

**GENERAL TERMS AND CONDITIONS**  
**(B2B) of Holo-Industrie 4.0 Software GmbH**

Updated April 20th, 2024

**1. Scope of Application:**

1.1. Holo-Industrie 4.0 Software GmbH (hereinafter referred to as “Holo-Industrie”) produces software for the Client(s) based on works and service contracts. All contracts concluded with Holo-Industrie are exclusively subject to the present Terms and Conditions, which are an integral component of every contract concluded by Holo-Industrie, even without express reference to them.

1.2. Other contractual terms of any nature, in particular the Client’s own Terms and Conditions of Business and Purchasing, which conflict with these General Terms and Conditions, shall not have any binding legal effect whatsoever, even if Holo-Industrie fails to object to them and performs the contract.

Conditions and/or supplements and/or amendments to this contract, which deviate from the Agreement, shall only be legally effective with express written confirmation from Holo-Industrie.

1.3. The currently valid version of the present General Terms and Conditions shall also apply for future software orders between Holo-Industrie and the Client, even if no explicit reference is made to them. Any amendment announced to the Terms and Conditions shall be deemed accepted by

the Client unless the Client objects to it in writing within four weeks of the notification of the amendment to the Terms and Conditions.

- 1.4. These General Terms and Conditions only apply vis-à-vis entrepreneurs as defined in Section 1 of the Austrian Consumer Protection Act (KSchG) in the course of their business.

## **2. Conclusion of Contracts:**

- 2.1. Quotations by Holo-Industrie are always subject to change and non-binding and do not oblige Holo-Industrie to provide the service. A contract between Holo-Industrie and the Client shall not be valid until a written order confirmation is received from Holo-Industrie or until Holo-Industrie renders it valid by performing the contract.
- 2.2. The specifications in Holo-Industrie's order confirmation and/or an individual contract underlying it solely determine the content of the contract, not the Client's specifications in the order placement.
- 2.3. Where Holo-Industrie performs development and programming activities per the requirements and specifications of the Client and/or incorporates existing computer programs or other third-party and/or Client technical components into in-house developments to be made by Holo-Industrie, and/or adapts its own developments to prescribed components and technical specifications, Holo-Industrie shall accept no responsibility for the technical and legal properties of such third-party components. In this regard, Holo-Industrie is not obliged to assess the suitability of such third-

party components. On the contrary, article 2.4 of these General Terms and Conditions applies explicitly in this context.

2.4. Holo-Industrie shall accept no responsibility for software, databases, networks and/or other products or documents it did not produce that precede the services subject to the contract, up to an interface defined in the order. In particular, the Client confirms the suitability of software, databases, networks and/or other products or documents, provided by it or a third party, in the event of use by Holo-Industrie, if they are required to perform the order. Holo-Industrie is exempted from all liability for such software, databases, networks and/or other products or documents and information provided by the Client. Holo-Industrie also has no separate obligation to review these items.

2.5. Where Holo-Industrie produces test programs, project descriptions, sketches, samples, documentation or similar to complete the order placed, and makes them available to the Client, such documents and/or documentation neither imply an express nor implicit assurance of resulting properties, nor do they represent an extension/modification of the subject of the contract, unless Holo-Industrie and the Client reach a separate written agreement on this.

### **3. Concept, Order Processing and Duty of Cooperation of the Client:**

3.1. All custom programs and concepts are always produced based on the type and scope of the binding information, documents and other resources required to complete the order provided by the Client in full and in writing/electronically. This represents the binding basis for

quotation and order placement and contains the full requirements profile of the Client for the order placed with Holo-Industrie.

- 3.2. Where these requirements for software are not made independently and/or fully by the customer, Holo-Industrie also agrees to review the requirements profile and/or produce it itself independently subject to a fee and subject to a separate order for this service. Such specifications produced jointly and/or exclusively by Holo-Industrie must be reviewed by the Client and approved in writing and shall form the binding legal basis for the quotation by Holo-Industrie.
- 3.3. Holo-Industrie shall perform the contractually agreed services within the normal working time and in the usual way for such work performed by Holo-Industrie. In particular, Holo-Industrie is not restricted in its fulfillment of the order. At its own discretion, Holo-Industrie is also entitled to utilize third parties to provide the contractually agreed services.

Every change to the service provision, whether on request by the Client and/or due to special circumstances, shall entitle Holo-Industrie to claim resulting additional costs incurred by the change.

- 3.4. Changes requested by the Client and/or extensions relative to services to be provided by Holo-Industrie in accordance with the contract must be notified separately in writing by the Client, and confirmed by Holo-Industrie in the event of provision of such changed/extended services. Where such a changed and/or supplemented order placement results in changed prices and deadlines, Holo-Industrie is entitled to claim them on order confirmation.

Furthermore, Holo-Industrie is entitled to refuse to implement such changes and/or extensions, if they result in fundamental amendments to the contract and/or are neither reasonable nor feasible. In the event of a failure to reach agreement on amendments/extensions requested by the Client, Holo-Industrie is entitled to fulfill the order placed in accordance with the written agreement originally made.

- 3.5. If it becomes clear as part of services to be provided by Holo-Industrie that performance of the order in accordance with the specifications and order content is factually, technically or legally impossible, Holo-Industrie is obliged to inform the Client immediately. If the Client does not change the performance description after receiving such notification from Holo-Industrie, and/or fails to create the conditions which permit performance of the service in accordance with the contract, Holo-Industrie is also entitled to refuse (continued) performance. Should the impossibility to provide the service be the consequence of a failure on the part of the Client and/or a retrospective amendment/supplement to the scope of the service by the Client, Holo-Industrie is also entitled to withdraw from the contract. All services provided by Holo-Industrie prior to this point must be paid for by the Client.
- 3.6. All (further) services of Holo-Industrie, which are also claimed in addition to the agreed scope of services, must be paid for separately by the Client.

- 3.7. Holo-Industrie is neither obliged – without a separately agreed fee – to provide system documents, in particular a user manual and/or similar documents nor training courses.
- 3.8. Holo-Industrie is not subject to a non-competition clause, neither during the provision of the service in accordance with the contract, nor after the termination of the contract.

#### **4. Performance Schedule, Deadlines, Delays:**

- 4.1. The agreed performance schedule and deadlines are fundamentally non-binding unless specified otherwise. Where a confirmed performance schedule was agreed, this does not represent a fixed delivery date. Partial deliveries and advance deliveries are expressly permitted.
- 4.2. If a defined performance schedule is exceeded by more than three months, the Client shall set in writing a period of grace of at least four weeks for Holo-Industrie. If this period of grace expires without a successful outcome, the Client is entitled to withdraw in writing from the contract.
- 4.3. If Holo-Industrie's performance is delayed for reasons for which it is not responsible or which it could not have foreseen, or if events which cannot be prevented with reasonable resources exist, the service obligation of Holo-Industrie shall be deemed suspended for the respective duration and/or the scope of the impediment, and the agreed schedule shall be extended by the period during which this impediment persists. Such an impediment to performance shall be deemed to apply in particular in

cases of force majeure, terror, official measures, labor disputes, unforeseeable failure of advance deliveries essential to the provision of the service and/or similar events. Both Contract Parties shall not be entitled to withdraw from the contract until after a delay period of nine months from the original performance schedule, to the exclusion of assertion of mutual damage claims. Holo-Industrie is entitled to invoice the Client for services provided to it until this point in time.

- 4.4. Where the contractual performance to be provided by Holo-Industrie cannot be provided for reasons for which the Client is responsible, Holo-Industrie is entitled to withdraw from the contract after setting a period of grace of at least four weeks. Work performed until this point in time by Holo-Industrie must be paid for by the Client. In addition to this, Holo-Industrie is entitled, in addition to compensation from the Client for expenses for work already performed, to claim a contractual penalty not subject to judicial discretion as defined in Section 1336 (2) of Austrian Civil Code (ABGB) of 40% of the agreed contract total as a minimum compensation from the Client. Moreover, Holo-Industrie is entitled to claim additional compensation for damages.

## **5. Cooperation of the Client:**

- 5.1. The Client must provide Holo-Industrie in good time and at its own expense with all information, data and documents required to perform the contract in the requested by Holo-Industrie.
- 5.2. Furthermore, the Client is obliged to take all measures which are required and expedient for the fulfillment of the order. In particular, the

Client shall support Holo-Industrie free of charge in performing the contract, in particular by cooperating with specifications, tests, acceptances, problem analyses and troubleshooting etc., and also provide employees, rooms, an appropriate IT environment and other facilities conducive to performance of the order.

- 5.3. Where the Client provides Holo-Industrie with data and program source code in particular, the Client must back these up such that this data and program source code can be reconstructed if necessary.
- 5.4. The Client accepts the obligation to assess all programs/software delivered to it by Holo-Industrie for freedom from defects and usability (test run), before using the programs/software created by Holo-Industrie commercially and/or operatively. In particular, the Client accepts responsibility in this context for taking precautions in case the software provided by Holo-Industrie does not function properly. In this context, the Client must make full data back-ups in advance and on an ongoing basis to enable it to reproduce this data in the event of problems and/or loss/damage of data.
- 5.5. Should the Client fail to comply with its duties of cooperation, or does not do so fully in the prescribed time frame, providing the technical framework and staff required, all services already provided by Holo-Industrie shall be deemed contract-compliant, notwithstanding any restrictions. Alternatively, Holo-Industrie is entitled to withhold services and invoice any additional expenses incurred in such an event separately.



## **6. Transfer of Risk:**

- 6.1. Unless otherwise agreed, the Client shall bear the price risk from the notification by Holo-Industrie that the contractually agreed service has been provided. In this case, the Client shall accept the services provided by Holo-Industrie within three working days. This also applies to any partial services.
- 6.2. A joint test must be performed by the Contract Parties for the acceptance, which must be documented in a report. This report must detail the agreed test cases, functional tests performed and any defects found.
- 6.3. Should the Client refuse to accept the service subject to the contract provided by Holo-Industrie, Holo-Industrie is entitled to withdraw from the contract and claim compensation for damages due to non-fulfillment. To the exclusion of judicial discretion in accordance with Section 1336 (2) of the Austrian Civil Code (ABGB), Holo-Industrie is entitled to claim a contractual penalty of 40% of the agreed contract price, expressly reserving the right to assert further claims for damage compensation.

## **7. Warranty:**

- 7.1. The warranty period is six months from the transfer of risk. When this period expires, all warranty claims vis-à-vis Holo-Industrie shall be void and the Client shall have no recourse in accordance with the provisions of Sections 933b of the Austrian Civil Code (ABGB) and 379 of the Austrian Commercial Code (UGB). The Client shall bear the burden of

proof for all qualifying criteria when asserting a warranty claim, in particular for the defect itself, the time an error is found and the punctuality of the complaint. The assumption of deficiency as defined in Section 924 of the Austrian Commercial Code (ABGB) is ruled out.

- 7.2. The Client shall assess all services provided by Holo-Industrie without delay in accordance with the relevant legal regulations (Sections 377, 378 of UGB) and report defects immediately in writing including a detailed description. In the event of a defect subject to the warranty, Holo-Industrie shall, at its own discretion, replace the defective delivery or service and/or rectify it and/or reduce the price appropriately.
- 7.3. The warranty does not refer to the replacement of parts subject to natural wear, nor do improper use, operating errors by the Client and its employees, subsequent modifications to the deliveries and/or services from Holo-Industrie by the Client, its personnel or third parties, or other errors, faults, damages caused by the Client and/or its employees and/or third parties involved form grounds for a warranty claim. The same applies for improper wiring, insufficient power supply or air conditioning as well as failure to comply with safety provisions and transport damage or other conditions the Client provides.
- 7.4. However, Holo-Industrie is only obliged to provide warranty services if the Client in turn fulfils its payment obligations in full. Warranty claims do not entitle the Client to withhold its payment obligations.
- 7.5. If Holo-Industrie is not in a position to create a condition in compliance with the contract in spite of repeated attempts and a period of grace of at

least four weeks, the Client is entitled to withdraw from the contract in writing with immediate effect. A withdrawal made on this basis does not entitle the Client to claim compensation for damages from Holo-Industrie.

## **8. Intellectual Property Rights:**

- 8.1. All copyrights and other intellectual property rights to the agreed services (patents, trademarks, design protection, semi-conductor protection etc.) or other services provided by Holo-Industrie to the Client, are the property of Holo-Industrie and/or its licensors, unless agreed otherwise.
- 8.2. The Client shall only receive a non-transferable right to use these contractual services after full payment of the agreed fee for its own purposes and as part of the contractual specifications to the extent of the number of licenses purchased at the agreed installation location. With this present contract, the Client only purchases permission to use a copyrighted work.
- 8.3. Every form of transfer and/or use of the subject of the contract by the Client to and for third parties, whether for a fee or free of charge, is fundamentally prohibited. The software and database use rights purchased by the Client are exclusively permitted for implementation in the scope agreed in the specific contractual relationship, whereby this also applies should the Client cooperate in the production of the subject of the contract.
- 8.4. All other types of usage, in particular editing, finishing, reproduction and other adaptation of the subject of the contract by the Client and/or by

third parties commissioned to do so by the Client require written approval by Holo-Industrie. The Client shall receive the subject of the contract in machine code and without further development documentation, whereby the copyright notes and/or the other legal reservations in the subject of the contract may not be changed or otherwise rendered illegible.

- 8.5. Holo-Industrie is not obliged to hand over the source code to the Client, neither for standard nor for custom software. The source codes shall remain exclusively the property of Holo-Industrie.
- 8.6. Holo-Industrie is also entitled to use results from the software development subject to the contract when developing software for other Clients and/or to allow other Clients to use it. This shall not justify any claims whatsoever for the Client vis-à-vis Holo-Industrie.
- 8.7. The Client undertakes to only and exclusively use the subject of the service in accordance with the contractual agreements reached, and to indemnify in full Holo-Industrie in particular against the legal consequences of any violations of intellectual property rights by the Client itself or third parties attributable to it. The indemnification obligation covers all disadvantages arising to Holo-Industrie from such third-party claims, i.e. also and in particular legal and defense costs.
- 8.8. Should third parties refer to or use the subject of the contract or other work results of Holo-Industrie, the Client undertakes to notify Holo-Industrie immediately of such rights infringements and to inform the third parties of Holo-Industrie's ownership of the intellectual property rights associated with the subject of the contract.

8.9. Should disclosure of interfaces be required to facilitate interoperative use of the software by the Client, Holo-Industrie undertakes to perform the activities required in this context. If the Client decompiles the software, this must only and exclusively be done to establish interoperability.

**9. Documents:**

9.1. All quotations, plans, sketches, samples, implementation documents, other technical drawings/documents etc. produced by Holo-Industrie in relation to the performance of the order remain the intellectual property of Holo-Industrie and are subject to the intellectual property provisions in article 8 accordingly.

**10. Use Rights of the Client:**

10.1. Only after the agreed upon fee or purchase price has been paid in full, the Client shall receive a non-transferable and non-exclusive right to use the subject of the contract for the purposes and the time defined in the contract.

10.2. All other rights to the subject of the contract shall remain with Holo-Industrie and/or its licensors, with the result that the Client is not authorized to reproduce, modify, develop in any way whatsoever, extract parts, render accessible to third parties, use on hardware other than that subject to the contract, analyze, decompile or disassemble the subject of the contract without a written declaration of consent from Holo-Industrie, irrespective of the provisions of Section 40a f of the currently valid

version of the Austrian Copyright Act (UrhG), unless required by mandatory provisions of the applicable law .

- 10.3. If Holo-Industrie provides the Client with software subject to licenses as part of the performance of the order, the Client must comply with the corresponding software license terms of the respective owner of the rights to this software and any other terms related to this, in particular terms of use. Upon request by the Client only, such terms shall be provided to the Client either by Holo-Industrie and/or the Client shall be made aware of these conditions by notification of the corresponding links to the homepage of the software owner containing the terms of use.
  
- 10.4. Unless expressly agreed otherwise in writing between Holo-Industrie and the Client, with regard to software custom-made for the Client (custom software), the Client shall, upon payment of the agreed upon fee or purchase price has been received in full, receive the non-exclusive right to use one copy of the software for the agreed upon purpose for an indefinite time, with the exception of third party exploitation rights, after full payment of the agreed fee. If the Client permissibly edits the software that is subject of the contract with the express authorization from Holo-Industrie, which is to be obtained separately, the Client must provide Holo-Industrie with these edits on request by Holo-Industrie, granting it all intellectual property rights known now and in the future. Any infringement of these rights by Holo-Industrie is grounds for injunctive relief and compensation for damages.

## **11. Remuneration:**

- 11.1. All remunerations and fees are net prices in Euros excluding value added tax and shall remain valid until revoked. Prices stated are non-binding.
- 11.2. Costs of ancillary services, in particular those services that Holo-Industrie does not provide at its company domicile, such as travel/accommodation costs, expenses, per diems, flat rates for travel, overtime payments and the costs for obtaining approvals, fees, other levies, taxes, customs or similar shall be invoiced based on the costs incurred and paid separately by the Client.
- 11.3. Additional services, such as in particular updates, support, training and maintenance work on the subject of the contract must be commissioned and paid separately – where such work is not performed to satisfy warranty claims.
- 11.4. In the event of increases in wages or material costs after conclusion of the contract, Holo-Industrie is entitled to increase the prices in accordance with the scope of the respective increase and invoice them with the next invoice due.
- 11.5. Invoices are due for payment promptly on receipt, whereby all payments must be made free of expenses and deductions. Credit transfers shall be made at the risk of the Client. Debit and other fees shall also be borne by the Client.

- 11.6. Holo-Industrie is entitled to require down payments or other collateral by the Client before providing the service.
- 11.7. If the Contract Parties have agreed payment in installments, delayed payment of just one installment shall be deemed failure to comply with the due date, rendering the entire remaining amount payable due for full immediate payment.
- 11.8. Should the Client fall into arrears, Holo-Industrie is entitled to claim default interest per Section 456 f of the Austrian Commercial Code (UGB). Costs of debt collection agencies and lawyers incurred in the event of arrears and appropriate legal prosecution shall be payable by the Client.
- 11.9. In the event of arrears, Holo-Industrie is entitled to withhold fulfillment of all contractual obligations until all payment obligations of the Client have been fulfilled in full.
- 11.10. The contractual performance by Holo-Industrie shall remain the exclusive property of Holo-Industrie until full payment of the agreed fee, including expenses and all ancillary costs.
- 11.11. The Client must assert objections to invoice amounts in writing within seven days of the invoice date. If it fails to do so, the invoice amount shall be deemed recognized. The Client is not entitled to withhold payments. The Client can only offset against Holo-Industrie's claims legally binding, court-mandated claims or claims expressly undisputed by Holo-Industrie in writing.



11.12. All payments made by the Client shall be offset against the debt which occurred earliest such that payments are initially offset against the resulting costs, then the interest and the remainder against the contractual services, whereby payment references to the contrary by the Client shall be ignored.

## **12. Rectification of Defects:**

12.1. Holo-Industrie shall provide the services in accordance with the contract with utmost care, reliability and availability. However, Holo-Industrie cannot guarantee that its work results are and will remain accessible without interruptions, that the required connections (Internet) can always be established and the data stored and all factors remain unchanged.

12.2. The Client is obliged to report defects in the services and deliveries of Holo-Industrie without delay in writing, stating the causes where possible. Holo-Industrie undertakes to begin rectifying defects within any periods stated in the maintenance agreement, if one was concluded, and to rectify the defect without delay. If the rectification of a fault is not covered by the contractual agreements or an existing maintenance agreement, Holo-Industrie shall only perform such debugging work if commissioned separately to do so and in return for a separate fee.

12.3. If the Client is required to deploy a qualified employee (IT expert) for debugging work, the Client undertakes to cooperate and provide the necessary expert personnel.

In this event, the Client must also ensure complete access to the affected IT system including hardware, as well as providing all access resources necessary (password, access cards etc.).

12.4. Defects due to interventions in the subject of the contract by the Client or third parties consulted by the Client, and defects caused by computer viruses and/or similar technical procedures in the Client's systems, or due to failure on the part of the Client and/or third parties consulted by it to comply with guidelines or safety requirements issued by Holo-Industrie shall not be grounds for defects covered by the maintenance agreement, unless the Client succeeds in proving that such circumstances have not occurred.

12.5. Should remote maintenance of the subject of the contract result in interruptions and/or restrictions in the systems used by the Client, Holo-Industrie shall notify the Client of this in good time.

Such interruptions notified in this way, as well as those due to technical, or other problems through no fault of Holo-Industrie, shall not be grounds for liability in any form whatsoever on the part of Holo-Industrie.

### **13. Liability:**

13.1. Except in case of personal injuries culpably caused by Holo-Industrie, Holo-Industrie shall only be liable for damages due to intent or gross negligence. Holo-Industrie's liability for minor negligence and any liability or compensation for consequential damages, pecuniary losses ("bloße

Vermögensschäden") property damage, lost profit and the damages from third-party claims is excluded to the extent legally permissible.

13.2. Holo-Industrie is not liable for damages due to actions of third parties and/or force majeure.

**14. Contract Term, Cancellation, Early Termination:**

14.1. For framework agreements (maintenance agreements) or other continuing obligations without defined contract expiry dates, each Contract Party can terminate the contract with three months' written notice. This termination option shall be available to the parties for the first time at the end of the calendar year following the commencement of the contract.

14.2. Holo-Industrie is entitled to terminate the contract with immediate effect for good reason. Good reasons include the following in particular:

- a. Circumstances under the responsibility of the Client which render performance of the service impossible, and in which the delay persists in spite of a four week period of grace,
- b. If the Client infringes against major obligations from this contract, such as payment obligations and/or duties of cooperation, in spite of a written reminder setting a period of grace of at least seven working days,
- c. If there are justified concerns regarding the solvency of the Client, and the Client fails to make the appropriate advance payments or provide suitable collateral,

- d. If insolvency proceedings are instigated with regard to the Client's assets or are rejected for lack of assets, or an out-of-court settlement procedure takes place,
- e. If a circumstance as defined in articles 4.4., 8.3. and 10.4. exists.

**15. Confidentiality and Privacy:**

- 15.1. The Client expressly consents to processing of its data in relation to the present order, i.e. source code documentation and similar data, by Holo-Industrie when providing the service, and sending of this data to companies cooperating with Holo-Industrie in the performance the present contract, where this is required for such companies to contribute to fulfilling the order. The Client can withdraw this consent at any time in writing.
- 15.2. The Contract Parties undertake to treat as confidential all information and documents identified as confidential they receive and/or become aware of from the respective other Contract Partner when implementing the contract, or those that contain company or business secrets, and require all employees responsible for performing the order and any third parties consulted to do so also.
- 15.3. This duty of confidentiality shall not apply if a Contract Partner is required to provide access to such information to authorities and/or courts. The duty of confidentiality shall persist if the contract is either terminated or did not enter into force, and documents and information per article 15.2 are made accessible to the respective other Contract Partner as part of contract negotiations.

**16. General Provisions:**

- 16.1. The agreement of deviating provisions and/or contract supplements or amendments must be made in writing and signed by both Contract Parties to be effective.
- 16.2. Electronic contract declarations and other legally significant electronic declarations and electronic confirmations of receipt shall be deemed received when the other Contract Party, for whom such declarations are intended, can access them under normal circumstances. The time of receipt in accordance with this provision is the determining factor for timeliness and effectiveness of declarations.
- 16.3. Each Party must report legally relevant changes, such as the address, company name, contact etc. immediately. If such notification does not occur, documents shall be deemed received by the respective other Contract Partner when they are sent to the respective other Contract Party at the last address announced, the last announced name and the last person responsible involved.
- 16.4. Should individual terms of these General Terms and Conditions be or become inadmissible, this shall not affect the validity of the other provisions. The inadmissible or invalid provision shall be replaced by one as close as possible to the commercial purpose of the invalid or inadmissible provision and the outcome intended by the Contract Parties. The above provisions on the severability clause apply accordingly in the event of loopholes.

- 16.5. All legal relationships between Holo-Industrie and the Client are subject to German law, its conflict of laws as well as the Convention on the International Sale of Goods excluded.
- 16.6. The place of performance is the domicile of Holo-Industrie. All disputes arising in connection with this contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. The place of arbitration is Munich. The number of arbitrators is three (3). However, at its own discretion, Holo-Industrie is also entitled to file suit against the Client at any other court having jurisdiction to hear the respective dispute.