

## General Terms and Conditions of inncellys GmbH

German version: Allgemeine  
Geschäftsbedingungen → [link](#)



### I. General

INNCELLYS GmbH offers the goods and services listed in the appendix according to the state of the art and with the care of a prudent entrepreneur. This with the best possible protection of the interests of the customer or contractual partner.

### II. Scope of conditions and validity

(1) These terms and conditions apply to all deliveries of goods and data as well as to all services of an independent nature or in connection with the delivery of goods and data, whether own or third parties, on behalf of or by INNCELLYS GmbH.

(2) These terms and conditions are also the legal basis for all subsequent transactions, even if they are not agreed separately with the contractual partner each time.

(3) Any terms and conditions of the contractual partner are invalid for the legal transaction in question, unless they have been expressly acknowledged in detail by INNCELLYS GmbH in writing.

(4) When providing deliveries and services, the state of the art, but also recognized professional standards and rules, must be observed.

### III. Validity of the contract

(1) All orders and agreements are only legally binding if they have been confirmed in writing by INNCELLYS GmbH. To comply with the written form, a transmission by e-mail is sufficient.

(2) Offers of INNCELLYS GmbH are generally subject to change and non-binding.

(3) Verbal agreements shall only apply if they are confirmed in writing by INNCELLYS GmbH.

(4) Any changes to and additions to services already commissioned must be made in writing.

### IV. Scope of contract

(1) The scope of the services is based on the order confirmation or a written service description confirmed by INNCELLYS GmbH and the contractual partner.

(2) The basis for the creation of individual goods and/or data (technical drawings, CAD model files, 3D printing prototypes, etc.) is the written service description. For the creation of individual goods or data, standard-compliant and true-to-scale drawings or plans are sufficient. The service description must be checked by the contractual partner for correctness and completeness and provided with his/her approval note. Later change requests can lead to separate appointments and prices.

(3) When ordering goods and/or data, the customer confirms with the order that he/she is aware of the scope of services of the ordered goods and/or data.

### V. Dates and provision of services

(1) INNCELLYS GmbH will meet agreed deadlines for completion/delivery. If

unforeseen circumstances occur that make it impossible to meet the deadlines, INNCELLYS GmbH will inform the customer about delays and agree on a new date for the service/delivery.

(2) At the discretion of INNCELLYS GmbH, services may be provided by employees of INNCELLYS GmbH themselves or by independent third parties on behalf of INNCELLYS GmbH.

(3) Insofar as the delivery and service are divisible, they may also be provided in parts by INNCELLYS GmbH.

(4) Unless otherwise agreed, the transport of deliveries takes place at the risk and expense of the contractual partner.

(5) The contractual partner shall ensure that INNCELLYS GmbH receives all documents necessary for the fulfilment and execution of the contract in a timely manner, even without its special request, and that INNCELLYS GmbH is informed of all processes and circumstances that are important for the execution of the order. This also applies to all documents, processes and circumstances that only become known during the activity of INNCELLYS GmbH. Likewise, the contractual partner must create the organizational framework conditions for the provision of services.

(6) If the execution of the order is prevented after the order has been confirmed by the contractual partner, INNCELLYS GmbH is entitled to insist on fulfilment or to claim damages in the amount of the entire fee.

(7) If the execution of the order is omitted due to circumstances that represent an important reason on the part of INNCELLYS GmbH, INNCELLYS GmbH shall only be entitled to the previous part of the fee corresponding to the previous services. This applies in particular if, despite termination, the previous services can be used by the contractual partner.

## **VI. Cost estimates, prices and payment**

(1) Unless a binding price indication has been expressly agreed, cost estimates are not to be regarded as guaranteed within the meaning of § 5 (2) KSchG. Cost estimates are therefore non-binding and will be billed according to actual expenditure. An overrun of the cost estimate of up to 25% is to be accepted by the customer. In the event of a foreseeable exceedance above 25%, INNCELLYS GmbH shall notify the customer immediately so that the order can be adjusted accordingly if necessary.

(2) Unless otherwise agreed, all prices are ex works plus packaging plus the applicable statutory value added tax or goods turnover tax of the recipient country shall apply.

(3) All payments are to be made in the agreed currency exclusively to INNCELLYS GmbH and must be made in accordance with the order confirmation. The invoice is issued with the dispatch of the goods. Any discount granting requires the settlement of all previously due invoices.

(4) Undenied payments shall be offset first against reminder fees, then against interest and then against the oldest outstanding claim.

(5) In the event of default in payment, default interest of 6% above the applicable base interest rate of the ECB shall be due from the due date without reminder.

(6) The contractual partner is not entitled to withhold payments due to incomplete total delivery, warranty or warranty claims or complaints.

(7) A set-off of agreed payments with counterclaims by the contractual partner is excluded, unless the counterclaim has been determined by a court.

(8) The contractual partner acknowledges the right of INNCELLYS GmbH that claims can in principle be ceded or sold if necessary.

(9) Compliance with the agreed payment dates is an essential condition for the execution of the respective delivery or service by INNCELLYS GmbH. In the event of non-compliance with the agreed terms of payment, INNCELLYS GmbH is entitled to cease all activity and delivery and to withdraw from the contract. The previous services of INNCELLYS GmbH will be invoiced and the contractual partner must bear these costs. Further claims of INNCELLYS GmbH for complete performance and payment as well as damages remain reserved.

(10) In the case of orders comprising several units, INNCELLYS GmbH is entitled to invoice each individual unit or service after delivery. For these partial invoices, the terms of payment specified for the entire order apply equally.

#### **VII. Delivery and acceptance obligations, notification of defects**

(1) Delivery periods begin after receipt of all documents required for the execution of the order, if necessary timely material provision and any agreed down payments.

(2) Deliveries and services of any kind, in particular also data provided, must be checked immediately by the contractual partner and, in the event of findings, notices of defects must be reported immediately in writing.

(3) If the contractual partner fails to immediately inspect deliveries and services, in particular data or notices of defects, he/she shall waive any compensation for damages incurred by him/her on the basis of any defects that may exist.

(4) Individually created data require acceptance no later than two weeks from delivery by the client. If the client allows the period of two weeks to elapse without data acceptance, the delivered data with the end date of the specified period shall be deemed

to have been accepted free of defects. If the data is used in real operation by the client, the data shall be deemed to have been accepted free of defects.

(5) Notices of defects are only valid if they concern reproducible defects and if they are made in writing within two weeks of delivery or service or after data acceptance.

#### **VIII. Warranty**

(1) The warranty claims of the contractual partner are limited to improvement, price reduction and addendum of the missing.

(2) The contractual partner is not entitled to refuse acceptance, deliveries and services due to insignificant defects.

(3) For data that is subsequently changed by the contractual partner's own employees or by third parties, any warranty does not apply.

(4) INNCELLYS GmbH is not responsible for delays in delivery and performance or cost increases resulting from incorrect, incomplete or subsequently changed data and information or documents made available and cannot lead to default on the part of INNCELLYS GmbH. The resulting additional costs shall be borne by the contractual partner.

(5) In the event of unjustified assertion of warranty claims, INNCELLYS GmbH is entitled to invoice the contractual partner for the costs incurred at the applicable cost rates.

(6) Unless other deadlines are stipulated by statutory provisions in individual cases, the warranty period is 6 months from delivery.

#### **IX. Liability for defects and product liability**

(1) After placing the order, the contractual partner bears sole responsibility for the design and functionality of the delivered goods or data - even if he/she has been advised on the

development - unless INNCELLYS GmbH gives a corresponding written assurance.

(2) The agreed form of assignment (see XII.2) must be taken into account and defined in writing in the course of placing the order.

(3) Notices of defects must be made in writing immediately, at the latest two weeks after receipt of the delivery. In the case of hidden defects, this period is extended to one week after completion, but no later than six months after receipt of goods.

(4) In the event of a justified notice of defect, INNCELLYS GmbH shall be obliged, at its discretion, to remedy the defect or deliver a replacement free of charge. If it does not comply with these obligations within a reasonable period of time, the contractual partner is entitled to declare a reduction or withdrawal from the contract. Further claims are excluded. Defective parts that have been replaced must be returned at the request of INNCELLYS GmbH at the expense of the contractual partner.

(5) Liability under the national product liability laws remains unaffected.

(6) Unauthorized reworking or improper handling shall result in the loss of all claims for defects. Only to avert disproportionately large damages, the contractual partner is entitled to repair after prior notification to INNCELLYS GmbH and to demand reimbursement of the reasonable costs.

(7) The liability of INNCELLYS GmbH for damages based on slight negligence is expressly excluded.

(8) Likewise, liability for damages resulting from improper operation, misuse, changed operating system components, interfaces and parameters, use of unsuitable organizational means and data carriers, abnormal operating conditions, transport damage, lack of organizational framework conditions and incomplete documents is excluded.

(9) The compensation of consequential damages and financial losses, unrealized savings, interest losses and damages from claims of third parties against INNCELLYS GmbH is excluded in any case, as far as legally permissible.

(10) Claims for damages shall in any case become statute-barred one year after the delivery or service has been rendered. They are limited to the amount of the invoice amount of the delivery or service triggering the damages.

#### **X. Service and customer support**

(1) Unless otherwise agreed in writing, INNCELLYS GmbH carries out services and customer support, such as advice on CAD model optimization, material selection or experimental planning, at our discretion at the location of the contractual partner, by telephone or virtually or in our business premises within our normal working hours. If, by way of exception and at the request of the client, a service/support service is provided outside normal working hours, the additional costs will be invoiced separately.

#### **XI. Retention of title**

(1) INNCELLYS GmbH reserves ownership of the delivered goods, data and to the products and developments resulting from treatment and processing until all claims now existing or future against the contractual partner have been fulfilled.

(2) The retention of title refers to those sums of money received by the customer as a result of the sale of the deliveries and services provided by INNCELLYS GmbH. The client is obliged to store these amounts of money separately.

(3) INNCELLYS GmbH must be informed immediately of any measures that could endanger the retention of title.

(4) The client shall bear all costs of an intervention procedure and all defensive measures that INNCELLYS GmbH deems necessary.

(5) The same applies to deliveries outside the scope of these Terms and Conditions of Sale, provided that a retention of title or an extended retention of title is legally possible in the country in which the goods are located at the time of assertion. Otherwise, the client is obliged to provide INNCELLYS GmbH with all rights provided for by the legislation in the country of the supplier to secure these claims.

## **XII. Intellectual property, basic forms of commissioning, copyright and use**

(1) INNCELLYS GmbH creates and uses its own intellectual property in the form of product and process concepts as well as for the generation of functional prototypes and final products. Accordingly, unless otherwise agreed in writing, it is solely entitled to intellectual property and rights of use.

This is especially true in the field of prototype production. Here, INNCELLYS acquires the right to intellectual property and its further exploitation, provided that it invents and implements the relevant functional solution in the new development of a process or a prototype.

(2) A distinction must be made between two basic forms of commissioning: prototype development and prototype production.

a) During **prototype development**, the contractual partner commissions INNCELLYS GmbH to develop a technical and/or functional solution for a given application problem and/or process request without first making concrete specifications for possible solutions. If INNCELLYS GmbH thus generates the functional solution without the customer's contribution, it is fully entitled to the intellectual

property rights to this invention. Unless otherwise agreed, INNCELLYS GmbH shall bear the technical risk and the development costs until the completion of the functional prototype.

b) In the case of **prototype production**, the contractual partner commissions INNCELLYS GmbH with the production of a prototype in accordance with concrete specifications made by him/her, which represent the basic functional solution in detail, such as a technical drawing, dimensioned hand sketch and/or written process description. In this case, the right to intellectual property remains with the client, who must therefore also bear the technical risk and the production costs in full. INNCELLYS GmbH assumes no responsibility or liability for the functionality of the prototype and/or process produced according to the specifications of the client (see also IX.).

(3) If the process and/or prototype development takes place on the basis of jointly made inventions, separate written regulations for the division of the intellectual property right and its possible commercial exploitation between the contracting parties are required beforehand or immediately after successful implementation of the functional solution(s).

(4) INNCELLYS GmbH or its licensors are entitled to copyrights to the agreed services (CAD models and/or processes).

(5) Unless separately agreed, the right to use the work is acquired exclusively for any commissioning of INNCELLYS GmbH by means of a present contract. This means that the client receives the exclusive right to use the data, products and/or processes only for the production and/or application specified in the

contract to the extent of the purchased number and/or useful life.

(6) Any further use of intellectual property and/or patents is not agreed and not permitted. Distribution by the client is prohibited by copyright law.

(7) The cooperation of the client in the production of the data, prototypes or processes does not acquire any rights beyond the use specified in the present contract. Separate regulations can be agreed in accordance with XII.(2).

(8) When taking over models, templates, etc. from the client, INNCELLYS GmbH assumes that the contractual partner owns copyright and/or license rights. In this respect, the client indemnifies INNCELLYS GmbH from possible claims for damages by third parties.

### **XIII. Loyalty and duty of confidentiality**

(1) The contracting parties undertake to maintain mutual loyalty.

(2) Both undertake to keep information, of any kind, secret about the contractual partner and not to pass on data, products or documents of any kind to unauthorized third parties.

(3) This obligation is also to be transferred to third parties who are involved in the fulfilment of the mutual services.

### **XIV. Property Rights**

(1) The client is liable to INNCELLYS GmbH for the freedom of the commissioned deliveries and services from third-party property rights, indemnifies INNCELLYS GmbH from all corresponding claims and is liable for any damages incurred.

(2) Design documents, models, samples, non-purchased samples or prototypes, etc. of INNCELLYS GmbH remain their property and

may only be used or passed on with their permission. If a delivery contract is not concluded due to the fault of the customer, the supplier is entitled to appropriate compensation for the advance services provided by him/her.

### **XV. Place of jurisdiction and place of performance**

(1) Austrian law shall be deemed to have been agreed exclusively.

(2) The place of jurisdiction shall be exclusively the competent court in A-6020 Innsbruck.

(3) The applicability of the UN Convention on Contracts for the International Sale of Goods to contracts is expressly excluded.

(4) Unless the order confirmation contains otherwise, the location of INNCELLYS GmbH in A-6082 Patsch is agreed as the place of performance for all services.

### **XVI. General provisions**

(1) Should individual provisions of a contract or these General Terms and Conditions be or become invalid, this shall not affect the remaining content of this contract.

(2) There are no additions or ancillary agreements to this contract. Like the cancellation of this written form clause, they are only permissible and effective in written form.

(3) In accordance with § 107 of the Telecommunications Act, the contractual partner expressly consents to the transmission of advertising e-mails and the processing of his/her data within the scope of order fulfilment by INNCELLYS GmbH to him/her.



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