

# General Terms and Conditions As at: 07/2022

## A. General Stipulations

### 1. Scope of Application

**1.1** These General Terms and Conditions ("GTC") shall apply for the duration of the business relationship between FERCHAU Automotive GmbH ("FERCHAU Automotive") and the Client in respect of all services to be rendered by FERCHAU Automotive, particularly services under a service agreement (*Dienstvertrag*) or under a contract for work (*Werkvertrag*), as well as services within the framework of employee leasing (*Arbeitnehmerüberlassung*) and direct personnel placement (*Personalvermittlung*). These GTC shall also apply to all future transactions with the Client.

**1.2** These GTC shall apply exclusively. The Client's general terms and conditions shall not apply even if they are used or referred to on orders or other documents. The Client's general terms and conditions shall only be recognized if FERCHAU Automotive previously expressly agreed to their validity in writing.

### 2. Offers and Documents

**2.1** Offers from FERCHAU Automotive shall be subject to change without notice, until the order is finally confirmed.

**2.2** The Client's purchase order shall be a binding offer.

**2.3** FERCHAU Automotive shall fully retain rights of title and exploitation rights under copyright law in respect of cost estimates, drawings and other documents. These documents may only be made accessible to third parties with FERCHAU Automotive's prior written consent. The respective data and information contained in the documents shall not constitute guarantee undertakings. Guarantee undertakings shall, in any event, require FERCHAU Automotive's express written confirmation.

### 3. Prices/Payment Terms

**3.1** FERCHAU Automotive's price list, as amended, shall apply supplementarily. Prices may be agreed upon as a binding fixed price, as a percentage-based fee, as a recommended price, according to hourly outlay or according to a measurement. In principle, prices shall be subject to the addition of statutory value-added tax.

**3.2** If the scope of the service under the respective order is altered, particularly extended, by mutual agreement during the handling of the order, FERCHAU Automotive may demand a corresponding adjustment of the agreed prices and remunerations, particularly an increase therein. FERCHAU Automotive shall be entitled to temporarily discontinue implementing services under an order until agreement is reached on a corresponding adjustment of the prices and remunerations, provided that FERCHAU Automotive has pointed this out to the Client in writing beforehand. Delays occurring as a result thereof shall not be to the detriment of FERCHAU Automotive. Unilateral change of the service under an order by the Client is excluded.

**3.3** Except where otherwise agreed upon, FERCHAU Automotive shall be entitled, according to reasonable discretion, to demand a reasonable advance and issue, in stages, sub-invoices for services already rendered under an order and/or in relation to performance progress.

**3.4** All invoices from FERCHAU Automotive shall be due and payable, strictly net cash, immediately upon receipt.

**3.5** The Client shall only be entitled to rights of set-off if its counterclaims have been declared valid by a final and non-appealable court judgement, are undisputed or have been recognised by FERCHAU Automotive. The Client shall only be authorised to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

### 4. Fixed Dates/Duties of Cooperation

**4.1** Where no fixed dates are agreed upon, FERCHAU Automotive shall stipulate dates according to its own reasonable discretion.

**4.2** If the Client fails to comply with its duties of cooperation in due time, particularly in respect of the submission of essential documents, information and data, delays resulting therefrom shall be to its detriment.

**4.3** The Client shall be liable to FERCHAU Automotive that the services provided by it and the documents, informa-

tion, data and items made available within the framework of cooperation are free from third party property rights which preclude or impair use by FERCHAU Automotive in conformity with the contract.

**4.4** In the event of force majeure, the performance period shall be extended by the duration of the hindrance and a reasonable start-up period. If performance or implementation of the service becomes impossible or unreasonable due to the said circumstances, FERCHAU Automotive shall be released from the obligation to render the service.

### 5. Confidentiality/Non-solicitation

**5.1** The Client and FERCHAU Automotive shall be mutually obliged to treat all information with strict confidentiality concerning the business and/or operational affairs of the respective other Party and use such information merely for the purpose intended under the respective order placed. Within the framework of this intended purpose, FERCHAU Automotive shall be entitled to pass on the information to third parties.

**5.2** The Client and FERCHAU Automotive mutually undertake to refrain from enticing away or attempting to entice away employees of the other party. The Client further acknowledges that FERCHAU Automotive has a strong interest in retaining and protecting the highly qualified personnel employed by FERCHAU Automotive, for whose recruitment and qualification FERCHAU Automotive makes considerable efforts, from enticement. The Client therefore undertakes not to poach the qualified personnel of FERCHAU Automotive of which he becomes aware in the course of the cooperation ("Assigned Employee") during the term of the underlying contractual relationship and, in the event that the contractual relationship between the Assigned Employee and FERCHAU Automotive should end for whatever legal reason, not to employ the Assigned Employee until the expiry of twelve months period after the termination of that contractual relationship, unless FERCHAU Automotive has terminated the employment relationship or has given its prior written consent in individual cases.

If, contrary to the preceding paragraph, the Client hires an employee of FERCHAU Automotive or has him hired by a company affiliated with the Client, the parties shall treat this as a personnel placement subject to commission which reflects the recruitment and qualification efforts of FERCHAU Automotive. The commission shall amount to 30% of the gross annual salary which the recruited employee receives from the Client. The commission shall be net plus the applicable statutory value added tax. In the event of hiring of the Assigned Employee, the Client shall immediately inform FERCHAU Automotive of the start of the employment as well as the gross annual salary and shall submit the corresponding evidence upon request. For the avoidance of doubt the provisions under section 8.8 below remain unaffected.

### 6. Liability/Compensation for Damages

**6.1** FERCHAU Automotive shall compensate damages, irrespective of the legal grounds, exclusively in accordance with the principles set out below.

**6.2** FERCHAU Automotive shall be liable without limitation in cases of intent and gross negligence for damages resulting from a breach of the duty of care.

**6.3** In cases of slight negligence (*einfache Fahrlässigkeit*) FERCHAU Automotive's liability for damage to property and financial loss shall be limited to EUR 10.0 million, but not more than 100% of the respective net remuneration, per breach. Claims of the Client to compensation for damages shall be subject to a 24-month limitation period.

**6.4** The limitations and restrictions set out under sec. 6.3 above shall not apply (a) to damage to life, body and health, (b) in the event of culpable breach of material contractual obligations (*vertragswesentliche Pflichten*), whereby the liability in this case shall be limited to the amount of damage foreseeable at the time of conclusion of the contract and typical for the contract, (c) in the event of the assumption of a guarantee for the quality or existence of a performance success, (d) in the event of the assumption of the procurement risk or (e) in the event of delay, insofar as a fixed delivery date has been agreed, as well as (f) in the event of liability arising from statutory mandatory liability, in particular liability under the German Product Liability Act (*Produkthaftungsgesetz*). Material contractual obligations are those whose fulfilment characterises the contract and on which the Client may rely.

**6.5** The limitations of liability set out above (6.1-6.4) shall apply accordingly in case of breaches of duty by

FERCHAU Automotive's legal representative, corporate body and/or vicarious agent and for to claims for reimbursement of futile expenses (section 284 German Civil Code (*Bürgerliches Gesetzbuch (BGB)*). This does not imply a change in the burden of proof to the disadvantage of the Client.

**6.6** Insofar as FERCHAU Automotive's CAD systems are used within the framework of an order or are rented out to the Client, the Client shall be liable for all direct and indirect damages occurring due to improper handling of the CAD systems, as well as for their loss or destruction and for any and all damage to the CAD systems used within the framework of the order.

### 7. Rights of Use

**7.1** For all work and work results developed by FERCHAU Automotive on behalf of the Client, FERCHAU Automotive shall grant the Client, upon full payment, the exclusive and permanent right to use them to the extent described in the respective order.

**7.2** If employees of FERCHAU Automotive make any employee inventions or suggestions for improvement in the course of carrying out individual orders, FERCHAU Automotive shall be obliged, at the Client's request, to lay claim to the invention, with or without limitation, and transfer the rights resulting therefrom to the Client concurrently against indemnification against any and all financial obligations which result, in relation to FERCHAU Automotive's employees, from an employee invention. The German Employee Inventions Act (*Arbeitnehmererfindungsgesetz*) applies accordingly.

## B. Employee Leasing

### 8. Special Terms and Conditions for Employee Leasing Contracts

The following terms and conditions apply supplementarily to employee transfer contracts between the Client and FERCHAU Automotive:

**8.1** FERCHAU Automotive shall be responsible that the employee seconded is generally suitable for the job agreed upon, has been carefully selected and has been checked in respect of essential qualifications. A duty of scrutiny over and above the foregoing shall not apply.

**8.2** The Client shall inform FERCHAU Automotive without undue delay if an employee is or is to be seconded to the Client for personnel leasing, who, in the last six months prior to the start of the secondment, (a) has already been employed by the Client via another company, or (b) has been in an employment relationship with the Client or with a Client's group company in the meaning of section 18 German Stock Corporation Act (*Aktiengesetz (AktG)*).

**8.3** FERCHAU Automotive itself shall not owe to the Client performance of work or any particular success in respect of the work. The employee seconded shall be neither an authorised representative of FERCHAU Automotive, an assistant of FERCHAU Automotive with employee or independent contractor status for the purposes of vicarious liability in contract nor an assistant of FERCHAU Automotive with employee status for the purposes of vicarious liability in tort. The employee seconded shall not be entitled to collect payment or issue or take receipt of contractual declarations with effect for or against FERCHAU Automotive.

**8.4** The Client shall be obliged to introduce the seconded employee to the job and instruct and supervise him during the secondment. Furthermore, the Client shall ensure that all statutory, official and other regulations are complied with. In particular, the Client shall be responsible for compliance with the duties ensuing from section 618 of the German Civil Code (*BGB*) and section 11 (6) of the Act on Temporary Agency Work (*Arbeitnehmerüberlassungsgesetz (AÜG)*) (duties on health and safety at work). If health and safety stipulations are not complied with, the employee seconded shall be entitled to refuse to work, without FERCHAU Automotive losing its entitlement to the contractual remuneration.

**8.5** FERCHAU Automotive shall not be liable for the type, scope, execution or quality of the work performed by the seconded employee for the Client. In this connection, the Client indemnifies FERCHAU Automotive against all third party claims which may result to FERCHAU Automotive in connection with execution of the activities assigned to the seconded employee and/or are asserted in relation to FERCHAU Automotive.

**8.6** If there is a strike at the Client's business establishment, FERCHAU Automotive shall not be obliged to provide employees for leasing.

**8.7** FERCHAU Automotive's remuneration shall be calculated on the basis of the contractually agreed hourly rate plus value-added tax in effect. To that extent, the following surcharges shall apply: A 25% surcharge shall be levied for each hour of overtime. A 50% surcharge shall be levied for hours worked on Saturdays, a 70% surcharge shall be levied for hours worked on Sundays and a 100% surcharge shall be levied for hours worked on public holidays. Unless otherwise agreed in individual contracts, a working time of 8 hours per day and 40 hours per week shall be deemed agreed. Overtime is deemed given only if the monthly planned time has been exceeded. All job-related travel costs incurred due to the Client's demands shall be charged separately. All job-related travel times will be charged free of surcharges for up to a maximum of 10 hours per day.

**8.8** If the Client concludes an employment agreement with the leased employee during the leasing or within a period of up to 3 months after the end of the lease, the Client shall owe FERCHAU Automotive a reasonable placement commission, which falls due upon conclusion of the employment agreement between the Client and the leased employee within 14 days upon receipt of the invoice. The placement commission shall amount to EUR 18,000 plus the applicable statutory value added tax. The commission shall be reduced by EUR 1,000 per month of the secondment (calculation example: in the event of a takeover in the 7th month of the secondment, the commission shall amount EUR 18,000 minus EUR 6,000 = EUR 12,000). After the 18th month of the secondment, the Client may take over the seconded employee free of charge. Deviating provisions can be agreed in the respective individual contracts. The commission shall also be due if an employment contract is concluded without prior secondment and solely on the basis of the introduction of the employee to the Client within 12 months of the introduction. The Client shall notify FERCHAU Automotive without delay of the start of the work and provide corresponding evidence upon request.

**8.9** The employment relationship between FERCHAU Automotive and the employee is subject to collective bargaining agreements in terms of section 8 (2) Act on Temporary Agency Work (AÜG) by which the statutory principle of "equal treatment" is waived. If after the conclusion of the relevant employee transfer contract regarding the assignment of the seconded employee to the Client

- (1.) an increase of the seconded employee's remuneration occurs
  - (a) due to a standard wage increase, switch of the applicable collective labour agreement by FERCHAU Automotive or
  - (b) because sector-specific supplemental payments are to be paid for the first time or higher sector-specific supplemental payments are to be paid to the seconded employee than FERCHAU Automotive assessed on the conclusion of the relevant employee transfer contract, or
  - (c) because the statutory principle of "equal treatment" or "equal pay" applies according to the Act on Temporary Agency Work (AÜG) and for this reason the seconded employee has a claim to higher remuneration than FERCHAU Automotive assumed on the conclusion of the relevant employee transfer contract and the parties to the employee leasing agreement did not expressly provide for the applicable remuneration in this case, and
- (2.) the obligation to pay this remuneration increase
  - (a) could not be identified by FERCHAU Automotive based on the information provided by the Client or
  - (b) is caused by the fact that the actual circumstances as communicated by the Client to FERCHAU Automotive did change,

FERCHAU Automotive has the right to demand that the agreed hourly rates for the respective seconded employee are renegotiated with retroactive effect for the period from which the aforementioned remuneration increases became effective.

**8.10** So that FERCHAU Automotive is in a position to comply with its obligation arising from the Act on Temporary Agency Work, the Client is obliged, upon FERCHAU Automotive's request ("Duty to provide Information"), to promptly provide FERCHAU Automotive in writing, at the latest ten (10) days from FERCHAU Automotive's request for information,

- (1.) the material terms and conditions for employment and remuneration of a comparable regular employee of the Client in terms of the statutory requirement regarding "equal treatment" and/or "equal pay" and
- (2.) the information required to verify the applicability of collective labour agreements on sector-specific supplemental payments' for temporary employ-

- ment, as well as for the determination of sector-specific supplemental payments, if any, and
- (3.) the information required to determine the statutory maximum leasing period for a seconded employee.

The Client is also obliged, without a request for information by FERCHAU Automotive being required, to notify FERCHAU Automotive without undue delay of any subsequently occurring changes to the information provided by the Client according to Sentence 1.

If the Client does not, not completely or not timely provide the information according to Sentence 1, FERCHAU Automotive has a right to extraordinary termination of the employee transfer contract to which the information request relates. If the Client violates its duty to inform according to sentence 1 with intent or negligence, the Client is also liable to FERCHAU Automotive for all damages and expenses arising from such violation.

**8.11** Without prejudice to the right to terminate an employee transfer contract with immediate effect, employee transfer contracts may be terminated by either Party to the contract with 14 days' notice effective end of month.

## C. Contracts for Work

### 9. Special Terms and Conditions for Contracts for Work

The following special terms and conditions shall apply supplementarily in the event that contracts for work are concluded between the Client and FERCHAU Automotive.

**9.1** In principle, the order shall be carried out in FERCHAU Automotive's technical offices. Full or partial execution at the Client's business establishment may be agreed upon, if, for example, work documents cannot be handed.

**9.2** The right to issue directives to its assistants with employee or independent contractor status and to its employees, particularly induction, instructing and supervision, shall fall exclusively to FERCHAU Automotive, even if the order is carried out at the Client's business establishment. The Client's right to issue order-related instructions on execution relating to the result of the work in the individual case shall remain unaffected by this.

**9.3** The progress of performance shall be confirmed by the Client by means of signing the project progress reports submitted to it. Over and above the foregoing, the following stipulations apply to acceptance of services:

**9.3.1** Upon successful execution of a function test, but no later than two weeks after handover of the result of the order, the Client shall declare acceptance in writing without undue delay. The function test shall be deemed successfully executed, if the result of the order fulfils in all material points the requirements provided for in the contract.

**9.3.2** The Client shall be obliged to notify FERCHAU Automotive in writing without undue delay, if it becomes aware of defects during the function test. In the event of material defects in performance, FERCHAU Automotive shall, excluding claims over and above this, first be given the opportunity to rectify the defects within a reasonable period.

**9.3.3** If, despite its duty to accept, the Client fails to declare acceptance without undue delay, FERCHAU Automotive may set the Client a two-week time limit in writing for submission of this declaration. Insofar as FERCHAU Automotive has pointed this out when setting the time limit in writing, acceptance shall be deemed effected, unless, within a one-week period, the Client specifies in writing the reasons for refusal of acceptance. Furthermore, acceptance shall be deemed effected, if and when the Client begins to productively use the result of the order.

**9.4** FERCHAU Automotive shall provide warranty for any and all defects in the results of the order initially by rectification or re-performance, at its own option. If rectification/re-performance fails despite at least two attempts at supplementary performance, the Client may demand abatement or rescission as well as compensation for damages, subject to the limitation of liability as per section 6. In the case of only minor defects, the Client shall not be entitled to any right of rescission. The warranty period for defects not caused by intent is 24 months from commencement of the respective statutory limitation period.

## D. Service Agreements

### 10. Special Terms and Conditions for Service Agreements

The following special terms and conditions apply supplementarily to service agreements between Client and FERCHAU Automotive:

Without prejudice to the right to terminate a service agreement with immediate effect, service agreements may be terminated by either Party to the contract with 14 days' notice effective end of month.

## E. Recruitment

### 11. Special Conditions for Personnel Placement

In addition, the following special provisions shall apply to agreements on personnel placement between the Client and FERCHAU Automotive:

**11.1** Within the scope of personnel placement FERCHAU Automotive shall endeavor to identify suitable candidates for vacancies of the Client and shall present suitable candidates to the Client. In the event of successful placement, the Client shall pay FERCHAU Automotive a commission in accordance with the following paragraphs below. For the avoidance of any doubt FERCHAU Automotive neither assumes a staffing guarantee nor offers a guarantee that the candidate will fulfil the expectations set by the Client or achieve certain work results.

**11.2** By entering into employment contracts with a candidate presented by FERCHAU Automotive, the Client acknowledges the contributory causality of FERCHAU Automotive's placement activities. Profiles of candidates who already exist at or are known to the Client for the position to be filled (prior knowledge) are to be communicated immediately to FERCHAU Automotive. The Client must inform FERCHAU Automotive of the prior knowledge immediately, at the latest within 10 days after the presentation of a candidate, otherwise the causality of FERCHAU Automotive's presentation shall not be excluded.

**11.3** FERCHAU Automotive's claim to a commission shall arise if an employment contract is concluded between the Client or a company affiliated with the Client pursuant to sec. 15 et seqq. German Stock Corporation Act (AktG) and a candidate presented by FERCHAU Automotive. It is irrelevant whether the candidate actually possesses the qualifications stated in the job profile or not.

**11.4** If the employment contract with the presented candidate terminates prior the commencement of work, FERCHAU Automotive's claim to the commission and any reimbursement of costs from all other agreed and performed services shall nevertheless remain in force.

**11.5** The commission shall be calculated on the basis of the contractually gross annual salary agreed between the Client and the candidate presented by FERCHAU Automotive. The gross annual salary shall be calculated on the basis of all monthly salaries, Christmas bonus, holiday pay, variable salary components and profit participations. A company car is calculated at a flat rate of EUR 5,000. If no other contractual agreement has been concluded in advance regarding the commission, the commission shall be calculated at 35% of the gross annual salary (as defined above), but at least EUR 18,000. The Client shall immediately provide evidence of the agreed gross annual salary and inform FERCHAU Automotive thereof. The commission shall be subject to the applicable statutory value added tax.

**11.6** The commission shall also be due if the Client initially rejects a presented candidate or terminates the assignment prematurely, but within 12 months after the presentation of the candidate, applies the presented candidate for the position in his company or in an affiliated company in the meaning of section 15 et seqq. German Stock Corporation Act (AktG), for the position resulting from the respective placement order or establishes another employment relationship with the presented candidate. The foregoing shall also apply in the event that further positions are filled with candidates presented on the basis of any placement order. The commission shall be due for payment immediately, without deduction, upon conclusion of the employment contract between the presented candidate and the Client and receipt of the respective invoice.

## F. Miscellaneous

### 12. Place of Performance/Place of Jurisdiction/Applicable Law

**12.1** The place of performance for FERCHAU Automotive's services under the order is FERCHAU Automotive's respective place of establishment or the location of FERCHAU Automotive's technical office where the services under the order are rendered. The place of performance for the Client's payment obligation is the location of FERCHAU Automotive's registered office.

**12.2** The exclusive place of jurisdiction is at the registered office of FERCHAU Automotive. However, FERCHAU Automotive shall be entitled to also bring an action against the Client at any other statutory place of jurisdiction.

**12.3** The contract is subject to the laws of the Federal Republic of Germany, excluding the rules of private international law.