

General Terms and Conditions for Development Services

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VOIT





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General Terms and Conditions for Development Services

of VOIT Automotive GmbH (hereinafter referred to as: VOIT)

for exclusive use with entrepreneurs who, on conclusion of the contract, are acting in their commercial or professional activity (hereinafter referred to: the Customer)

1. Scope of Applicability

Any legal relationships resulting from a contract between Voit and the Customer, of which the subject is development services by Voit on behalf of the Customer, shall be based on the General Terms and Conditions of Sale and Delivery and – supplementarily – the following General Terms and Conditions for Development Services of Voit. In case of contradiction, the General Terms and Conditions for Development Services shall have precedence over the General Terms and Conditions of Sale and Delivery. The general terms and conditions of the Customer, in particular those for development services, shall not apply nor will they form an integral part of the contract.

2. Acceptance

The parties shall carry out a formal acceptance. Voit is entitled to carry out partial acceptances in agreement with the Customer. A joint record of the formal acceptance is to be created and signed by the parties. Acceptance shall be equivalent to utilisation without reservation of the result of the project and settlement without reservation of the final invoice by the Customer.

3. Liability and Warranty

3.1 Voit shall not advocate any industrial or commercial exploitation of the result of the development activities unless this has been explicitly agreed.

3.2 Voit shall not be held responsible for any damages, costs or other expenses on behalf of the Customer which are incurred as a result of the Customer making use of samples of the subject of development which are placed at his disposal by Voit before joint acceptance has been carried out. (Note: It may be necessary to arrange a procedure for release for series production).

3.3 Supplementarily, the provisions under paragraphs 12 and 13 of the General Terms and Conditions of Sale and Delivery of Voit apply regarding the Customer's rights in the case of defects and liability.

4. Industrial property Rights

4.1 Notwithstanding the utilisation of previous proprietary rights in the execution of the contract, this contract does not affect the proprietorship of Voit or the Customer with regard to these previous proprietary rights. Previous proprietary rights are all technical information and know-how, including patents, registered designs, aesthetic models, models, drawings, copyrights and similar rights to intellectual property which are either in their control or are their property before any conclusion of a contract between Voit and the Customer.

4.2 New property rights are all technical information and know-how including patents, registered designs, aesthetic designs, models, drawings, copyrights and exclusive rights to intellectual property which arise within the context of the development activities. For each invention, improvement or discovery (irres-

pective of the patentability) made by an employee of Voit during the contractual period, an application for property rights can be made by Voit, if possible, in Voit's name and at Voit's expense. Voit shall undertake to inform the Customer immediately of the status of the procedure in each case. Voit shall be the sole owner of these property rights.

4.3 For each invention, improvement or discovery (irrespective of the patentability) made by an employee of the Customer during the contractual period, the Customer can apply, where possible, in his name and at his expense for property rights. The Customer shall undertake to inform Voit immediately of the status of the procedure in each case. The Customer shall be the sole owner of these property rights.

4.4 Any invention, development or discovery made by employees of either party during the duration of this contract, irrespective of their remuneration, shall be utilised by the parties without restriction with respect to their employees and, where possible, a joint application for property rights is to be made in the name of both parties. The cost of this shall be carried by the parties in equal share. The parties shall immediately inform each other accordingly. Both parties shall be entitled collectively in equal parts to these property rights (mutual property rights). The preparation and execution of this application for property rights shall be carried out by Voit unless the parties have agreed otherwise in writing. The parties shall arrange within three months, at the latest, before the end of the priority deadline and agree in which countries corresponding foreign property rights are to be applied for. The costs incurred shall be carried by the parties in accordance with their proportions of the invention. The parties are committed to immediately issue any information regarding new property rights which are required for the application for industrial property rights as well as for taking legal action and for the maintenance process.

4.5 If Voit has created a development result and if Voit receives an order from the Customer for series production of parts in the manufacture of which the development result created by Voit is utilised, Voit shall grant the Customer a project-related, locally unrestricted, non-exclusive, untransferable and gratuitous right of utilisation for the purpose of the manufacture and sale in so far as the use of previous and/or new property rights which belong to Voit is necessary for the manufacture and sale. In so far as the use of previous or new property rights of Voit is necessary in order to exploit the development result and Voit is not involved in the further exploitation, Voit – except when otherwise stipulated in agreements with the Customer – is not obliged to grant the Customer either, wholly or partially, rights of utilization for the purpose of the manufacture and sale but, rather, these rights shall remain with Voit.

4.6 If Voit or the Customer do not wish to apply for property rights in the case of a new property right or a mutual property right or if they do not follow up an application or maintain a property right for which an application has been made, the other party must immediately be informed in writing and immediately be offered the new property right or mutual property right for adoption free of charge. The offer must certainly be made in such

timely manner that the other party can carry out whatever measures are required in order to secure their rights, in particular for claiming priorities in the parent application in the case of an application made abroad. The party which has transferred shall, however, retain a locally unrestricted, gratuitous, non-exclusive right of utilisation for this transferred new property right or mutual property within the context of this contract either itself, through a company associated with it or through an assigned third party.

■ 5. Notice of Termination

5.1 The contract can be terminated with three months' notice to the end of a calendar month. The Customer shall carry the costs for services provided by Voit until the date when the termination becomes effective as well as for costs which Voit has incurred through the project which can no longer be averted (such as orders to third parties which can no longer be cancelled).

5.2 The right of termination for cause remains unaffected. An important reason for extraordinary termination exists when, for example, insolvency proceedings are commenced with regard to the assets of the other party or if such proceedings are rejected due to lack of assets.

5.3 Any termination must be in writing.

■ 6. Secrecy

6.1 The parties are obliged, in so far as no other provisions apply, not to publish any papers, documentation or information which the other respective other party has put at their disposal nor to pass these on to any third parties but to keep them secret unless the other party has given their explicit permission in writing. Furthermore, the parties are obliged not to use or exploit, the business and operational secrets which the other party in each case has divulged, in particular also the know-how provided within the context of the execution of the contract either within the context of their own work nor to make these known to third parties in any way whatsoever. The parties are obliged to keep the strictest confidence towards third parties with regard to any inventions which have been created and to any application for property rights until the day when this is disclosed.

6.2 Voit has the right to involve third parties. In this respect, the obligation to secrecy does not apply to these third parties. However, Voit is obliged to make a corresponding agreement in writing with the third party with regard to secrecy.

6.3 The obligation to secrecy shall not be affected by termination of the contract and shall remain in force for a period of five years after termination of the contract.

6.4 The obligation to secrecy does not apply to such documentation, knowledge and information, for which proof is available, that

- they were known to the informed party before the information was passed on to him or
- the informed party received the information legitimately from a third party or
- which was known or generally accessible to the public before the information was passed on without any infringement of this contract or
- which become known or generally available to the public after the information was passed on without any infringement of this

contract and without any activities or blame on behalf of the informed party or

- which are to be brought to the attention of state institutions (in particular authorities or courts).

6.5 The parties are obliged to ensure, in accordance with § 3 of German Patent Law, that no activity prejudicial to novelty is carried out which either hinders or endangers the issuing of a patent.

6.6 The parties are obliged to encode all data transferred to them by the other party in each case during the cooperation in accordance with the instructions given by the respective other party.n.