery of the defect ("obligation to give notice"), otherwise their relevant rights will be considered void.

In a warranty case, improvements take precedence over price reductions or changes to the product. In the event of a substantiated report of a defective product, troubleshooting must occur within a reasonable period of time, and the CUSTOMER must permit CELUM to take all necessary measures to investigate and resolve the error. If troubleshooting cannot take place within a reasonable time frame, the CUSTOMER is entitled to request a price reduction or, in the event of a significant error, to withdraw from the contract after determining a reasonable extension period.

The terms of the warranty can be applied to rights of recourse, damages claims, or any other claims possessing a legal basis in the manner in which warranty claims are usually alleged, such as when defects cause damages.

Further, CELUM assumes no warranty for defects, malfunctions, or damages resulting from improper use, or due to the alteration of components of the operating system, the interface or the parameters, or caused by improper use of organizational resources and data carriers (provided that these are required), abnormal operating conditions (specifically, deviations from the installation and maintenance conditions), or damages sustained in transit. If the limitations to warranty and liability conflict with applicable law, CELUM's warranty and liability obligations will be limited to the greatest possible extent permitted by law.

**10.4.** Unless otherwise agreed, warranty obligations will encompass a period of three months from the time of transfer. "Time of transfer" is defined as the date on which a data carrier is transferred, or the date on which a program is otherwise made available. A warranty exceeding this period will not be valid, even under the condition that any defects should occur at a later date.

**10.5.** CELUM will perform any necessary revisions or modifications resulting from organizational or technical program errors for which it is responsible free of charge.

**10.6.** Costs for technical support, diagnostics, or troubleshooting of errors and disruptions for which the CUSTOMER is responsible as well as any revisions, modifications, and supplements undertaken by CELUM will be correspondingly remunerated. This extends to troubleshooting that results from a CUSTOMER or any third party undertaking program modifications, supplements, or engaging in other forms of intervention.

**10.7.** Furthermore, CELUM assumes no responsibility for errors, disruptions, or damages caused by improper use, alterations to components of the operating system, interfaces and parameters, or the improper use of organizational tools and data carriers (in the event that these are required), abnormal operating conditions (especially deviations from installation and storage conditions) and damages sustained during transit.

**10.8.** CELUM assumes no warranty for programs altered by programmers on behalf of the CUSTOMER or any third party.

**10.9.** If an order consists of changes or supplementations to already existing programs, the warranty will apply to those alterations or supplementations. The warranty for the original program will not thereby come into effect.

**10.10.** Should the terms of the warranty and liability restrictions conflict with mandatory legal provisions, CELUM's warranty and liability obligations will be limited in terms of scope and extent to the legally permissible minimum.

## 11. LOYALTY

Parties to the contract commit themselves to mutual loyalty. They must refrain from soliciting and employing employees, whether self-employed, employed, or employed via third parties, who work on the order on behalf of the contractual partner for the duration of the contract and up to twelve months after the contract has ended. Contractual partners who violate this clause are obliged to pay a lump sum compensation to the contractual partner fixed at the amount of the employee's annual salary.

## 12. DATA PROTECTION, PRIVACY

The CUSTOMER shall be obligated to maintain complete confidentiality regarding more intimate terms of binding agreements, such as prices and licensing fees. CELUM is obligated to adhere to the terms of applicable data protection laws.

## 13. CONCLUDING TERMS

**13.1.** Unless otherwise agreed, contractors will adhere exclusively to the legal provisions in Austrian law, with the exception of UN treaties and contracts regulating the commerce of international goods, even when the order is performed abroad. Any and all legal disputes will be considered to fall within the jurisdiction of the relevant local court in Linz.



**13.2.** Unless otherwise agreed, the applicability of any terms of service, purchasing terms, or other general contractual templates of the CUSTOMER is ruled out. These are, furthermore, not permissible as supplements.

**13.3.** If, at any given time, one of the contractual partners does not insist on the other's fulfillment of the terms laid out in this contract it will in no way affect the right of the former to invoke those terms. Likewise, a party's waiver of its assertion of claims in the case of a violation of terms of the contract does not constitute a waiver of its assertion in the event of future violations of those terms.

**13.4.** CELUM's head office will serve as the place of payment and performance.

**13.5.** The CUSTOMER consents to the processing and use of any of their data. In particular, they acknowledge that they must provide CELUM with external access to the program in order to enable CELUM to perform troubleshooting, remote maintenance, and license monitoring.

**13.6.** Changes or additions to the contractual terms must be submitted in writing. The same applies for any departure from this agreement.

**13.7.** The contractual parties waive their right to contest the present agreement for whatsoever reason, for instance on the grounds of error, rescission for lesion beyond moiety, or to request an adjustment to the contract.

**13.8.** Associated costs, fees, or expenses resulting from the establishment and implementation of any agreements will be borne by both contractual parties on their own.

**13.9.** Should individual terms of the agreement be or become ineffective, this will not affect the remaining content of this contract. The parties to the contract will act together cooperatively to find a regulation, which most resembles the ineffective terms with respect to their legal and economic content.