

## General Terms and Conditions of Purchase

Version 20.08.2015

### 1. ACKNOWLEDGEMENT AND CANCELLATION OF ORDER

Unless otherwise agreed in writing, an order (purchase order) shall be deemed accepted on our conditions upon processing of the order.

We reserve the right to withdraw from the order without stating reasons. Especially if acceptance of the order is not expressly declared by sending back a copy of our order signed by Contractor within five working days. Upon acceptance of our order Contractor acknowledges our Terms and Conditions of Purchase. Modifications of whatsoever kind by Contractor shall be agreed with us prior to commencement of delivery or service and shall be valid only with our written consent. These terms and conditions shall apply mutatis mutandis to ordering of services. We reserve the right to rescind the contract against reimbursement of the proven costs incurred by then. Additional claims by the Contractor are excluded. Purchase orders as well as modifications of or amendments to the same shall only be effective if they are made in writing or immediately confirmed by us in writing within 5 working days.

General terms and conditions of Contractor shall not apply even if we do not expressly object to them.

**For construction or assembly services**, the Contractor is obliged view the relevant localities and structures, access routes, installation locations for machines, foundations, scaffolding and any other concerned facilities and objects prior to finalising the contract and to familiarise themselves with the local conditions. The Contractor cannot appeal when faced with obstructions, complications, errors or ignorance with regards to conditions which were obvious at the point of entering into the contract and cannot claim for additional compensation with regards to these conditions. Taking measurements and checking drawings with regards to conformity with actual plants, facilities and buildings which are necessary to fulfil the order with regards to design, assembly and commissioning have to be carried out by the Contractor independently and to his sole responsibility.

In the event of using a temporary workforce our additional conditions in "Contractual Conditions for Temporary Workforces" apply.

Each party waives the right to contest this contract due to error.

### 2. SHIPPING, INVOICING

The Contractor has to meet the relevant applicable requirements of the national and international export, duties and foreign trade legislation ("FOREIGN TRADE LEGISLATION") for all supplied goods and services and to procure the necessary export permits, except if the foreign trade legislation states that it is the duty of the Client or a Third Party and not the Contractor to obtain such export permits.

For deliveries which include set-up or assembly and for services the transfer of risk occurs on approval, for deliveries without set-up or assembly the transfer of risk occurs on acceptance by the Client at the destination. If the seat of the Contractor and the destination are within the EU, then the DDP (for stated destination) Incoterm® 2010 applies (unloaded delivery) whilst delivery to construction sites or directly to third parties unloading is at the cost and risk of the Contractor. If the seat of the Contractor or the stated delivery destination are outside the EU, DDP unloaded delivery applies, too.

All shipping papers, invoices and correspondence shall state your supplier number, the full purchase order number, project number and/or cost centre and a detailed description of the goods. If the Contractor has his seat in the EU, then he has to state his VAT number on the invoice at the very latest.

### 3. DELIVERY

The delivery and service obligation begins on the date of order unless explicitly stated otherwise. The timeliness of deliveries shall be determined by the receipt of the goods/services at the destination stated by the Client ("designated place"), for the punctuality of deliveries with set-up or assembly and services, it depends on the approval of such.

Delays in delivery/service to be expected shall be advised to us without delay. If the agreed delivery/service date is not met, we shall be entitled to cancel the order in whole or in part without granting a grace period or partially by setting a grace period of 5 days, notwithstanding our claims for damages. Should we be willing to accept the goods/service despite lateness and if special measures are needed for us to do so, then all costs (e.g.: air freight, express delivery overtime etc.) have to be paid by the Contractor. In case of delivery in advance of the delivery date the goods can be returned to the Contractor or goods are put into storage, the costs and risks shall be borne by the Contractor and the payment shall be postponed to the date of delivery agreed upon from which time the payment date is calculated. Until the agreed date, Client shall only bear the responsibility of a depositary.

Excess or short deliveries are only accepted by us, if the Client provides prior written consent. We are entitled to change quantities and deadlines for orders if considering the agreed response times. If such changes lead to additional costs or longer lead times, then the client has to be notified immediately, even if the fact seems obvious. Otherwise, additional costs are not accepted. In the event of default in delivery/service provision, the contractor is liable to a contractual penalty not subject to judicial mitigation regardless of fault to the amount of 0.5% per started calendar day after the missed deadline, however, a maximum of 10% of the total order value. The contractual penalty does not affect our right to withdraw or our entitlement to claim damages which go beyond the con-

tractual penalty even if the Contractor is only responsible for slight negligence.

#### **4. INSURANCE**

Transport insurance for deliveries shall be covered by the supplier in accordance with the agreed terms of delivery and/or Incoterms. We shall not refund insurance premiums paid by Contractor. We shall not take out any insurance for staff, tools or material of the entrepreneurs or installation staff working in connection with our order. The Contractor is obliged to prove existence of sufficient liability insurance upon request at any given time.

#### **5. PACKAGING**

The goods shall be properly packaged safe for transport and in the agreed units. Costs resulting from non-compliance with packaging provisions shall be borne by Contractor. Unless otherwise agreed, packaging shall be included in the price. At our request Contractor shall be responsible, at its own cost, for proper taking back and utilisation of the packaging material in accordance with applicable standards. At our request Contractor shall advise us of the data on the packaging material.

The ARA [Waste Recycling Austria] ("ARAAG") license number for the goods delivered to us shall be stated on the delivery note and on the invoice. If the ARA license number is not stated and the packaging is not taken back free of charge (including transport) either, we shall be paid, at our request, a compensation for disposal at a rate of 2% of the invoice amount.

#### **6. QUALITY, SAFETY AND ENVIRONMENTAL PROTECTION**

Purchase orders may only be processed in accordance with the specifications and testing arrangements agreed in writing. At our request certificates of conformity shall be provided to us at short notice. Services have to comply with applicable legislation in the country of where the service is provided. Services have to be state-of-the-art. The Client reserves the right to request proof of the quality control system used by the Contractor and to obtain documentation of quality checks and is entitled to carry out an audit in the Contractor's company. The Contractor will reimburse the Client the cost for such an audit if the audit shows a deficient quality control system or insufficient documentation of quality checks.

Notwithstanding any legal information duties, the Contractor shall provide the Client with all necessary and useful information pertinent to the goods and services to be delivered, in particular, information on proper storage as well as safety data sheets in accordance with regulations 91/155/EEC, 93/112/EEC and 99/45/EEC. In addition, the Contractor shall raise the Client's attention to the possibility of hazardous waste or waste oils arising from the goods delivered by the Contractor and shall, in particular, advise on their disposal. Upon the Client's request, the Contractor shall take back, free of charge, any waste resulting from the ordinary use of the delivered goods or similar products, as defined in the applicable Waste Disposal Act. However, such obligations shall be limited to the amount delivered by the Contractor. Should the Contractor refuse or should the Contractor not be able to accept such waste, the Client shall be entitled to dispose of it at the Contractor's expense. The Contractor ensures that deliveries under the order are RoHS (Restriction of the use of certain Hazardous Substances in Electrical and Electronic Equipment) - compliant and therefore in conformity with the EC Directive on the Re-

striction of the use of certain Hazardous Substances in Electrical and Electronic Equipment (Directive 2002/95/EC) at the time of delivery. In the event that deliveries fail to comply with this EC Directive, the Contractor shall – without prejudice to any warranty claims the Client may raise – compensate the Client for any damage arising from such non-compliance. If the delivery contains goods which are classified as hazardous goods according to international regulations, then the Contractor informs the Client of this fact in the order information in a way that has been previously agreed between the parties.

#### **7. SAMPLING AND RELEASE**

Prior to delivery of new serial products type samples from serial production shall be submitted together with a measurement report. The same shall apply in the case of initial use of a tool after modification of construction and/or after tool overhaul. The delivery note must state the word "Sample" by all means. We shall release actual serial production only after approval of the type samples.

#### **8. ACCEPTANCE OF SERVICE**

The mere receipt or temporary use of deliveries and services or payments made thereof do not constitute an acceptance or waiver of rights by the Client. Acknowledgements of receipt issued by the goods receiving department at the Client do not constitute a final acceptance of the goods or services delivered. The goods are taken over (received) and checked as to their completeness and any visible defects within a reasonable time after their receipt. If random checks show that parts of a delivery do not comply with the Client's requirements or do not have the required marketable quality, then the Client can reject the delivery as a whole. The Client shall notify the Contractor of any defects detected as soon as possible. The Client is not obliged to notify defects pursuant to Sect. 377 of the Austrian Business Code (Unternehmensgesetzbuch).

#### **9. WARRANTY, GUARANTEE AND LIABILITY**

If defective goods or services are delivered to us, we shall be entitled, at our discretion and at the cost and risk of Contractor,

- (a) to claim replacement of the defective goods/service by goods/services that are free from defects,
- (b) to improve the defective goods/service ourselves or to have them/it improved by third parties,
- (c) to send back the entire delivery or defective parts thereof,
- (d) to store defective components with us or with third parties,
- (e) to claim a reasonable price reduction,
- (f) the right to annul or rescind the contract (rescission).

If we demand improvement, defects which occur within the warranty period due to defects in material, software, construction, manufacturing or assembly, etc., shall be repaired at Contractor's cost inclusive of ancillary charges free place of use. If Contractor fails to fulfil its obligation within the stipulated period of time, we shall be entitled to have the defects repaired at Contractor's cost. Contractor shall reimburse us for all costs and consequential damage, in particular such which is subject to Austrian or foreign provisions on product liability or which we incur due to deliveries/services, that are not in accordance with the agreement and/or defective deliveries and Contractor shall indemnify and hold us harmless.

The Contractor is obliged upon request to name the relevant manufacturer, importer or upstream suppliers without delay and to provide all documentation which are necessary to oppose product liability claims of third parties. The Contractor warrants to the Buyer that it will use best, appropriate and brand-new materials, manufacture the products adequately and in compliance with the underlying technical drawings, and that it will provide for their proper installation. The warranty period for supplies and services by the Contractor is two years. The warranty period for products and services that become a fixed part of buildings or land is three years. After rectification of defects notified by the Client, the warranty period for the replaced product begins to run afresh. The warranty period for deliveries begins to run with the erection or installation of the delivered products, for services with their acceptance, for deliveries not involving erection or installation with their delivery to the place of destination, for hidden defects with their identification. For deliveries to locations where the Client uses the Contractor's goods to perform contracts outside its premises, the warranty period begins to run with the acceptance of the services to be rendered by the Client or by the Client's customer. This time-limit is deemed to be observed if the Client has asserted warranty claims against the Contractor within the aforesaid periods in writing.

To the extent that we have to satisfy warranty claims of our customer, we may assert warranty claims vis-à-vis Contractor even after expiration of the period stated above. The Client is entitled in this case to ask for monetary compensation instead of improvement or replacement. Contrary provisions in section 933 par. 2 ABGB is expressly excluded. We may assert such rights of recourse by a notice of defect (out of court) within two months of fulfilment of our own warranty obligation.

Within the scope of that warranty, the Contractor shall also be liable for consequential damage caused by recall campaigns and/or replacement campaigns regarding the services we have rendered to our customers.

Contractor guarantees availability and delivery of maintenance spare parts at short notice for the goods delivered by Contractor for a period of ten years after acceptance at prices customary in the market.

If engineering, advisory, software, documentation services or staff are provided by the Contractor, the Contractor fully guarantees the correctness and completeness of its written and verbal information and instructions for a period of two years after their provision.

## 10. PROPRIETARY RIGHTS

Contractor represents that its services are free of proprietary rights of third parties and that the said services and use of the same does not infringe patents, copyrights or other proprietary rights of third parties; otherwise Contractor shall indemnify us and hold us harmless. All drawings, models, materials, calculations and other information as well as aids made available for execution of offers and/or purchase orders shall remain our unrestricted property and may not be reproduced, made accessible to third parties and may not be used for execution of orders from third parties. They have to be returned immediately upon request, however, at the very latest within 5 working days. Drafts of Contractor made for us of whatsoever kind including all rights shall become our property, in particular including all exclusive rights of exploitation. Any reservations of title are ineffective. Software or hardware developed for us as a separate product, as a module or software in connection with hardware and the like, shall be provided to us inclusive of the documented source code and/or all other documentation necessary for use and maintenance of

the software. The Client and if applicable their customer shall acquire a sole and exclusive right of exploitation to the said components, products and to the software.

Contractor shall be obliged to maintain absolute secrecy vis-à-vis third parties regarding matters which have become known to Contractor due to tender documents and/or the order, in particular data, provisions, models, drawings, constructions, concepts, software, hardware, etc. This secrecy obligation shall also apply vis-à-vis those staff of Contractor who are not involved in the rendering of the services. Contractor shall in any case impose this secrecy obligation on its staff. Contractor shall also be liable without limitation for all violations of this secrecy obligation by its staff.

The name or company logo of the manufacturer may be stated on goods, etc. which were produced according to our specifications only with our express written consent. Such consent shall only apply to the specific case for which it was given.

## 11. TOOLS, SOFTWARE SERVICES

Unless otherwise agreed in the order, hardware and software always constitute a single product. The tools, software services and hardware services, and devices produced and/or delivered on our behalf and paid by us shall be our sole and unrestricted property, of which we may dispose at any time and without additional costs, inclusive of spare parts, construction drawings, documentation, maintenance documents, user manuals and rights. The Contractor undertakes to make available to the Client all subsequent program versions in which errors have been eliminated (updates) free of charge within the warranty period. The Contractor furthermore undertakes to offer the Client software maintenance at competitive market prices for at least five years from the date of acceptance. Within the warranty period, maintenance charges will be reduced accordingly.

## 12. PAYMENT

Payment shall always be effected upon receipt of proper invoices and acceptance of goods and/or services in accordance with the contract, at our discretion either

- (a) within 30 days less a 3% cash discount or
- (b) within 60 days without deduction.

In the case of early deliveries or provided services the agreed delivery days shall be decisive. We shall be entitled to deduct a cash discount from timely paid partial invoices or final invoices irrespective of whether other partial invoices and/or the final invoice have been paid within the stipulated period. The cash discount may be deducted by us also in the case of partial amounts of an invoice that has been timely (within 30 days) paid.

Invoices shall state all details defined in Clause 2; furthermore, they shall be issued in accordance with the Austrian Value-Added Tax Act [UStG] as amended and shall include quantity and customary name/description and/or type and scope of the services. The delivery date and/or the period of service shall in any case be stated on the invoices to be sent to the prescribed address. Invoices which are not in compliance with our General Terms and Conditions of Purchase or any additional contractual agreements or with statutory provisions shall be returned and shall be deemed not received. In that case the payment period shall commence to run again in full only upon receipt of the duly issued invoices.

Accounts receivable from deliveries of goods and rendering of services shall become time-barred one year af-

ter acceptance of the goods or completion of the work. Demands for issuance of the final invoice shall not be accepted.

Any assignment of a claim resulting from a service rendered to us shall only be permitted with our written consent.

Payment of invoices shall only be effected against presentation of a signed delivery note and a legible name.

If partial invoices are agreed, a final invoice on the total amount shall be issued upon completion of service and credit notes on the partial invoices shall be issued. We shall be entitled to retain a security deposit of 7% of the partial invoice amount. The security deposit shall be accounted for by the final invoice.

Moreover, we shall be entitled to retain an interest-free guarantee deposit of 10% of the amount of the partial or final invoice unless such liability cover amount is replaced by Contractor by an abstract bank guarantee of a credit institution authorised within the EEA. The term of the guarantee shall exceed the warranty period by at least four weeks. The liability cover amount shall secure our claims for warranty, guaranty, contractual penalties and damages (also in case of termination of the contract). The liability cover amount shall apply for the term of warranty/guarantee and shall be returned four weeks after the end of the warranty period unless it is utilised in accordance with its purpose.

We are entitled to retain the wages up to three-times of the total claim we made to cover any potential claims towards the Contractor. The Client is entitled to set off claims of its affiliated companies against the Contractor's claims.

Payment of services based on an hourly rate.

If payment for the services is agreed upon on the basis of hourly rates, the Contractor will be paid for the actual working hours minus break periods worked by the contractor and confirmed by the client. The payment liability is thereby limited to the objectively required number of hours of experienced employees. Travel times and expenses will be reimbursed only if this has been explicitly agreed upon. The smallest chargeable unit is 15 minutes. The Contractor has to notify the Client's representative when work starts and ends if the payment is based on an hourly rate. The time sheets have to be provided on the forms issued by the Client and be given to the Client's representative on a daily basis, immediately upon finishing the working day for the purpose of counter-signature. The time sheets have to include the Client's order and project number, the tasks and activity period as well as first and last name as well as role of all staff.

### **13. SUBCONTRACTORS**

Our orders may, neither in whole, nor in part, be passed on or processed by third parties without our written consent.

### **14. SAFETY AND HEALTH AT WORK**

Contractor undertakes to be in charge of coordination regards Section 8 of the Austrian Act on Safety and Health at Work.

### **15. ADVERTISING**

Our company name, trademarks and other proprietary rights as well as products and services made for the Client and to the use of which we are entitled may not be used for advertising purposes or other purposes without our written consent.

### **16. EXPORT CONTROL CLAUSE**

Contractor shall be obliged to inform us before processing of the order on whether the services to be rendered by Contractor are subject to export control regulations of the United States or and/or of Contractor's country. If necessary, the ECCN classification number shall be advised to us. In case a license is necessary, which may also result from the rendering of service intended by us (in particular re-export), we shall reserve the right to cancel the order provided that Contractor fails to provide us with an official license to such effect and does not undertake to procure the same within 14 days of our request.

### **17. JURISDICTION**

The place of performance of the deliveries and services rendered under these General Terms and Conditions of Purchase shall be the registered office of the relevant orderer unless the purchase order contains different information. The parties agree that the court having jurisdiction over the subject matter and over the First District of Vienna shall have exclusive jurisdiction over all disputes arising out of the contract with Contractor, including the issue of its validity and termination. The contracting parties agree that Austrian law shall apply and that UN Sales Law and the rules of conflict of laws of private international law shall be excluded. All disputes with contractors having their registered office in a country with which Austria has not entered into an agreement on the enforcement of court decisions shall be finally settled according to the Rules of Arbitration and Conciliation of the International Court of Arbitration of the Federal Economic Chamber Austria (Vienna Rules) by one or several arbitrators appointed in accordance with the said Rules.

The language of the arbitration proceedings shall be German.

### **18. PRICES**

The prices shall be fixed prices in Euros unless expressly agreed otherwise. Amounts stated in our purchase order shall be exclusive of statutory VAT.

### **19. PASSING OF RISK**

The risk shall always pass to us as soon as we have received the delivery or service at the place of destination and have accepted it as being in order.

### **20. DOCUMENTATION**

Documentation necessary or customary for use and maintenance of the object of the purchase and/or service, operating provisions, user manuals, descriptions, in particular of the delivered software (source) code, measuring logs technological documentations have to be , state-of-the-art. They shall be a material part of the order and shall be handed over in duplicate not later than upon acceptance of the delivery or service.

If due to non-delivery of the documentations damage should occur to the object of the purchase, such damage shall be borne by Contractor. Contractor shall bear the cost of technology training of our customer support staff, for them to be able to recognise defects, replace components and/or repair devices.

### **21. ANTI-CORRUPTION, CODE OF CONDUCT**

The Contractor shall notify the Client – at the latest upon submission of the Contractor's offer to the Client – in writing if the Contractor or members of its management board have been sentenced by final judgment of a national court for corruption of a public officer within the last five years prior to the submission of the Contractor's offer to the Client, and, without undue delay, if the Contractor or members of its management board are charged with corruption of a public officer before a national court at any time between submission of the Contractor's offer to the Client and acceptance of the supplies/services of the Contractor pursuant to Sect. 9.2. Such notification shall ensure compliance with the requirements laid down by the OECD Recommendation on Anti-Corruption. The Contractor is obliged to comply with the laws of the respective jurisdiction. In particular, the Contractor shall not engage, actively or passively, directly or indirectly, in any form of bribery, violation of fundamental rights of its employees or child labour. Moreover, the Contractor shall take responsibility for the health and safety of its employees, act in accordance with the applicable environmental laws and make best efforts to promote this Code of Conduct among its suppliers.

The Contractor shall provide the necessary organizational instructions and take measures, particularly with regard to the following security: premises security, packaging and transport, business partner, personnel and information - in order to guarantee the security in the supply chain according to the requirements of respective internationally recognized initiatives based on the WCO SAFE Framework of Standards (e.g. AEO, CTPAT).

The Contractor protects his deliveries and services to the Client or Third Parties named by the Client against unauthorized access and external manipulation. The Contractor uses only reliable staff for such deliveries and services and requires that potential subcontractors take the same measures.

Without prejudice to other rights and remedies the Client may have, the Client may terminate the contract if the Contractor has culpably violated any of these obligations. If, however, the Contractor's breach of duty is capable of remedy, the Client may terminate the contract only if the Contractor has failed to comply with a period granted by the Client for remedying its breach of contract.

## **22. LEGAL SUCCESSION**

The Client may assign its rights and obligations arising from the contract with the Contractor to another company within the Client's group. The Contractor has no right to cancel the contract for reasons of such assignment.

## **23. SEVERABILITY CLAUSE**

If any of the provisions of the contract is or becomes invalid, this shall not serve to invalidate the remaining provisions thereof. Such provisions have to be replaced with provisions which are as close to the the original objectives as possible.

**Version August 2015**