

## **General Terms and Conditions of bionic surface technologies GmbH (BST)**

### **1.) Applicability of the General Terms and Conditions and Deviations**

- a) The following General Terms and Conditions apply to all current and future contracts between the client and BST.
- b) Deviations from these conditions and, in particular, terms and conditions of the client are valid only if expressly acknowledged and confirmed in writing by BST.
- c) Insofar as contracts are concluded with consumers within the meaning of the Austrian Consumer Protection Act (KSchG), the mandatory provisions of this law shall take precedence over the following General Terms and Conditions. <sup>1</sup>

### **2.) Offers, Side Agreements**

- a) BST's offers are non-binding unless otherwise stated, including all specified data and fees.
- b) If BST's order confirmation contains changes compared to the original order, these shall be deemed approved by the client unless the client objects in writing without delay.
- c) Agreements must generally be made in writing.

### **3.) Placing of Orders**

- a) The type and scope of the agreed service are based on the contract, power of attorney, and these General Terms and Conditions.
- b) Changes and additions to the order require written confirmation by BST to become part of the contractual relationship.
- c) BST undertakes to properly execute the order given to it in accordance with the generally accepted rules of technology and the principles of cost-effectiveness.
- d) BST may engage other appropriately authorized parties for contract performance and place orders with them in the name and for the account of the client. However, BST must notify the client in writing of this intention and give the client the opportunity to object to such third-party engagement within 10 days.
- e) BST may also engage sub-consultants for contract performance and place orders with them in the name and for the account of BST. BST must notify the client in writing if it intends to have services performed by a sub-consultant and allow the client one week to object. In this case, BST must perform the services itself.

### **4.) Warranty and Liability**

- a) Warranty claims may only be asserted after complaints have been submitted exclusively by registered mail within 14 days of delivery of the service or partial service.
- b) BST assumes no warranty or liability for direct or indirect damages resulting from possible defects in the software or from the use and/or evaluation of the results calculated with the software. For consequential damages, BST explicitly excludes any liability.
- c) Claims for rescission and price reduction are excluded. If the products developed or projects executed by BST do not provide the desired function or benefit, BST cannot be held liable. Any damages caused to the object during BST's projects or tests cannot be claimed.
- d) BST shall perform its services with the care expected of a professional (§ 1299 ABGB).

### **5.) Withdrawal from the contract**

- a) Withdrawal from the contract is only permissible for good cause.
- b) In the event of a delay by BST, the client may only withdraw after setting a reasonable grace period by registered mail.

<sup>1</sup> The following provisions do not apply or apply with the following deviations for consumers:

- Points 1.b, 2.c, and 3.b do not exclude the validity of informal declarations by BST or its representatives.
- Points 4.a and 4.b do not apply.
- Point 5.b does not apply to fixed-date transactions.
- Point 5.d applies with the proviso that only the regulation of § 1168 ABGB is applicable.
- The offsetting prohibition in Point 6.c does not apply in the event of BST's insolvency and for counterclaims that have been legally established, acknowledged by BST, or are legally related to BST's claim.
- The last two sentences of Point 9.d do not apply.
- Point 10.b applies only if the client has their residence, habitual abode, or place of employment at that location. Other jurisdictions available to the client remain unaffected.

- c) If the client delays a partial service or agreed cooperation necessary for the execution of the order, making execution by BST impossible or significantly hindering it, BST is entitled to withdraw from the contract.
- d) If BST is entitled to withdraw from the contract, it retains the right to the full agreed fee. The same applies in the case of an unjustified withdrawal by the client. Additionally, § 1168 ABGB applies; in the event of justified withdrawal by the client, BST must be compensated for the services already rendered.

#### **6.) Fee, Scope of Services**

- a) All fees are stated in EURO unless otherwise specified.
- b) The fees do not include VAT (value-added tax), which must be paid separately by the client.
- c) Offsetting against any counterclaims, for whatever reason, is not permitted.
- d) Unless otherwise agreed, the non-binding calculation recommendations published by the Austrian Association of Consulting Engineers are part of the contract.

#### **7.) Place of Performance**

The place of performance for all office services is BST's registered office.

#### **8.) Confidentiality**

- a) BST is obliged to maintain confidentiality regarding all information provided by the client.
- b) BST is also obliged to keep its planning activities confidential, provided and as long as the client has a legitimate interest in such confidentiality. After completion of the project, BST is entitled to publish the contractual work in whole or in part for advertising purposes, unless otherwise contractually agreed.

#### **9.) Protection of Plans**

- a) BST retains all rights and uses to the documents it creates (especially plans, brochures, technical documentation).
- b) Any use (especially editing, implementation, reproduction, distribution, public presentation, provision) of the documents or parts thereof is only permitted with BST's express consent. All documents may therefore only be used for the purposes explicitly defined at the time of order placement or by subsequent agreement.
- c) BST is entitled, and the client is obliged, to mention BST's name (company, trade name) in publications and announcements about the project.
- d) In the event of a violation of these provisions on the protection of documents, BST is entitled to a contractual penalty amounting to twice the reasonable fee for the unauthorized use, without prejudice to further claims for damages. This penalty is not subject to judicial mitigation. The burden of proof that the client did not use BST's documents lies with the client.

#### **10.) Choice of Law, Jurisdiction**

- a) Only Austrian law applies to contracts between the client and BST.
- b) For all disputes arising from this contract, the competent court at the registered office of BST shall have jurisdiction.