

# APM Technica AG

## GENERAL TERMS & CONDITIONS FOR CONSULTING SERVICES ("GTC")

---

### 1. Scope of Application

1.1 These General Terms & Conditions for consulting and engineering work ("GTC") shall apply to the consulting and engineering work ("**Consulting Services**") rendered by APM Technica AG ("**APM**") for customers ("**Customers**").

1.2 These GTC shall also apply if the Customer submitted its own terms and conditions to APM and APM did not expressly refuse them. Any undertaking entered in deviation of these GTC shall be binding only if and to the extent agreed by APM in writing.

### 2. Conclusion of Contract

2.1 A contract shall become legally binding between APM and the Customer ("**Contract**") only after the issuance of an order confirmation by APM. APM's quotation and order confirmation in conjunction with these GTC shall form the final contractual provisions.

2.2 All descriptions and representations by APM on printed, digital or electronic media as well as any technical documentation such as, but not limited to, descriptions, drawings, brochures shall not have any legally binding effect and may be modified by APM at any time without notice. Only those descriptions and representations set out in a Contract shall be legally binding.

2.3 If a Customer requested changes under a Contract, such requests shall become legally effective between the parties only pursuant to Clause 2.1.

### 3. Intellectual Property Rights of the Documentation

Any documentation of the Consulting Services rendered on printed, digital or electronic media such as, but not limited to, studies, blue prints, reports, brochures, photographs, software ("**Documentation**") shall remain the intellectual property of APM; specifically, any copyrights to the Documentation shall remain with APM. The Documentation shall neither be copied nor be made available to any third party without the express prior consent of APM.

### 4. Customer Information and Material Provided

Should APM need information and services from and/or material provided by the Customer in order to execute a Contract ("**Information and Material Provided**"), then the Customer, or a third party appointed by it, shall warrant their timely delivery, accurateness, completeness and the required quality to APM. APM shall be entitled to rely on such Information and Material Provided without any verification. APM shall inform the Customer forthwith if it realized that the Information and Material Provided are faulty. The Customer shall keep APM harmless and indemnified and on request shall defend APM from and against any loss or damage, costs and expenses arising out of or in relation with such faulty Information and Material Provided.

### 5. Price

5.1 The Consulting Services are invoiced at the hourly rate indicated in APM's quotation or order confirmation. The Consulting Services rendered as well as the expenses incurred shall be billed on a monthly basis by APM unless agreed otherwise in a Contract. The hourly rate is billed in Swiss Francs plus value added tax, if any, unless Euro or US\$ were agreed in the Contract.

5.2 The quotations and price indications are made to the best of APM's knowledge. The prices are indicative only. If additional costs were to be incurred during the term of the Contract, these shall be forthwith notified to and approved by the Customer.

### 6. Terms of Payment

6.1 Payments shall become due and payable within 30 days as of date of invoice unless expressly otherwise agreed in the

Contract. The payment shall be deemed received when credited to APM's account.

6.2 Past due payments shall entitle APM to charge late interest effective as of the due date at the CHF 3-month LIBOR increased by 5% in addition to the invoiced amount.

6.4 Past due payments and – in APM's sole judgment – the deterioration of Customer's creditworthiness, shall entitle APM to immediately declare any outstanding amounts due and payable. In addition, APM shall be entitled (a) to hold off the rendering of Consulting Services, or (b) to request prepayment of or an irrevocable, unconditional bank guarantee issued by a first class Swiss bank for the invoiced amount, or (c) to rescind the Contract and claim for damages.

### 7. Deliveries and Dates of Delivery

7.1 The dates of deliveries indicated by APM shall be deemed indicative dates only and not fixed dates. APM shall forthwith inform the Customer if a delivery date cannot be kept. IN SUCH CIRCUMSTANCE, IN NO EVENT SHALL APM BECOME LIABLE FOR DIRECT, INDIRECT AND/OR CONSEQUENTIAL DAMAGES THAT MAY BE ARISING FOR CUSTOMER, SUCH AS, BUT NOT LIMITED TO, LOSS OF SALES AND/OR PROFITS.

7.2 The time of delivery shall be counted as of the date of APM's order confirmation, provided that all Information and Material Provided have been delivered to APM and the scope of the Consulting Services has been cleared and accepted by APM. If any of the foregoing has gone missing, the time of delivery shall be postponed until such time when such missing item has been fulfilled.

7.3 The time of delivery shall be extended in the following cases:

7.3.1 force majeure, i.e. in case of occurrences that are beyond APM's reasonable control and/or not predictable even when applying reasonable due diligence. In such a circumstance, APM's obligations under the Contract shall be postponed and Customer shall not be entitled to claim for loss and damages under any title. Should the force majeure event last longer than 3 months, either party may at its convenience rescind the Contract whereby neither party shall be entitled to claim for loss and damage from the other party;

7.3.2 if the Customer was in default under any clause of the Contract, in particular if payments are past due. If payments are made through an irrevocable, unconditional letter of credit ("L/C") confirmed by a first class Swiss bank, such L/C shall be issued ahead of time before the delivery of the Consulting Services;

7.3.3 if the Customer requests changes after an order confirmation has been issued by APM, provided APM agreed to such request;

7.3.4 if the Customer made available Information and Material Provided pursuant to Clause 4 to APM which are faulty or incomplete or late.

### 8. Warranty for Consulting Services Provided

APM warrants to Customer only the true and diligent execution of the Consulting Services. Any further warranties are hereby expressly excluded.

### 9. Limitation of Liability

9.1 TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, APM EXCLUDES ANY LIABILITY, WHETHER BASED IN CONTRACT, STRICT LIABILITY, WARRANTY OR TORT (INCLUDING NEGLIGENCE), OR ANY OTHER BASIS WHATSOEVER, FOR DIRECT, INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND, OR, LOSS OF INFORMATION OR DATA, OR FINANCIAL LOSS ARISING OUT OF OR IN RELATION WITH THE RENDERING OF THE CONSULTING

SERVICES AND LIMITS ITS LIABILITY TO THE PRICE PAID BY CUSTOMER TO APM. THIS LIMITATION OF LIABILITY APPLIES EVEN IF APM HAS BEEN ADVISED OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

9.2 ANY LIABILITY FOR MATERIAL PROVIDED IS HEREBY EXPRESSLY EXCLUDED.

9.3 If Material Provided has been damaged by APM intentionally or by gross negligence, APM shall be liable according to the law; in all other cases, APM shall be liable only for the direct material and manufacturing cost of labor net of any overhead costs.

9.4 Any loss or damage incurred by Customer on Material Provided which are the consequence of tests in general, such as, but not limited to, load tests, test on the impact of heat or cold and other test procedures are hereby expressly excluded.

#### **10. Term and Termination**

10.1 A Contract expires when it is fulfilled.

10.2 Termination for convenience: Either party may terminate a Contract at any time with immediate effect. However, the terminating party shall compensate and indemnify the terminated party if the termination occurred at an inopportune time, hence causing unreasonable loss or damage to the terminating party. The Customer shall pay for all Consulting Services rendered up to the date of termination.

10.3 Termination for cause: Either party may terminate a Contract with immediate effect and shall be entitled to claim for any loss and damage in the following cases:

10.3.1 debt collection and/or debt settlement proceedings (in particular in the context of insolvency) are instituted against the terminated Party; cessation of the business, sale or assignment of the business; or the existence of other important causes which reasonably prompt the terminating party's concerns about a loss or other damage;

10.3.2 breach of Contract such as, but not limited to, ongoing past due payments, provided that, to extent reasonably possible,

the terminating party grants to the terminated party a 30-day period to remedy the contractual situation ("**Remedy Period**") and the terminated party fails or omits to remedy, in which case the terminating party shall be entitled to claim for any loss and damage.

#### **11. Applicable law and Jurisdiction**

These GTC and each Contract hereunder shall be governed and interpreted according to the laws of Switzerland, excluding its conflict of law provisions. The ordinary courts at the place of business of APM at Heerbrugg, Switzerland, shall be competent. APM shall however, at its sole discretion, be entitled to take legal action against Customer at the courts competent at Customer's place of business or domicile.

#### **12. Severability**

If a competent court of law was to declare any of the provisions of these GTC and/or Contract as null and void or unenforceable for whatever reason, the validity of all other provisions shall not be affected. In such instance, the null and void or unenforceable provisions shall be replaced by other legally valid or enforceable provisions, which shall within the limits of the law closest reflect the original economic intentions of the Parties.

#### **13. Modifications and Waiver**

No supplement, modification or waiver of these GTC and/or a Contract shall be binding unless executed in writing by both Parties. No waiver of any of the provisions of this Agreement shall constitute, or shall be deemed constituting, a waiver of any other provisions hereof (whether or not similar), nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

Heerbrugg, July 2013

#### **APM Technica AG**

9435 Heerbrugg  
Switzerland