

## TTTech Auto

### General Terms & Conditions of Sale and Delivery of Services

The following TTTech Auto General Terms & Conditions of Sale and Delivery of Services (the “**T&C**”) of TTTech Auto GmbH, Vienna, Austria, FN 477693 s (“**TAAG**”) shall apply to all deliveries by TAAG and all use by Customer of any Product supplied by TAAG hereunder and/or any Services rendered by TAAG hereunder. However, these T&C might be amended by TAAG’s special terms and conditions (such as Software Product License Terms and Conditions and/or Terms and Conditions for Consulting Services), which are then considered to be part of the Agreement with Customer, and which shall prevail over any contradicting terms of these T&C.

THESE T&C SHALL OVERRIDE ANY CONTRADICTING OR ADDITIONAL TERMS CONTAINED IN OR REFERRED TO IN DOCUMENTS OR CORRESPONDENCE FROM CUSTOMER, INCLUDING IN PARTICULAR ANY GENERAL TERMS AND CONDITIONS OF CUSTOMER. ANY GENERAL TERMS AND CONDITIONS OF CUSTOMER SHALL NOT APPLY TO THIS AGREEMENT, EVEN IF REFERENCED IN A PURCHASE ORDER OR OTHER CUSTOMER DOCUMENT, UNLESS EXPRESSLY ACCEPTED BY TAAG IN WRITING.

#### 1. Definitions

Any capitalized term used in this Agreement (including its Annexes) shall have the meaning set out herein below or as defined elsewhere in the Agreement:

<b>Affiliate</b>	means any entity, whether incorporated or not, that is Controlled by or under a common Control with a Party. “ <b>Control</b> ” (or variants of it) shall mean the ownership of 50 % or more of such company's voting rights. Regardless of Control, TTTech Computertechnik AG and its Affiliates shall be deemed TAAG Affiliates within the meaning of this Agreement.
<b>Agreement</b>	means the contractual relationship between the Parties based on an Offer, a Purchase Order accepted by TAAG and these T&C.
<b>Background IPR</b>	shall have the meaning set forth in section 9.4.
<b>Confidential Information</b>	shall have the meaning set forth in section 13.2.

<b>Customer</b>	means the person or entity designated in an Offer who intends to use the Product(s) or does download, install, or use the Software hereunder and/or receives any Services.
<b>Customer Cooperation Responsibilities</b>	shall have the meaning set forth in section 5.1.
<b>Disabling Code</b>	means a computer code inserted by TAAG that is designed to delete, interfere with or disable the normal operation of the Software.
<b>Documentation</b>	means all documents relating to a Product authored by TAAG or any Third Party describing its features or use.
<b>Effective Date</b>	means the date the Purchase Order is accepted by TAAG, or an earlier date if expressly specified as such in an Offer.
<b>Feedback</b>	means comments, suggestions, improvements or enhancements of (a) the Product or Software, (b) the Services or (c) TAAG products or processes or any Customer-prepared derivatives of TAAG products, including without limitation, all Intellectual Property Rights in any such comments, suggestions, improvements or enhancements.
<b>Foreground IPR</b>	shall have the meaning set forth in section 9.5.
<b>Force Majeure</b>	means all events which are beyond the control of the Parties, and which are unforeseen, unavoidable or insurmountable and which were not known at the formation of the Agreement, and which prevent total or partial performance by either Party, including earthquakes, typhoons, flood, war, epidemics, civil disturbances, and any other event which neither can be foreseen, prevented nor controlled.
<b>Intellectual Property Rights or IPR</b>	means any and all intellectual property rights anywhere in the world, whether or not registered or granted, including any applications therefore, including any patent rights, patent application rights, copyrights, design rights, rights in inventions, rights in utility models, intellectual property rights in semiconductors, topographies and mask words, Confidential Information, know-how, trade secrets, business secrets, database rights, , test and development reports, suggestions, ideas, drafts, designs, proposals, samples, models, drawings, CAD data records, service descriptions, documentation, and programs, all moral and

	economic rights of authors and inventors, all rights of whatsoever nature in computer software and data and all intangible rights and privileges of a nature similar or allied to any of the foregoing. IPR shall, however, exclude trademarks and trade names.
<b>License</b>	means any legal right required to use any Software or other Product supplied by TAAG hereunder.
<b>Notice</b>	shall have the meaning set forth in section 18.
<b>Offer</b>	means a legally binding offer issued by TAAG to Customer relating to Products and/or Services, always including all its annexes and referenced supporting documents.
<b>Open-Source Software</b>	means any software provided under a license or other contractual obligation that requires, as a condition of use, modification, or distribution of the covered technology, that the covered technology or other technology incorporated into, derived from, or distributed with the covered technology (i) be disclosed or distributed in source materials form; (ii) be licensed by the user to third parties for the purpose of making or distributing derivative works; (iii) be redistributable at no or minimal charge or (iv) be otherwise used, modified and/or shared under terms and conditions defined by the author.
<b>Parties</b>	means TAAG and Customer collectively, and <b>"Party"</b> means either of them.
<b>Product</b>	means any goods, such as Software, firmware, chip IP and/or hardware supplied by TAAG under these T&C.
<b>Project</b>	means a specific Customer development project or use case.
<b>Purchase Order or PO</b>	means a legally binding purchase order issued by Customer.
<b>Services</b>	means any (i) support services, in particular integration and de-bugging, or (ii) any other installation, training, consultancy service, development service, product enhancement, product extension, or other services offered by TAAG to Customer.
<b>Software</b>	means all software supplied by TAAG under this Agreement.

<b>T&amp;C</b>	means these TTTech Auto General Conditions of Sale and Delivery of Services.
<b>Third Party</b>	means with respect to a Party, any person or entity that is not an Affiliate of such Party.
<b>Update</b>	means any modification or addition to the Software that fixes defects and does not change its overall utility, functional capability or application and only to the extent that any such Updates are issued by TAAG. For the sake of clarity Updates do not include (i) Upgrades; or (ii) any product that is marketed by TAAG as a new or distinct product.
<b>Upgrade</b>	means significant improvements in either performance, changes in architecture and/or new functionalities that go beyond an Update. An Upgrade is usually given a new version number, such as "2.0" or "2.5" and marketed with this number.
<b>Warranty Period</b>	shall have the meaning set forth in section 10.3.

## 2. Offer and Order of Precedence

- 2.1. Unless contained in this Agreement and expressly stated to be binding, TAAG is not bound by any advertisement, marketing statement, www-appearance, catalogue or other documents, whether communicated publicly or to Customer. Any written statements, requests for quotation or Documentation submitted by Customer to TAAG prior to entering this Agreement shall be binding for Customer only.
- 2.2. Any Offer can only be accepted by Customer through a Purchase Order within ten (10) days from the day of receipt of the Offer unless the Offer defines a different validity period. The Purchase Order shall not include conditions or amendments to any of the commercial, legal, or other terms expressed in the Offer. Any Purchase Order deviating from the Offer or an acceptance of an Offer later than the acceptance date shall be regarded as a counteroffer by Customer, which only becomes binding upon written confirmation by TAAG. Any general terms and conditions of the Customer referenced in a counteroffer shall not be applicable.
- 2.3. If a conflict exists between these T&C and an Offer, the Offer (including any annexes to the Offer) shall prevail.

- 2.4. The Offer further specifies what type or Product or Service is obtained by Customer and its scope and restrictions, in particular if use of any Products or Services is restricted to a particular Project and what additional terms may apply.
- 2.5. For avoidance of doubt, no Licenses to any Software or other Product of TAAG are granted under these T&C. Should any Licenses be required by Customer, Customer must obtain those under the TAAG Software Product License Terms and Conditions or a separate license agreement.
- 2.6. All rights granted to Customer under this Agreement (incl., but not limited to, all rights under warranties) are contingent upon Customer's full and timely payment of all TAAG invoices as well as full and timely fulfilment of all Customer Cooperation Responsibilities. All services, dates and prices mentioned in any Offer are based on the assumption that the PO is placed on time, that Customer is fulfilling all Customer Cooperation Responsibilities and is providing its active participation and contributions/provisions free of charge, on schedule and according to requirements.

### **3. Fees and Payment Terms**

- 3.1. Unless agreed otherwise in writing any estimate of cost given by TAAG shall be non-binding.
- 3.2. All TAAG's fees and prices set out in an Offer are net, excluding inter alia (public) charges, customs, and all taxes, in particular Value Added Tax (VAT) or withholding tax. Payment of all fees and prices set out in an Offer must be made in full, any applicable withholding tax will be added to these amounts and must be borne by Customer. All other costs, e.g. packing, shipment and insurance will be paid by Customer unless otherwise agreed in writing.
- 3.3. Unless expressly set out otherwise in an Offer, all fees for Services are calculated on a time-and-material basis. The smallest unit of time for the calculation of fees is one hour. Times will be rounded up to nearest unit of one hour. A rate for each unit of one hour may be stated in an Offer.
- 3.4. All hourly rates (for Services) and all other recurring fees for deliverables are subject to annual adjustments based on the Consumer Price Index published by Statistics Austria (index basis: annual CPI 2020=100). The adjustment shall be calculated by comparing the annual CPI for the calendar year preceding the calendar year in which the corresponding Offer is issued with the annual CPI for the calendar year preceding the date of adjustment. The adjusted fees will be effective from the anniversary of the Offer conclusion and apply until the next

annual adjustment. If the consumer price index of Statistics Austria is no longer published, the officially determined successor index shall take its place for adjustments under this section 3.4.

- 3.5. When fixed prices are agreed upon for any deliverables, they are contingent on the requirements and assumptions which TAAG has utilized for planning, allowing the execution and provision of deliverables at the agreed price. Additionally, fixed prices are conditional upon the fulfilment of Customer's obligations set out in section 2.6. If changes to the requirements or assumptions on which an Offer is based or failure to fulfil all obligations set out in section 2.6, render fixed-price service delivery infeasible, TAAG will promptly notify Customer. In this situation, both Parties will negotiate a new fee. If an agreement cannot be reached, TAAG has the right to terminate the corresponding Agreement according to section 14.2. Services already rendered will be billed on a time and materials basis, according to the hourly fee applicable at that time.
- 3.6. Overhead charges, hours of travel, travelling and hotel expenses, and other related costs incurred by TAAG in performance of Services may be charged separately to the Customer, unless agreed otherwise in writing explicitly.
- 3.7. Payment shall be due within thirty (30) days upon receipt of TAAG's invoice, irrespective of the time of delivery, without any deductions, in the agreed currency, free to TAAG's accounts. Customer is not entitled to a monetary offset of counter claims, or the retention of payments in case of disputes over TAAG's performance or warranty claims.

#### **4. Retention of Title**

- 4.1. Products delivered by TAAG shall remain in TAAG's property until all TAAG's claims, including payment of all additional charges, have been satisfied in full.
- 4.2. In the event of the Customer's defaulting on payment, TAAG reserves – under preservation of the Agreement – the right to remove the Products which are still subject to TAAG's retention of title and to impose all transport costs on the Customer.

#### **5. Customer Cooperation Responsibilities**

- 5.1. Customer shall provide, at his own account and risk, all the resources required to ensure TAAG can duly fulfil its contractual obligations under this Agreement. In particular, without limitation, Customer must ensure the following:

- (a) TAAG is timely provided with access to all relevant information, in particular in the correct form as requested by TAAG. This includes, without limitation, providing the information on technology and on Project organization required for the provision of Products or Services hereunder (e.g. without limitation, hardware and operating systems, standard software deployed, organizational plans) and, where necessary, making available the hardware and/or software (including documentation) for which the Products and/or Services are to be provided.
- (b) Where necessary or useful, TAAG is upon request granted access to Customer's premises, including servers and systems environment, and granted the related access rights and/or licences, both of Customer as well as any Third Parties used by Customer for execution of the Project (e.g. cloud service providers).
- (c) Where access to external providers is required, TAAG is provided written permission, granting TAAG such access.
- (d) CUSTOMER HEREBY EXPRESSLY INDEMNIFIES TAAG AGAINST ALL AND ANY CLAIMS FOR DAMAGES, AND ANY OTHER CLAIMS, ARISING FROM ACCESS ON THE PART OF TAAG WITHIN THE SCOPE OF PERFORMANCE OF THIS AGREEMENT, IN PARTICULAR, WITHOUT LIMITATION, ACCESS TO EXTERNAL PROVIDERS.
- (e) Customer will appoint a Project manager as its authorized representative. The Project manager will be responsible for all Project activities, will establish all contacts and make or bring about all decisions required and appropriate for the prompt progress of work.
- (f) Properly skilled and qualified employees or subcontractors of Customer that are familiar with relevant Customer's information and resources are available to TAAG during normal business hours.
- (g) Where TAAG submits reports, recommendations, analyses, test results, or similar documents or oral statements, to Customer, Customer must check these before implementation or other use to ensure compatibility with his systems, and if necessary, draw TAAG's attention to existing or potential problems.
- (h) Whenever TAAG staff is working at Customer's site, Customer is responsible and shall pay for the compliance with all health and safety regulations and public law qualifications necessary.



- (i) Customer shall be responsible for compliance with all applicable national and foreign legislation and regulations in the area of protection of privacy and personal data, including where the Customer provides TAAG with – or puts at TAAG’s disposal – personal data of its personnel, its customers or other Third Parties, even if such personal data originates from Third Parties or is provided to TAAG or put at TAAG’s disposal by Third Parties at Customer’s request.

## **6. Conditions of Delivery**

- 6.1. Delivery shall be made in accordance with Incoterms 2020: CPT, whereby the Customer shall bear all costs for transport in deviation from these Incoterms.
- 6.2. Agreed upon times of delivery shall in no case commence prior to clarification of all commercial and technical details and to the fulfilment of all pre-requirements on the part of Customer and shall only be binding on TAAG if agreed in writing.
- 6.3. Orders for delivery are deemed fulfilled:
  - (a) In case of delivery ex works: with the notification of readiness of the Products for shipment.
  - (b) For deliveries with other agreed place of delivery: when dispatch of Products from TAAG’s works is initiated.
  - (c) For Services: with beginning of rendering of Services.
- 6.4. TAAG is entitled to make partial deliveries or advance deliveries.
- 6.5. TAAG shall use its best efforts to adhere to the time of delivery as agreed upon. Force Majeure and other obstructions beyond TAAG’s control, shall in any case extend the time of delivery, or entitle TAAG to rescind the contract without thereby creating cause for any claims against TAAG.
- 6.6. Unless otherwise agreed between TAAG and Customer, shipment shall be at the risk and expenses (including insurance cover) of the Customer.

## **7. Assembly and Start-Up**

- 7.1. TAAG shall assume assembly and start-up operations only if explicitly set out in the Offer or on the basis of special written agreements which may also define the



scope of support granted in connection with the assembly, such as training, installation support, testing support or consultancy.

- 7.2. For each assembly engineer delegated by TAAG and requested by Customer, the Customer shall reimburse TAAG for the expenditures incurred as per TAAG's hourly rates plus extra charges for possible overtime work, and for the costs of travel and dispatch of baggage incurred for such engineer.
- 7.3. Customer shall provide in good time, at his own account and risk: The necessary staff to assist with assembly and/or start-up (TAAG shall not be in any way responsible for such staff or the work carried out by same); the necessary preliminary work, equipment, materials, auxiliary equipment and tools; suitable, lockable premises for the proper storage of materials and equipment of all kind provided by TAAG for the assembly and/or start-up; Customer shall be obliged to take all structural or other steps necessary for the timely execution of the assembly and/or start-up operations, including testing the Products under actual conditions.
- 7.4. Any and all hazards and risks (including the transportation risks) in respect of equipment and materials of all kinds required for assembly and/or start-up shall be borne by the Customer.
- 7.5. For damages or defaults in assembly and/or start-up caused by the operating conditions, section 5.1(d) shall apply mutatis mutandis.

## **8. Documentation and Instruction Manuals**

- 8.1. The use of Products shall be governed by the Documentation and/or instruction manuals issued or provided by TAAG. Customer shall be responsible to obtain as many copies of these instruction manuals from TAAG as necessary and in accordance with Customer's right of use. If, in any case, the instruction manual is not delivered, Customer shall notify TAAG immediately. Failure to abide by these instructions shall preclude Customer's warranty or damage claims.
- 8.2. The technical consultation given by TAAG's staff is limited to the explanation of TAAG's technical instructions. Any consultation going beyond, in particular solutions for specific utilization not covered by TAAG's instruction manual, are subject to a separate agreement.

## **9. Intellectual Property**

- 9.1. No Licenses to any Software or other Product of TAAG are granted under these T&C. Should any Licenses be required by Customer, Customer must obtain those under the TAAG Software Product License Terms and Conditions or a separate license agreement. Any Products supplied by TAAG may only be used to the maximum extent as necessary for the contractual scope as set out in an Offer. Any use beyond the contractual scope is strictly prohibited.
- 9.2. Customer shall not reverse assemble, reverse compile, or otherwise reverse engineer the Products in whole or in part. He shall not use the Products for any competitive analysis whatsoever unless specifically authorised in writing to do so by TAAG. He shall not modify the Products unless agreed otherwise in writing.
- 9.3. Customer furthermore agrees that he will not himself or through others (i) sell, lease, license or sub-license the Products, (ii) write or develop any derivate software or any other software program based upon the Products, or any Confidential Information of TAAG, (iii) use the Products, for purposes other than those in the contractual scope, and/or (iv) provide, disclose, divulge or make available or permit use of the Products, to any Affiliate or Third Party without TAAG's prior written consent.
- 9.4. Nothing in this Agreement shall change or transfer the ownership rights of any IPR owned, controlled, developed, licensed from any Third Party, created or invented by or for a Party (a) prior to the Effective Date or (b) resulting from activities that are performed concurrent with the term of this Agreement, but not pursuant to or under this Agreement and independent of the other Party's IPR and/or Confidential Information ("**Background IPR**"). This Agreement transfers to Customer neither title nor interest in any proprietary or Intellectual Property Right in any Product, the Documentation or any other deliverable.
- 9.5. Any (i) IPR in Feedback (ii) IPR arising during the provision of Services, and (iii) any IPR arising out of any other alterations, amendments, updates, upgrades, modifications and derivative works of any Product created by either Party in the course of this Agreement, including any of their employees, Affiliates, sub-contractors, or any Third Party on their behalf, shall vest automatically in TAAG ("**Foreground IPR**"). TAAG shall be entitled in its own discretion to apply in its own name for registration of any and all Foreground IPR, both domestically and abroad, to pursue such registrations and abandon them at any time. The Parties agree that no jointly held IPR shall accrue under this Agreement.
- 9.6. Customer will provide TAAG, and ensure that its respective personnel will do so as well, all reasonable assistance and execute all documents necessary to assist and/or enable TAAG to perfect, preserve, register and/or record TAAG's rights in

Foreground IPR in accordance with the IPR allocation set forth in this section 9. To the extent ownership cannot be transferred to TAAG, Customer shall grant the TAAG the exclusive, sublicensable, worldwide license to use, modify, copy, reproduce, distribute and commercialize such Foreground IPR.

- 9.7. Portions of the Software may be Open-Source Software. The use of such Open-Source Software delivered by TAAG in connection with the Software shall be governed solely by the respective Open-Source license terms and, to the extent permitted by applicable law, TAAG shall assume no warranty or liability with respect to Open-Source Software.
- 9.8. In the course of the Agreement, Customer may provide Feedback to TAAG. Unless agreed otherwise in writing, there is no obligation for Customer to provide any Feedback, and any Feedback of Customer is provided “as is” without any warranty of any kind. Whenever Customer does provide Feedback, upon doing so, Customer grants to TAAG a non-exclusive, irrevocable, worldwide, royalty-free license, with the right to sublicense to TAAG’s licensees and customers, under all of Customer’s Intellectual Property Rights, the rights to use and disclose the Feedback in any manner TAAG chooses and to display, perform, copy, make, have made, use, sell, offer to sell, import, and otherwise dispose of TAAG’s and its sublicensee’s products embodying such Feedback in any manner and via any media TAAG chooses, without reference.

## **10. Limited Representations and Warranties**

- 10.1. No warranty for timely delivery: Unless expressly agreed as fixed dates, all delivery dates in Offers shall be non-binding indications. TAAG shall use its best efforts to adhere to any agreed upon schedule or timetable. Customer failing to fulfil the Customer Cooperation Responsibilities, Force Majeure and other obstructions beyond TAAG’s control, shall in any case extend any agreed schedule or timetable, including fixed dates.
- 10.2. TAAG represents and warrants with respect to the Products that on the Effective Date:
- (a) TAAG owns all rights, title and interest in and to the Products, including the Software, except for portions of it subject to an Open Source License;
  - (b) the Products will perform substantially in accordance with the accompanying written materials for the Warranty Period;

- (c) TAAG it has taken reasonable steps to test Software delivered hereunder for Disabling Code and that to the best of TAAG's knowledge the Software is free of Disabling Code as of delivery to Customer.
- 10.3. The warranty period for Products is six (6) months from the date when the Customer has first received access to the Products; for Services, the warranty period is six (6) months from the date of performance of the corresponding Service (together hereinafter and above the "**Warranty Period**").
- 10.4. For all Services as part of deliverables, no particular result or outcome is owed, unless expressly agreed. All Services rendered hereunder qualify as service contracts ("Dienstvertrag"), as specified by para 1151 and 1153 et seq Austrian Civil Code (ABGB). Unless expressly agreed otherwise, all work products are ancillary results to the Services only and do not alter the legal qualification of the deliverables owed by TAAG. TAAG does not hereunder provide products or services under contracts with defined outcomes ("Werkvertrag"), as outlined in para 1151 and 1165 et seq ABGB, unless specifically agreed in writing. This remains applicable even if the Parties have signed an acceptance protocol, time sheet, or any other document confirming the completion or delivery of individual Services or work products.
- 10.5. TAAG warrants that it will use commercially reasonable efforts to perform the Services in a timely, professional manner and that each of its personnel has the proper skill, training and background necessary to accomplish its assigned tasks .
- 10.6. No Updates, Upgrades, support or other Services are provided as part of a warranty under this Agreement. The obligation to provide updates under sec. 7 VGG (*Verbrauchergewährleistungsgesetz*) is expressly excluded.
- 10.7. Upon delivery, Customer shall immediately examine all Products for any defects or incompleteness and shall inform TAAG of such case immediately. A breach of a warranty under sections 10.2(b) and/or 10.2(c) shall only be assumed when Customer submits a warranty notice to TAAG within seven (7) days after Customer discovers such defects in the Products. Hidden defects must be notified to TAAG immediately after detection. Proof of the fact that the defect was hidden lies with Customer. Products, which are claimed and proved to be defective accordingly, shall be returned to TAAG on request, exact written description of the defects and/or missing Products attached, otherwise such warranty claim may be rejected by TAAG. In case of such warranty claim being accepted by TAAG, Customer's sole remedy shall be that TAAG shall within a reasonable period of time of at least three (3) months from the time of a written warranty claim notification from Customer, at TAAG's choice either correct, repair or replace any defective

Products or reduce the price accordingly. Repair may also be fulfilled by delivering a new version according to a reasonably planned course of development of TAAG. With regards to Products repaired by TAAG, the warranty period is the remaining period according to clause 10.3, but at least a period of three (3) months.

- 10.8. TAAG does not warrant that the Products will meet Customer's requirements or operate free from error.
- 10.9. The warranties set forth in section 10.2 above will apply only if (i) the Product has been properly installed and used at all times and in accordance with the Agreement or the instructions for use and (ii) no modification, alteration or addition has been made to the Product. Furthermore, to the extent permitted by applicable law, these warranties regarding Software shall not apply for any software integrated in the Software which was provided by any Third Party or licensed under any Open Source License and shall not apply for the Software integrated in any system other than specified in the respective Offer or PO (if applicable).
- 10.10. TAAG expressly disclaims any warranty or liability for damages due to wear and tear, defective maintenance, insufficient equipment, inadequate protection and/or unsuited operating materials. Any repair carried out by or on behalf of Customer relieves in any case TAAG from its warranty and liability.
- 10.11. TAAG does not make any warranty in relation to the interoperability of the Products with products not sold by TAAG and it is the sole responsibility of Customer to ensure such interoperability in cases where it is required due to the nature of the Product's use by adequate testing and quality standard procedures.
- 10.12. Except as otherwise provided herein, all Products provided by TAAG are provided "AS IS" and TAAG will not assume any liability whatsoever.
- 10.13. Customer shall be responsible for and shall defend, indemnify and hold harmless TAAG from all claims, costs, damages and attorney's fees resulting from or arising out of (i) TAAG complying with specification requests or specific instructions of Customer, (ii) the use of the Products in conjunction with equipment, devices or other software components not specifically authorized by TAAG, (iii) improper installing of the Products or the use of the Products in contradiction to this Agreement or the instructions for use, (iv) modifications, alterations or additions to the Products made by Customer; its Affiliates or Third Parties instructed by Customer and/or (v) any shortcuts in the interoperability of the Products connected to the Product's use by Customer.

## **11. Third Party Infringement**

- 11.1. TAAG will defend any suit brought against a Customer and will pay all damages finally awarded in such suit insofar as such suit is based on a claim that the Products as provided to Customer infringes a Third Party patent or copyright, provided that TAAG is notified promptly of such claim and at its expense is given full and complete authority (including settlement authority), information, and assistance by Customer (at Customers expense) for such defense. In the event that Product is held in any such suit to infringe such a right and its use is enjoined, or if in the opinion of TAAG, the Product is likely to become the subject of such a claim, TAAG at its own election and expense will either: (A) procure for Customer the right to continue using the Product; or (B) modify or replace the Product so that it becomes non-infringing while giving equivalent performance. In the event that (A) or (B) above are not, in TAAG's sole determination, reasonably practicable, then TAAG may terminate this Agreement and refund an equitable portion of money paid by Customer in connection with the licenses granted hereunder.
- 11.2. The IPR indemnity provided herein shall not apply to the extent that the alleged infringement arises from (a) use of the Product in combination with data, software, hardware, or other technology not provided by TAAG or authorized by TAAG in writing; (b) modifications to the Product not made by TAAG; or (c) TAAG complying with specification requests of Customer.
- 11.3. THIS SECTION 11. SETS FORTH CUSTOMER'S SOLE REMEDIES AND TAAG'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT A PRODUCT OR DOCUMENTATION INFRINGES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

## **12. Limitation of Liability**

- 12.1. Any liability of TAAG is limited to damages caused by TAAG deliberately or by gross negligence, for fraudulent concealment of defects, claims under the Austrian Product Liability Act, personal injury and for injury to life or health.
- 12.2. THE MAXIMUM AGGREGATE LIABILITY OF TAAG TO CUSTOMER (INCLUDING CUSTOMER'S CUSTOMERS, EMPLOYEES AND ADVISORS) OR, AS THE CASE MAY BE ANY BENEFICIARY OF THE PRODUCTS AND/OR SERVICES FOR ANY AND ALL CLAIMS ARISING UNDER OR RELATED TO THE PRODUCTS OR ANY SERVICE BEING SUBJECT TO THESE T&C (INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, INDEMNIFICATION CLAIMS OR TORT CLAIMS) SHALL – TO THE EXTENT PERMITTED BY APPLICABLE LAW – BE LIMITED TO THE ACTUAL DAMAGE (THEREFORE NOT INCLUDING CONSEQUENTIAL DAMAGES, LOST PROFITS OR PECUNIARY LOSSES, PRODUCTION DOWNTIMES, BUSINESS



INTERRUPTIONS) AND IN THE AGGREGATE NOT EXCEED THE LOWER OF EUR 100,000 OR THE CONTRACT VALUE RELATING TO THE RESPECTIVE OFFER. CLAIMS FOR DAMAGES DUE TO FAILURE TO FULFIL, OR DELAYED FULFILMENTS, OR CLAIMS CAUSED BY TAAG'S SLIGHT NEGLIGENCE ARE EXCLUDED. ANY LIABILITY FOR LOSS OF DATA IS EXCLUDED.

- 12.3. All Customer's claims for damages or indemnification, including under section 11. (Third Party Infringement), will be time-barred if no court action is brought after twelve (12) months unless a shorter limitation period was agreed. This limitation period starts with the end of the month in which the claim arose, and Customer received knowledge of the circumstances justifying the claim and the liability of TAAG or could have become aware of these circumstances without negligence.

### 13. Confidentiality

- 13.1. Precedence of NDA Agreement: In the event that a separate Non-Disclosure Agreement (NDA) has been executed by both Parties, the terms and conditions of that NDA shall take precedence over the provisions of this section 13, to the extent that there is any inconsistency or conflict between the NDA and this section 13.
- 13.2. "**Confidential Information**" means any non-public business or technical information disclosed hereunder by one Party or any of its Affiliates ("**Disclosing Party**") to the other Party or any of its Affiliates ("**Receiving Party**") that (a) has been identified or otherwise designated to show (expressly or by necessary implication) that it is confidential or proprietary to the Disclosing Party or (b) should reasonably be understood by the Receiving Party to be confidential to the Disclosing Party. Confidential Information includes any and all non-public technical and business information, whether written, oral, electronic or graphic, that representatives of any Party may disclose or reveal to another Party, including but not limited to business plans; present and proposed products; technical data; specifications; documentation; rules and procedures; contracts; presentations; know-how; product plans; business methods; product functionality; services; data; customers; markets; competitive analysis; databases; formats; methodologies; applications; developments; inventions; processes; payment, delivery and inspection procedures; designs; drawings; algorithms, formulas; information related to engineering, marketing, or finance; trade secrets; and information regarding customers and suppliers, founders, employees and Affiliates.
- 13.3. Each Party agrees that all Confidential Information provided by the Disclosing Party is the confidential and proprietary information of the Disclosing Party. Except as specifically provided elsewhere in this Agreement, the Receiving Party shall not



use the Confidential Information of the Disclosing Party other than for the purposes of fulfilling its obligations under this Agreement, and shall disclose the same only on a need-to-know basis to those of its and its Affiliates' employees, and contractors who are subject to written confidentiality agreements with terms no less stringent than those provided in this Agreement. Each Party shall diligently enforce such confidentiality agreements with its employees and contractors and shall be responsible for any breach of that Party's confidentiality obligations under this Agreement by its employees and contractors. Each Party also may provide a copy of this Agreement to the Party's (a) public accounting firm in connection with calendar quarter and annual financial or tax audits, and (b) outside legal advisors in connection with obtaining legal advice relating to this Agreement, the relationship established by this Agreement or any related matters. Other than as provided by the foregoing, the Receiving Party shall not disclose the Disclosing Party's Confidential Information to Third Parties. Each Party shall use at least the same procedures and degree of care that it uses to prevent the disclosure of its own Confidential Information, but in no event less than a reasonable standard of care. The Parties' confidentiality obligations under this Agreement shall survive the termination or expiration of this Agreement, for a period of ten (10) years following the termination or expiration of this Agreement.

- 13.4. The Parties' confidentiality obligations under this Agreement will not apply to any information that (a) the Receiving Party can document is or becomes generally known to the public without fault of the Receiving Party, (b) the Receiving Party can show by written documentation was in its possession without any obligation of confidentiality prior to receipt thereof from the Disclosing Party, (c) was or is independently developed by the Receiving Party without use of or reference to the Confidential Information of the Disclosing Party, or (d) was or is rightfully obtained by the Receiving Party from a Third Party without any obligation of confidentiality to Disclosing Party.
- 13.5. Nothing in this Agreement will prohibit the Receiving Party from disclosing Confidential Information of Disclosing Party if legally required to do so by judicial or governmental order or in a judicial or governmental proceeding; provided that the Receiving Party shall, to the extent allowed by applicable law, (a) give the Disclosing Party reasonable notice of such required disclosure prior to disclosure, (b) cooperate with the Disclosing Party in the event that it elects to contest such disclosure or seek a protective order with respect thereto, and (c) in any event only disclose the exact Confidential Information, or portion thereof, specifically required.
- 13.6. The Parties acknowledge that the relationship created by this Agreement and the terms of this Agreement are Confidential Information of the Parties and that

written approval will be obtained from the other Party if a Party wishes to make any disclosure relating to the terms of this Agreement to a Third Party (except as permitted herein).

- 13.7. Upon termination of this Agreement, and except as is required to exercise any rights expressly granted under this Agreement, each Party and its Affiliates agrees to return all Confidential Information (including tangible products or materials) received by the Receiving Party from the Disclosing Party, at the request of the Disclosing Party, provided, however, that the Receiving Party may retain one (1) secure archival copy of any Confidential Information received in writing from another Party for record purposes to determine its ongoing confidentiality obligations under this Agreement, and the Receiving Party will be allowed to keep any copies made as part of its normal backup procedures and that would not be commercially practicable to destroy; provided that any such copies remain subject to the confidentiality obligations set forth in this section 13.
- 13.8. Each Party shall have the sole discretion to decide whether and to what extent, if any, to share its Confidential Information with the other Party. Neither Party shall have any express or implied obligation to share any of its Confidential Information or Background IPR with the other Party unless expressly provided herein.

## **14. Term and Termination**

- 14.1. This Agreement shall become effective as of the Effective Date and shall remain in force until the later of (i) expiry of the term set out in the Offer, or (ii) six (6) months from the date TAAG has delivered all agreed Products / rendered all agreed Services under this Agreement.
- 14.2. This Agreement can only be terminated for good cause in case of a material breach of this Agreement by a Party hereto, notification by the other Party wishing to terminate because of the existence of such breach and failure by the respective Party in breach of this Agreement to cure such breach within thirty (30) days of such notice.
- 14.3. Effects of Termination: Upon termination of this Agreement, (i) unless it is expressly set forth in the Offer or a separate agreement that Customer may retain Products after termination, all rights of Customer to use the Products as stipulated above shall forthwith terminate and Customer shall return to TAAG any and all Products and copies of the Software not already delivered to a customer of Customer and delete the Software from its computer systems. Furthermore, the right of Customer to use Confidential Information as granted shall immediately terminate.

- 14.4. Expiration or termination of this Agreement shall not relieve the Parties of any liability hereunder that accrued, arose during or relates to, any period prior to such termination, nor preclude any Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement prior to such termination, nor prejudice any Party's right to obtain performance of any obligation hereunder that accrued, arose during or relates to, any period prior to such termination. The remedies provided in this section 14 are not exclusive of any other remedies a Party may have in law or equity (each Party understands that nothing in this sentence shall limit the scope or application of any limitations on those remedies that may be expressly set forth elsewhere in this Agreement).
- 14.5. The provisions of sections 7 (Intellectual Property Rights), 10 (Limited Representations and Warranties), 11 (Third Party IPR Infringement), 12 (Limitation of Liability), 13 (Confidentiality), 15. (Customer Reference), and 17 (Applicable Law and Arbitration Clause) shall survive the termination of this Agreement.

## **15. Customer Reference**

- 15.1. Unless Customer expressly objects in writing (e-mail sufficient), TAAG is entitled to name the Customer as a reference customer. The Customer may at any time revoke such consent by way of a written notice. In the event of revocation, TAAG remains entitled to use up advertising material already produced. This right granted to TAAG shall take precedence over respective restrictions set forth in a non-disclosure agreement or similar agreement signed previously between TAAG and Customer.
- 15.2. The naming as a reference customer may take place in the sales process (e.g. in offers or presentations for potential customers) and online on the corporate website as well as any social media channels (incl. LinkedIn) of TAAG; this may include the display of (i) the company logo and the company name, as well as (ii) a brief description of the specific project, whereas (ii) is only admissible after consent has been given by the Customer. For the purpose of using the logo and name, the Customer grants TAAG a non-exclusive, non-transferable right of use, unlimited in time and space, with regard to the name and trademark rights required for this purpose.

## **16. Export Control**

- 16.1. Customer guarantees and warrants that it will comply with all restrictions set forth in applicable export control laws or regulations for deliverables supplied by TAAG

subject to the applicable classification and will impose this obligation to its customers or third parties who receive such deliverables.

- 16.2. Customer will not export or re-export the Products, directly or indirectly, to: (i) any countries that are subject to US export restrictions (currently including, but not necessarily limited to, Russia, Cuba, Iran, North Korea, Sudan, and Syria) or applicable export restrictions of another country; (ii) any end user who Customer knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems; or (iii) any end user who has been prohibited from participating in US export transactions by any federal agency of the US government.
- 16.3. Customer shall indemnify TAAG against any and all direct, indirect and punitive damages, loss, costs and other liability arising from claims resulting from Customer's or its customers' breach or non-compliance with this section 16. The deliverables may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than authorized, without first obtaining approval from the respective government or as otherwise authorized by applicable export control laws and regulations.
- 16.4. In regard to Article 12g of Council Regulation (EU) No 833/2014 the following shall apply:
- (a) Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.
  - (b) Customer shall undertake its best efforts to ensure that the purpose of section (a) is not frustrated by any third parties further down the commercial chain, including by possible resellers.
  - (c) Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of section (a).
  - (d) Any violation of sections (a), (b) or (c) shall constitute a material breach of an essential element of this Agreement, and TAAG shall be entitled to seek appropriate remedies, including, but not limited to (i) termination of this

Agreement, and (ii) a penalty of 2% of the total value of this Agreement or price of the goods exported, whichever is higher.

- (e) Customer shall immediately inform TAAG about any problems in applying sections(a), (b) or (c), including any relevant activities by Third Parties that could frustrate the purpose of section (a),. The Customer shall make available to TAAG all information concerning compliance with the obligations under sections (a), (b) or (c) within two weeks of the simple request of such information.

## **17. Applicable Law and Arbitration Clause**

- 17.1. Any disputes including the issue of the valid conclusion of a contract and its pre- and post-contractual effects shall exclusively be governed by the laws of Austria, whereby the rules on conflicts of laws, the UN Convention on Contracts for the International Sale of Products and any other (international) provisions that displace substantive Austrian law shall not apply.
- 17.2. All disputes arising out of or in connection with this Agreement, including disputes relating to its validity, breach, termination or nullity, shall be exclusively and finally settled under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said Rules; arbitration shall be conducted in Vienna, Austria, and the language of arbitration shall be English; arbitration award shall be final and binding on both parties.
- 17.3. However, in case of claims whose value does not exceed Euro one hundred thousand (EUR 100.000,-), each Party shall, in its sole discretion and contrary to section 17.2 above, have the right to bring proceedings against the other Party at the competent court for 1010, Vienna, Austria. Notwithstanding the foregoing, either Party may apply to any court of competent jurisdiction for an injunction or other interim relief in support of arbitration and no such application will be deemed incompatible with or a waiver of the terms of these T&C.

## **18. Notices**

Any and all notices required or permitted to be made under the Agreement shall be in writing and delivered in person, by courier, by registered mail or by e-mail, with the proper postage affixed, always to the attention of the respective Party's designated Project manager or contact person. For TAAG, the designated contact person shall be the Project manager as set out in the Offer. All such notices shall be effective upon confirmed receipt, whereas notices sent by e-mail shall be deemed effective upon receipt of a non-automated confirmation e-mail sent by the receiver of the initial e-mail.

## **19. Severability**

Should any provision of the Agreement and any contract concluded between Customer and TAAG be or become illegal or unenforceable, the remainder shall not be affected. Any illegal or unenforceable provision shall be replaced by valid and enforceable provisions, which commercially come as close to the illegal or unenforceable provision as possible; the same applies mutatis mutandis for contractual loopholes.

## **20. Written Form**

Only a written agreement signed by TAAG and Customer can modify the Agreement, whereby the written form shall also be fulfilled if a simple electronic signature via DocuSign or Adobe Acrobat Sign is used.

## **21. Assignment**

Neither Party may assign its rights or delegate its duties or obligations under the Agreement without prior written consent of the other Party, except that TAAG may assign the Agreement to its Affiliate and/or to its subsidiary or to any successor corporation or entity (whether by purchase of all or substantially all of such party's assets or outstanding capital stock, by merger or consolidation or otherwise) upon at least thirty (30) days prior written notice to the other Party. The Agreement will be binding upon and inure to the benefit of any successors or rightful assigns of the Parties. Any attempt to so assign in contravention of the Agreement shall be void.

## **22. Subcontractors**

TAAG is at any time in its sole discretion entitled to employ subcontractors (Affiliates or Third Parties) for the performance of any of its obligations under the Agreement, always provided that the respective subcontractor enters an obligation to protect all Confidential Information of Customer not less strict than under the Agreement.

## **23. Independent Parties**

The Parties are independent contractors, and neither party is authorized to act on behalf of the other or to bind the other to any third party. Neither these T&C nor the Offers establish any relationship of agency, partnership, or joint venture.

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