

**General Terms and Conditions (GTC)**  
**of FOTEC Forschungs- und Technologietransfer GmbH**  
**Status: April 2021**

**1. General**

- 1.1. These General Terms and Conditions (GTC) form the basis of all current and future agreements and business relationships between FOTEC Forschungs- und Technologietransfer GmbH ("FOTEC") and the customer or client (hereinafter referred to as "client").
- 1.2. Conflicting or deviating terms and conditions of the client shall only apply if an express written agreement has been reached on their validity. The unconditional provision of services by FOTEC in the knowledge of conflicting or deviating terms and conditions of the customer shall not change this.
- 1.3. The GTC apply to the cooperation with or commissioning of FOTEC in all areas (research, planning, development, management, etc.).
- 1.4. Insofar as these GTC contain provisions that deviate from the individual agreements concluded between the parties, the individual agreements shall take precedence.
- 1.5. The services of FOTEC are exclusively directed at enterprises within the meaning of § 1 Abs 1 Z 1 KSchG.
- 1.6. For the sake of better readability, no gender-specific differentiation is made. This is done without any intention of discrimination.
- 1.7. The contractual, ordering and business language is German.
- 1.8. By way of clarification, it is noted: FOTEC is active in the field of research and development. This goes hand in hand with the fact that the services it provides have not yet been tested in practice and are therefore not yet ready for the market. For this reason, FOTEC's express written consent is required if the services it provides are to be used outside the areas of research and development. Due to the fact that they have generally not yet reached market maturity, the services provided by FOTEC are regularly not suitable for use in high-risk areas. This applies, among other things, to areas that could pose a risk to life and limb. „Market maturity" within the meaning of these General Terms and Conditions is understood to mean that the services of FOTEC have not yet been tested in practice to such an extent that they have been expressly approved by FOTEC for use with the client's customers.

**2. Conclusion of contract, processing time**

- 2.1. A contract shall be concluded by written acceptance on the part of FOTEC or written order confirmation on the part of FOTEC. Until then, offers and contract negotiations are subject to change.
- 2.2. If the order is research and development in the broadest sense, the client is aware of the risks of success. In this case, FOTEC owes a good faith effort with the application of scientific care and compliance with the generally recognised rules of technology, but does not assume any warranty or guarantee for the achievement of the services offered. In case of doubt, it shall be assumed that FOTEC does not owe a concrete work (within the meaning of § § 1151 Abs 1 second half-sentence ABGB) but a service (within the meaning of § 1151 Abs 1 first half-sentence ABGB).
- 2.3. Information on completion dates is non-binding unless a binding completion date has been expressly agreed. Events of force majeure (operational disruptions, power failures, strikes, default by suppliers, etc.) shall entitle FOTEC to choose between
  - an extension of the time for completion by the duration of the impediment and a reasonable start-up time, or
  - to withdraw from the contract in whole or in part.
- 2.4. FOTEC shall not be responsible if it is unable to fulfil its obligations under a contractual relationship due to circumstances for which it or a vicarious agent is not responsible. This applies, among other things, to the lack of availability of energy or telecommunications services and due to force majeure.

**3. Performance, acceptance and warranty**

- 3.1. The performance of the service depends to a large extent on FOTEC receiving all the necessary data, information or preliminary services from the client in good time. FOTEC may request the client to provide the data, information or preliminary services if the data, information or preliminary services are not provided when the contract is concluded.
- 3.2. Should the client fail to comply with this obligation despite being granted a grace period, claims for performance against FOTEC shall be deemed to have lapsed and FOTEC shall furthermore be entitled to the right at its own discretion:
  - to procure such information, data or preliminary services from third parties at the expense of the client, or
  - to declare the withdrawal from the contract in the case of liability for damages on the part of the client.
- 3.3. The selection of employees or vicarious agents is the responsibility of FOTEC. However, the use of certain employees may be stipulated in individual contracts.
- 3.4. If, in the course of executing the order, a service becomes necessary that was not provided for in the order, FOTEC shall inform the client without delay. After determining the necessity, the parties shall mutually agree on changes to the order in technical, content-related, time-related or financial terms. The same shall apply if circumstances become apparent that jeopardise or delay fulfilment of the order or jeopardise the achievement of the purpose of the order.
- 3.5. The place of performance shall be Wiener Neustadt, Austria. Acceptance shall take place through receipt of the service. The service shall in any case be deemed to have been accepted if the client does not object to the service in writing within fourteen days of performance as not being in accordance with the contract within the meaning of the obligations to give notice of defects pursuant to § 377 UGB.

#### **4. 4. Duty to cooperate**

- 4.1. The client is obliged to support FOTEC continuously and to a reasonable extent in the creation of its services. In particular, it shall provide FOTEC with the necessary information, data and descriptions and communicate its wishes and ideas for the provision of the service in a timely and clear manner.
- 4.2. The client undertakes to check the specifications, if any, the submitted structure tree, the basic version and final version of the agreed services in detail and conscientiously, to give notice of defects without delay and to release the checked work results in writing (whereby an e-mail is sufficient).
- 4.3. The customer shall notify FOTEC of any requests for changes and additions without unnecessary delay in order to keep the associated expense for FOTEC as low as possible.
- 4.4. If agreed deadlines are not met due to inadequate cooperation on the part of the customer, FOTEC shall not be at fault and cannot be held accountable for this to its detriment.

#### **5. Secrecy and data protection**

- 5.1. The client and FOTEC are mutually obliged to maintain absolute confidentiality of all information obtained within the scope of the business relationship. The obligation to maintain secrecy shall also extend to the period after termination of the contractual relationship.
- 5.2. In case of doubt, the information disclosed by FOTEC shall be qualified as business secrets within the meaning of § 26b UWG. The client undertakes to take appropriate confidentiality measures within the meaning of § 26b Abs 1 Z 3 UWG to maintain the confidentiality of these trade secrets.
- 5.3. FOTEC shall retain sole ownership of all work results, offer documents, drafts, worksheets, etc. as well as all intellectual property rights. These documents may not be made accessible to third parties without the prior written consent of FOTEC and must be returned if the order is not placed.
- 5.4. However, FOTEC is entitled to publish its research results in scientific papers without naming the client, unless the client's recognisable interests conflict with this.
- 5.5. The client is only entitled to publish the research result after prior coordination with FOTEC, naming the persons involved and the participation of FOTEC. The coordination shall take place with regard to the fact that diploma theses, applications for industrial property rights, etc. are not impaired.
- 5.6. Markings of the work results of FOTEC, in particular copyright notices, trademarks, serial numbers or similar may not be removed, changed or made unrecognisable unless expressly agreed otherwise.
- 5.7. The disclosure of data and information to the respective required business partners is permitted to the extent necessary for the fulfilment of the contractual relationship (Art 6 Abs 1 lit b DSGVO) or, if applicable, for research purposes (Art 6 Abs 1 lit e DSGVO; § 7 DSG). Otherwise, FOTEC and the client shall be mutually obliged to maintain secrecy with regard to circumstances, data or business and trade secrets relating to the other party of which they become aware as a result of the present business relationship and, in particular, to comply with data secrecy. These obligations regarding data and business secrecy shall also apply beyond the contractual relationship. FOTEC and the customer further undertake to instruct and instruct their employees and vicarious agents in this sense.

#### **6. Intellectual property rights, intellectual property**

- 6.1. FOTEC shall endeavour to carry out the research and development work or services without infringing third-party property rights. FOTEC shall notify the customer without delay of any third-party property rights that become known and that conflict with the agreed provision of services or use. In this case, the parties shall decide by mutual agreement on the further course of action.
- 6.2. However, the scientific and technical services provided by FOTEC may themselves be patentable or - in the case of developed computer software - copyrightable. In any case, all intellectual property rights shall remain with FOTEC (in particular intellectual property rights, ancillary copyrights and processing rights).
- 6.3. Unless otherwise expressly agreed in writing (see section 6.8), FOTEC grants the customer a non-exclusive licence to use its work results (within the meaning of § 24 Abs 1 first sentence UrhG), which is limited in terms of time, content and location for the purposes of the business relationship.
- 6.4. Resale and transfer of the work results is prohibited and requires the express consent of FOTEC.
- 6.5. Sublicensing of the work results is prohibited and requires the express consent of FOTEC.
- 6.6. The client may not make any changes to FOTEC's work results without FOTEC's consent.
- 6.7. If already existing property rights of FOTEC are used in the execution of the order, which are necessary for the exploitation of a research result by the client, the client shall receive a non-exclusive right of use against payment to be agreed separately, insofar as this does not conflict with any other provisions.
- 6.8. If FOTEC individually and specifically develops a work protected by copyright for a client, the following shall apply: Upon full payment of all fees and expenses, FOTEC grants the client the exclusive right to use the work created under the contract, which is unrestricted in terms of content, location and time (within the meaning of § 24 Abs 1 second sentence UrhG). By way of clarification it is stated: However, FOTEC retains the right to reuse general development elements such as programme codes, scripts or solution approaches, which FOTEC has not expressly created on behalf of the client or which are included in the order as preliminary work, in relation to third parties. The customer shall not be entitled to any rights of use to these elements. The use of any third-party software shall be governed exclusively by their licence conditions.
- 6.9. In the event of the commissioning of individual software within the meaning of item 6.8, the client shall be entitled to edit, change or supplement the contractual work results itself or through a third party. FOTEC shall make the source code and the associated documentation available to the client for these purposes.

## 7. Claims for damages

- 7.1. FOTEC shall test its services (research and development, exploitation of inventions and technology transfer, expert opinions, etc.) with due diligence by its qualified employees before handing them over to the client, taking into account the state of the art in science and technology, and shall check them for risk-free functional suitability.
- 7.2. Notwithstanding point 7.1, FOTEC is active in the field of research and development. The services it provides have therefore generally not yet reached market maturity (cf. item 1.8). Therefore, if FOTEC does not give its written consent to the use of its services vis-à-vis the client's customers, it cannot be held liable for warranty or damages, either directly or indirectly (by way of recourse), in the event of a default in performance or poor performance in the relationship between the client and its customers.
- 7.3. Claims for compensation by the client or third parties for damages and consequential damages - for whatever legal reason - are excluded, unless they are mandatory by law.
- 7.4. The liability of FOTEC is limited to the amount of the agreed order sum.
- 7.5. FOTEC's liability for slightly negligent conduct is excluded.
- 7.6. Any change in the burden of proof to the detriment of FOTEC is contractually waived.
- 7.7. Claims for compensation against FOTEC shall become statute-barred after six months from knowledge of the damage, but in any case after three years from acceptance.
- 7.8. FOTEC shall not assume any liability for the economic usability of the services or even a specific economic success with the client, unless expressly agreed otherwise.
- 7.9. All exclusions and limitations of liability shall also apply to any vicarious agents used.
- 7.10. In order to minimise any direct damage to the client, the client shall take out appropriate liability insurance.
- 7.11. Defects must be reported immediately (in compliance with the provisions of §§ 377 ff UGB) and in a qualified form. In case of doubt, a notice period of 14 days shall be assumed.
- 7.12. Should a claim be made against FOTEC by a third party (including public authorities) due to the unlawful use by the client of the services it has provided, the client undertakes to indemnify and hold FOTEC harmless upon first request.

## 8. Terms of payment

- 8.1. FOTEC reserves the right to determine the method of payment (advance payment, invoicing, payment plan, etc.). Invoices and fee notes of FOTEC are due for payment promptly without deduction. The timely receipt of the total amount due on the account announced by FOTEC, stating the invoice number, shall be decisive.
- 8.2. In the event of late payment
  - the client shall owe default interest in the amount of 9.2 percentage points above the respective current base rate (§ 456 UGB);
  - the client shall reimburse all costs incurred by FOTEC due to the delay;
  - a reimbursement of expenses of EUR 40.00 per reminder can be charged for reminders and any additional collection costs can be claimed (§ 458 UGB);
  - if there is a delay in payment despite a third reminder, FOTEC shall be entitled to restrict or block access to services;
  - FOTEC may adapt schedules or work plans for the execution of the order accordingly;
- 8.3. Offsetting with counterclaims or the assertion of a right of retention shall only be permissible if the claim has been expressly recognised in writing by FOTEC or has been legally established by a court of law.
- 8.4. All rights of ownership and use shall not pass to the client until the order fee has been paid in full.

## 9. Written form

Verbal subsidiary agreements do not exist. All agreements between FOTEC and the client must be in writing. This shall also apply to any waiver of the written form requirement.

## 10. Reference clause

FOTEC shall be entitled to indicate the fact of the business relationship with the client by means of a reference on its website, invitations to tender, advertising and offer documents, unless the client objects to this. In this context, it shall be entitled to use the logo of the client as well as the achieved work result and to describe them in abstract terms.

## 11. Severability clause

Should individual provisions be invalid or unenforceable or become invalid or unenforceable after conclusion of the contract, this shall not affect the validity of the remainder of the contract. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision whose effects come as close as possible to the economic objective pursued by the contracting parties with the invalid or unenforceable provision.

## 12. Applicable law and place of jurisdiction

- 12.1. The contract concluded between the parties shall be governed by Austrian law to the exclusion of all conflict of law provisions.
- 12.2. For legal disputes arising from this contract, the parties agree on the jurisdiction of the competent court in Wiener Neustadt, Austria.

12.3. FOTEC is entitled to amend these GTC at any time. FOTEC shall inform the client of such amendments by sending the amended GTC to the email address last notified to the client. The client has the right to object to this amendment. If no objection is made by the client within 14 days of this amendment being sent, implied consent to the amendment of the GTC shall be assumed. Unilateral and factually unjustified changes to the GTC cannot be implemented in this way.