

## **proionic GmbH General Terms and Conditions**

### **1. T&C Subject Matter**

- 1.1 These General Terms and Conditions (“T&C”) shall apply to all legal transactions and orders where proionic GmbH (“proionic”) is the contractor or supplier of any other party (“Customer”). proionic and Customer hereinafter also referred to as Party or Parties.
- 1.2 Deviations from these T&C shall be valid only after proionic approved them in writing. Applicability of Customer’s T&C shall be expressly excluded and Customer’s remarks to their T&C shall be hereby objected.

### **2. Order, Offer and Ancillary Agreements**

- 2.1. Agreements, orders, or order supplements must be generally made in writing; this shall also apply to deviations from the written form requirement. Proionic offers shall be non-binding.
- 2.2. Proionic shall be entitled to have orders totally or partially executed by employees or commercial/freelance co-operation partners.

### **3. Supply/Completion Deadline**

- 3.1. Customer must obtain any authorities or third-party approvals required for order execution at their own expense. Should such approvals not be granted on time, proionic’s order execution periods shall be extended accordingly.
- 3.2. If unforeseeable circumstances or circumstances independent of the Parties’ intentions occur, such as but not limited to cases of force majeure, preventing or delaying compliance with supply/completion deadlines, such deadlines shall be extended by the period of prevention/delay. Should delays due to force majeure persist for more than three months, proionic may cancel the agreement.

- 3.3. Circumstances referred to under para. 3.1. and 3.2. must be immediately documented by the contractual partners and be submitted to the other partner.
- 3.4. Supply deadlines shall also be extended by those periods in which sub-suppliers supplied proionic not correctly or not on time. Proionic shall inform Customer accordingly without this establishing a right for Customer to claim compensation.
- 3.5. Supply deadlines shall be proportionately extended by those periods in which Customer fails to comply with payment terms and other contractual duties.

#### **4. Order Subject Matter, Duty to Cooperate, Delay of Acceptance**

- 4.1. Proionic undertakes to ordinarily perform contractual duties pursuant to the state of the art applicable at the time of order placing. Only if this was expressly agreed upon in writing must proionic provide for a given result or success.
- 4.2. Customer must ensure that proionic, without special requests, is provided with documents required for performing orders and that proionic is informed about processes and circumstances which might be relevant for order performance; this shall also apply to documents, processes or circumstances arising only during proionic's activities.
- 4.3. Customer shall ensure that services and supplies which they provide to proionic do not violate third-party intangible property rights, ancillary copyrights, expertise or processing rights, they shall hold proionic harmless against competition, intangible property or similar law aspects and compensate proionic for any disadvantages resulting from this, irrespective of negligence or fault. Correspondingly, Customer undertakes to immediately notify proionic of any claims due to intangible property rights or other ancillary copyrights violations being asserted.
- 4.4. Should Customer fail to accept proionic's services on time, this shall not affect remuneration payment due dates. If Customer fails to fulfil their duty to provide information or other duties, proionic may, after granting a reasonable grace period of at least seven days, cancel the agreement without notice; their claims for fees shall be subject to sec. 10.

- 4.5. Default of acceptance or non-fulfilment of cooperation duty by the Customer shall establish a claim for proionic for compensation of additional expenses and related losses even if proionic did not cancel the agreement.

## 5. Protection of Intellectual Property

- 5.1. All rights (including those created through order processing), such as, particularly, intangible property rights, ancillary copyrights, expertise or processing rights, shall generally remain proionic's property, unless agreed otherwise.
- 5.2. For works and services subject to proionic's copyrights, Customer shall be granted, for lack of express contrary agreements, permission to use the works in terms of sec. 24 para. 1 sent. 1 *UrhG* [*Urheberrechtsgesetz* – Austrian Copyright Act] upon complete payment. Transfer of proionic's contractual services to third parties for usage shall require proionic's prior written approval; this shall not establish liability for proionic towards such third parties.
- 5.3. Customer must ensure that proionic's works, related information or expertise created during the order will be only used for order purposes which were communicated to proionic or which are objectively recognizable; usage for other purposes shall be inadmissible, unless the parties agreed otherwise. Violations establish a claim for proionic, regardless of other claims, for the return of profits which Customer generated by violating this duty and for immediate cancellation of Customer's orders which had not yet been performed.
- 5.4 proionic guarantees that its' products don't violate third parties' property rights. proionic, however, does not guarantee that Customer's application / usage of proionic's product is free of rights of third parties. Thus, proionic can't be hold responsible in case of violation of these rights. The obligation to evaluate *freedom to operate* regarding Customer's application remains solely with the Customer; this will also apply if proionic is involved directly or indirectly in R&D of customer's application.

## **6. Templates, Guarantees**

- 6.1. Template and sample characteristics shall only be binding if they were expressly agreed upon as goods quality levels in advance.
- 6.2. Quality, shelf-life, usability and other information shall only be deemed quality guarantees if they were agreed upon and referred to as such.

## **7. Compliance with Legal Provisions**

- 7.1. Unless otherwise agreed in individual cases, Customer shall be responsible for complying with legal or authority goods import, transport, storage and usage provisions.
- 7.2. Customer shall ensure compliance with valid safety, legal or authority requirements, provisions or regulations regarding order results employment and usage and they shall hold proionic harmless in this regard.
- 7.3.

## **8. Warranty**

- 8.1. Customer shall be subject to defect notification duties for both materials supplies and results from proionic's services. Defects shall be reported in writing instantly, but at the latest within 5 business days from arriving of the goods for obvious defects and within 3 months for hidden defects respectively. This shall not affect the limitation of liability. It is the Customers duty to prove the existence of a hidden defect.
- 8.3. Warranty claims shall become time-barred if they are not asserted in court within one year from delivery at the latest.
- 8.4. If the goods are defective and if Customer ordinarily notified proionic of this in terms of para. 8.1., Customer shall be entitled to statutory rights subject to the following: proionic is entitled, at their choice, to either remove the defects or to deliver to Customer goods free from defects (subsequent performance), whereby proionic reserves the right to two subsequent performance attempts. Should subsequent performance fail or be unacceptable for Customer, the

latter may either withdraw from the agreement or request a purchase price reduction.

- 8.5. To the extent that proionic provides consultancy services, proionic does so to the best of their knowledge. Information on goods suitability and use shall not exempt Customer from performing their own tests and trials.

## **9. Liability**

- 9.1. proionic shall only be liable for intentional or gross negligent damage for which Customer produces evidence, to the amount of contractual fees or the maximum business liability insurance coverage, but never for loss of earnings, consequential, indirect or mere property damage.
- 9.2. Also, proionic accepts no liability for gross negligence of their vicarious agents, unless proionic managers are accused of gross negligence.
- 9.3. Supplies shall be made ex works according to the Incoterms as amended upon contract conclusion. The risk of accidental loss or deterioration shall be transferred to Customer upon hand-over to the haulage contractor and not later than upon the goods leaving the premises. Clauses such as “free delivery” or similar relate to transport costs, but they do not amend the above risk transfer provisions.
- 9.4. If commercial software is used for service provision, proionic accepts no warranties and/or liabilities for (consequential) damage from software errors and other software faults.
- 9.5. Damage claims shall become time-barred if they are not asserted in court one year from becoming aware of it at the latest.

## **10. Fee/Payments**

- 10.1. All amounts shall be net amounts (excluding VAT), unless expressly indicated otherwise.

- 10.2. Customer shall not be entitled to retain or offset payments against counter-claims.
- 10.3. If wage costs increase due to collective agreements with orders lasting for more than a year or if other costs relevant for calculation or required for service provision or supply of goods, such as but not limited to material, energy, transport, external labor or funding costs, increase, proionic shall be entitled to accordingly raise prices after a one-year period from order placing.
- 10.4. Additional services due to changes for which proionic is not responsible, new processing or modifications of individual order components, particularly due to authority requirements, amendments of relevant provisions or laws or following Customer's requests for changes shall be separately compensated.
- 10.5. If there is reason to doubt Customer's ability to pay, particularly in the case of defaults, proionic may revoke payment terms and subject additional services to pre-payments and the provision of collaterals or withdraw from the agreement without granting grace periods.

## **11. Cancellation**

Cancellations by the customer have to be accepted in writing by proionic to be valid. In case of acceptance proionic has the right to invoice accrued costs plus a cancellation fee of about 1% of the order value, but at least € 200.--.

If the cancellation is not accepted by proionic the total order value has to be paid. Proionic does not need to deduct any amount obtained or the amount that could be obtained through alternative use respectively.

## **12. No Assignment**

Claims against proionic may not be assigned without proionic's express written approval.

## **13. Retention of Title**

Upon the supply and/or provision of transferable goods, proionic shall have a right to retention until complete payment of invoices, plus applicable interest and costs.

#### **14. Salvatory Clause**

If any provision in this Agreement is found by a court of competent jurisdiction (from which there is no appeal or, if there is, no appeal is lodged or any appeal is withdrawn) or arbitrator to be illegal or invalid that clause shall be deemed removed and the remainder shall be unaffected. The parties shall endeavor to agree an alternative clause having like effect, as a substitute for the provision that has been removed.

#### **15. Venue and Place of Fulfilment**

15.1. Austrian law shall apply; CISG and international private law reference provisions shall be excluded.

15.2. For lack of other written agreements, proionic's registered office shall be the place of fulfilment.

15.3. The contractual language shall be English.

15.4. The venue shall be proionic's registered office or, at their choice, the general venue of Customer.

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Registered office: Austria, 8074 Grambach; Register Court of Leoben:  
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