

General Terms and Conditions of Contract (GTC)

Revision 01.03.2017

0 Preamble

These General Terms and Conditions of Contract (GTC) apply to all orders placed by AustriaTech - Gesellschaft des Bundes für technologiepolitische Maßnahmen GmbH, unless explicitly agreed otherwise in individual contracts.

1 General

The Contractor

- a) may only accept contracts that are in keeping with his/her know-how and skill,
- b) shall name a contact person to the Principal not later than promptly upon being contracted,
- c) shall, as soon as he/she becomes aware of any circumstances whatsoever that could make proper performance of the agreed works and services impossible, promptly notify the Principal in writing of such circumstances and any actions to be taken into consideration by him/her. If the Contractor fails to notify the Principal as set out herein, he/she shall be responsible for any disadvantages resulting therefrom,
- d) shall, on request, report on the status of contract fulfilment to the Principal in writing or verbally within a reasonable period and present or explain the results to date to the Principal if applicable,
- e) shall comply with the labour and social law provisions as set out in the International Labour Organisation Conventions No. 29, 87, 94, 95, 98, 100, 105, 111 and 138, 182 and 183, Fed. Law Gazette No. 228/1950, No. 20/1952, No. 39/1954, No. 81/1958, No. 86/1961, No. 111/1973, Fed. Law Gazette III No. 200/2001, Fed. Law Gazette III No. 41/2002 and Fed. Law Gazette III No. 105/2004,
- f) shall, when preparing the offer, observe the labour and social law regulations applicable in Austria. The Contractor undertakes to comply with these regulations when performing the works and services in Austria. These regulations are available for inspection by interested parties at the local office of the statutory representation of employee's interests responsible at the location of performance of the works and services,
- g) shall not dispose of any claims under this Contract for Works and Services either by way of assignment (cession), transfer or pledging, nor in any other manner. An assignment (cession), transfer, pledging or other manner of disposal of claims under this Contract shall be ineffective vis-à-vis the Principal, unless the Principal's prior written consent was obtained.
- h) Shall procure or obtain all the official permits and third-party consents required for the performance of his/her works and services at his/her own costs, and shall hold harmless and indemnify the Principal in this respect.

2 Intellectual Property/Utilization and Exploitation Rights

- 2.1 If the contractually agreed work or service performed by the Contractor or one of his/her vicarious agents results in a technical invention that can be patented or registered as a design, or if a semiconductor product, a registered design or a trademark is developed that can be protected, the Contractor shall promptly notify the Principal and - subject to the Principal's consent or mandate - apply for registration of the patent, registered design, semiconductor, trademark or copyright. The Contractor and his/her vicarious agents shall refrain from any actions that could be detrimental to the filing of the property right.
- 2.2 The Contractor shall transfer his/her rights from the filing or the property right already registered to the Principal on demand. In the event of a major disproportion between the financial value of the right to be transferred and the contractually agreed remuneration, a reasonable consideration may be agreed.
- 2.3 The Contractor shall grant the Principal an exclusive licence for complete utilisation (unlimited in terms of time, territory and content) of the property right registered pursuant to Art. 2.1.
- 2.4 If the contractually agreed work or service performed by the Contractor or one of his/her vicarious agents results in works that are protected by copyright, the Principal shall be entitled to the exclusive work utilisation rights. The right to exploit as set out in Section 14-18a Copyright Act including the right to process as set out in Section

5 Copyright Act shall be granted exclusively to the Principal, unless agreed otherwise.

- 2.5 The concrete design of the rights to be granted as set out in Art. 2.3 and 2.4 (forms of exploitation; scope: time; territory: national/Europe/international) and the terms and conditions in the case of possible licence fees or for consideration of the transfer of rights as set out in Art. 2.2 shall, where not already regulated within the scope of the contractual relationship, be regulated in writing in a works utilisation or licence agreement.

3 Confidentiality and Use of Data/Privacy

- 3.1. The Contractor undertakes to comply with all the statutory and contractual obligations of confidentiality, in particular to maintain confidentiality with regard to any knowledge disclosed to him within the scope of performance of this Contract, unless he/she is released from such obligation by the Principal in writing as the specific case may be. Subject to liability regardless of fault otherwise, the Contractor further undertakes – if he/she employs other persons for performance of work and services – to impose these confidentiality obligations upon all other persons employed by him/her to perform any works and services, and to employ only such employees and vicarious agents who have explicitly been sworn to secrecy in writing as set out in particular in Section 11 Para. 1 (2) of the Data Protection Act 2000 (DSG 2000), Fed. Law Gazette I No. 165/1999 as amended. Data and/or documents transmitted by the Principal must be returned to the Principal or promptly destroyed upon completion of the performance of works and services.
- 3.2. The Contractor agrees that all works and services, data and information that he/she provides to the Principal may be used without restriction and made available to any third parties by the Principal, unless agreed otherwise.
- 3.3. In particular, it is possible that data, information and documents may have to be submitted or disclosed to the Federal Ministry of Transport, Innovation and Technology, the Court of Auditors (especially Section 3 Par. 2, Section 4 Par. 1 and Section 13 Par. 3 of the Court of Auditors Act, Fed. Law Gazette No. 144/1948 as amended), the Federal Ministry of Finance (especially Sections 43 to 47 of the Federal Budget Act, Fed. Law Gazette No. 213/1986 as amended), the European Commission as well as other institutions under EU law or national regulations. This may also occur within the scope of compliance with the Principal's statutory obligations (Section 7 DSG 2000).
- 3.4. The Contractor acknowledges that pursuant to the Media Transparency Act, Fed. Law Gazette I No. 125/2011 as amended, the Principal is under obligation to disclose media cooperations and media subsidies.

4 Rescission

- 4.1 The Principal shall be entitled to rescind the contract with immediate effect, if
- a) the Contractor acts in breach of any contractual provisions resulting either directly from the Contract, from the General Terms and Conditions of Contract, or other components of the Contract, and remains in breach of contract despite being set a period of grace of not more than 30 calendar days,
 - b) the Contractor is in default of delivery of the agreed works and services. If the works and services are contractually to be performed in instalments and the Contractor is in default of delivery of only one instalment, rescission may be declared only with regard to individual instalments or with regard to all the remaining instalments, especially if the instalments already provided are totally or almost totally worthless for the Principal. The declaration of rescission shall set a reasonable period of grace and shall only remain effective if the Contractor also fails to perform the work or service or the instalment that is in default within this period of grace.
 - c) circumstances are present that obviously make a timely fulfilment of the Contract impossible or result in major amendments, unless the Principal himself is responsible for such circumstances,
 - d) the Contractor employs a subcontractor without the required approval by the Principal,
 - e) the Contractor directly or indirectly offers, promises or grants any body of the Principal involved in the conclusion and/or handling of the Contract a pecuniary benefit for such body or for a third party,
 - f) the Contractor himself/herself or a person employed by him/her for the fulfilment of the Contract violates the duties of secrecy,
 - g) the Contractor dies or loses his/her capacity to act,
 - h) a serious breach of contract occurs; this shall include in particular any violation of the contractual obligations if it is sustained and repeated despite a written reprimand;
 - i) the Contractor has committed any actions that harm the Principal, in particular if he/she has entered into agreements with other enterprises that are disadvantageous for the Principal, against good morals, or in violation of the principles of fair trade.
- 4.2 If the Principal declares rescission of the Contract as set out in Art. 4.1, the Contractor shall lose every right

to remuneration as set out in Art. 3 of the Contract, unless he/she has already performed an instalment that can be exploited by the Principal. Inasmuch as the right to remuneration as set out in Art. 3 is lost, the Contractor shall be obliged to promptly refund any payments already received to the Principal.

- 4.3 The Principal shall be entitled to cancel the Contract at any time. If there is no cause for rescission as set out in Art. 4, however, the Principal shall reimburse the documented cash outlays to the Contractor and pay a prorated part of the remuneration in accordance with the work and services performed by the Contractor up to this point.
- 4.4 Unless agreed otherwise in the Contract, the Contractor shall pay a contractual penalty of 1% of the contractual remuneration per calendar day by which he/she is in default of delivery of the works and services. The Principal shall be entitled to offset the contractual penalty against any remuneration payments still outstanding.
- 4.4.1 The contractual penalty shall be payable as soon as the Contractor is in default of delivery and unable to prove that the cause of such delay is not within his/her control; proof of damage is not required.
- 4.4.2 The contractual penalty shall be payable for the period by which the term of delivery is delayed until full completion of the works; however, if the Contract is terminated by rescission before then and the circumstances leading to the rescission were within the Contractor's sphere of control, the contractual penalty shall – regardless of the other consequences of rescission – be calculated only for the period until service of the declaration of rescission.
- 4.5 If the Contractor has culpably failed to fulfil his/her obligations in a manner as set out in Art. 4.1 lit. e, f and l, the Principal shall be entitled to claim lump-sum damages in the amount of 50 percent of the agreed remuneration as set out in Art. 3 of the Contract.
- 4.6 In the event of non-compliance with delivery deadlines the Principal shall further be entitled, after fruitless expiry of a reasonable period of grace set in writing, to have the works and services performed by a different provider of his choice at the Contractor's expense. The existing contractual relationship and settlement of contractual penalties shall not be prejudiced.

5 Takeover of the Works and Services

- 5.1 The Contractor shall in principle invite the Principal in writing to take over the works and services upon contractual completion thereof. The works and services shall be deemed completed upon takeover of the same by the Principal.
- 5.2 The takeover shall in principle take place within the scope of a formal takeover, unless this is not usual in accordance with the nature and scope of the works and services, or an informal takeover has been agreed or the Principal has specified otherwise. A formal takeover shall take place in the presence of both parties. The result shall be recorded in writing and must be officially signed by the Contractor and the Principal. If a formal takeover is not required, the takeover shall be deemed to have taken place when the Principal has taken over the power of disposition of the works and services without reservations.
- 5.3 Fulfilment of the contracted overall works and services in instalments shall only be permissible on the basis of an explicit written agreement. Instalments may be taken over separately at the Contractor's request by agreement with the Principal.
- 5.4 The Principal may refuse takeover if the works and services have defects that are not merely of a minor nature, or if documents relating to the works and services, the handover of which is contractually required at this point (e.g.: operating manuals and testing instructions, plans, drawings, etc.), have not been handed over to the Principal. In this case the consequences of default shall apply until the defects have been remedied or eliminated.
- 5.5 If the Principal takes over the works and services despite the presence of defects, the warranty provisions shall apply. The Contractor shall remedy the defects within the set period of grace and notify the Principal of such rectification in writing. If the works and services are taken over with rectifiable defects, the Principal shall be entitled to retain a part of the remuneration equivalent to up to three times the expected costs of substitute works and services until the defects have been remedied in full.

6 Liability

- 6.1 The Contractor shall be liable to the Principal as an expert as set out in Sections 1299 et seq. ABGB [Austrian Civil Code] without limitation for any damages or consequential damages and for the conscientious and proper performance of the contractually agreed works and services in accordance with the terms of contract. The Contractor shall be liable for the fault of all and any persons he/she employs for the fulfilment of his/her

contractual obligations, as well as the conduct of any third parties attributable to him/her (e.g. owners, corporate bodies, etc.) to the same extent as if he/she were personally at fault.

- 6.2 The Contractor shall hold harmless, including from and against execution, and indemnify the Principal against any third party claims. In the course thereof the Contractor shall bear any costs incurred to the Principal by legal counsel. The Contractor shall promptly notify the Principal of any legal actions as soon as they become known.

7 Defects

- 7.1 The Contractor shall be obliged, after handover of the works and services to the Principal and at the Principal's demand, to remedy any defects (remediation or completion of missing parts) or replace the works and services promptly and without additional claim to remuneration within a reasonable deadline and with the least possible disruptions for the Principal.
- 7.2 The obligation as set out in Art. 7.1 shall lapse if the Principal fails to bring such a demand to the Contractor's attention within a maximum of two years of handover of the works and services.
- 7.3 If remediation of defects or replacement is impossible or would require an unreasonable effort or cost on the part of the Contractor, or if the Contractor fails to remedy the defects at all, on time or in full, or if such remediation is associated with unreasonable disruptions for the Principal or is otherwise unacceptable to the Principal for reasons within the control of the Contractor, the following shall apply, notwithstanding the assertion of further claims arising for any legal title whatsoever:
- 7.3.1 If the defect is not a minor defect, the Contractor shall lose his/her right to remuneration; any amounts already received shall be refundable by the Contractor with interest in the amount of 4 percent over the applicable base interest rate p.a. as of the date of receipt of the amount.
- 7.3.2 If the defect is minor, the Principal shall be entitled to lower the contractual remuneration reasonably.
- 7.3.3 If remediation of defects by a third party is possible in the cases set out in Art. 7.3.1 and 7.3.2, the Principal shall - notwithstanding the rights as set out in 7.3.1 and 7.3.2 - additionally be entitled to reimbursement by the Contractor of the costs of defect rectification actually incurred, inasmuch as these exceed the contractually agreed remuneration in the case of 7.3.1 or the price reduction in the case of 7.3.2.

8 Archiving

The Contractor shall archive all documents for the duration required by law. If the Contractor is contracted within the scope of a project that is subsidised nationally and/or at the European level, the duration of archiving shall depend on the relevant regulations, but shall not be less than 10 years after conclusion of the project. In individual cases, the Contractor shall be obliged to grant the relevant national and European inspectors access to the archived original documents and to make the necessary disclosures.

9 Subcontracts

Subcontracts for technical works within the scope of the Contract shall in any case be subject to prior written approval by the Principal. Contracts with vicarious agents shall be concluded by the Contractor in his/her own name and for own account.

10 Entire Agreement

The legal relationship between the Principal and the Contractor is finally regulated by these General Terms and Conditions of Contract and by the Contract. It is explicitly noted that there are no verbal side agreements. It is further explicitly noted that Art. 0 of this provision remains unprejudiced.

11 Multiple Contractors

If multiple contractors act for the Principal jointly, they shall be jointly and severally liable to the Principal.