

WIEN 3420 ASPERN DEVELOPMENT AG GENERAL TERMS AND CONDITIONS FOR SERVICE PROVISION CONTRACTS

1. GENERAL PROVISIONS

- 1.1 These General Terms and Conditions (*GTC*) form an integral part of the Service Provision Contract (*SPC*) concluded between the Service Provider (*SP*) and the *Client*. In the absence of applicable provisions herein, the statutory provisions shall apply.
- 1.2 Deviating terms and conditions of the *SP* shall only be binding upon the *Client* if expressly confirmed by the latter in writing by fax or e-mail.
- 1.3. In accepting the *SPC* and/or performing the work specified therein, the *SP* expressly acknowledges and accepts the exclusive application of these *GTC*.
- 1.4. These *GTC* shall also apply in full and without exception in the event of any changes to the work ordered and to any additional work provided, as well as to any future contractual agreements between the *Client* and the *SP*.

2. COMMISSIONING OF WORK

- 2.1 The *SPC* must be concluded in writing. Work commissioned orally or by telephone as well as any additions to, changes to and deviations from the *SPC* shall only become binding upon the *Client* if confirmed by the latter in writing.
- 2.2 The drawing up of offers, cost estimates, plans, test certificates for technical equipment, and indeed the production of all documents required to perform the work is included in and covered by the agreed remuneration.
- 2.3 Deviations from the work commissioned by the *Client* shall be clearly indicated, and moreover shall only be valid if explicitly accepted in writing by the *Client*; unconditional acceptance of the work delivered by the *SP* does not constitute consent. In any case, the *GTC* of the *Client* shall form an integral part of any contract concluded.

3. EXECUTION AND DELIVERY OF WORK

- 3.1 The *SPC* shall define the precise scope of the work to be performed by the *SP*, and the *SP* shall ensure its proper and diligent execution. In doing so, the *SP* shall follow the instructions issued by the *Client* as well as observing the customary industry standards.
- 3.2 The *SP* shall provide the materials, tools, machinery and other ancillary equipment required to complete the work at its own risk and expense. The *Client*, even if it makes storerooms, storage space or other such areas available to the *SP*, shall assume no liability whatsoever for the materials and equipment brought onto the site by the *SP*.
- 3.3 The *SP* shall verify the serviceability of any ancillary equipment (such as e.g. ladders, scaffolding, hoists and the like) provided by the *Client* before use. The *SP* shall assume exclusive responsibility for the use of such ancillary equipment, as well as the associated risk.
- 3.4 The *SP* shall keep the *Client* regularly informed of the progress of the work and immediately notify it of any circumstances which jeopardise the delivery of the work as agreed.

- 3.5 If any delay is expected in delivering the work, the *Client* shall be notified immediately in writing by fax or e-mail, stating the cause and probable duration of the delay.
- 3.6 Even if the work is delivered prior to the agreed delivery deadline and accepted by the *Client*, the payment deadline and discount period shall not commence before the agreed delivery deadline. In any case, no detriment shall accrue to the *Client* as a result of early delivery of the work.
- 3.7 The *Client* reserves the right to postpone the delivery deadline. However, it shall notify the *SP* of any such postponement in writing by fax or e-mail at least three weeks prior to the previously agreed deadline.
- 3.8 Upon completion of the contractually agreed work, the latter shall exclusively be accepted by a member of staff authorized by the *Client* to take delivery of the work. The handover shall be documented in writing and signed by both the staff member authorized to do so by the *Client* and an authorized representative of the *SP*. For commissions with a value of below €10,000 the *Client* shall issue a simple confirmation of acceptance.
- 3.9 In the event that defects are identified during the handover, these shall be recorded in the documentation along with an appropriate deadline for their removal. Once the *SP* indicates that the defects have been remedied, a further handover shall take place following the same procedure as above. The contractually agreed work shall only be deemed accepted when zero defects are recorded in the documentation of the latest handover.
- 3.10 The *SP* shall be available to the *Client* day-to-day and at short notice for any consultations required during the course of the work, and – if the *Client* wishes – shall participate in a joint coordination meeting with the *Client* and other service providers commissioned by the *Client* at least once semi-annually to report on its project.

4. DUTY OF THE CLIENT TO COOPERATE AND PROVIDE INFORMATION

- 4.1 The *Client* shall supply the *SP* with information in a timely manner so that the *SP* can fulfil its contractual obligations in accordance with the needs of the *Client*.
- 4.2 In principle, the *SP* shall carry out the activities required to complete the contracted work on its own business premises; however, the work (results) shall be delivered to the *Client* at the *Client's* registered office and/or communicated or transmitted to the *Client's* registered office. The parties may expressly agree that the work activities of the *SP* should likewise be carried out at the *Client's* registered office. If the work activities are carried out at the *Client's* registered office, the *Client* shall make available suitable workspaces as required by the *SP* in order to perform the work. However, this shall only apply to the required rooms; the necessary technical equipment (e.g. laptop, etc.) shall be provided by the *SP* itself. If the *SP* works at the *Client's* registered office, the work may only be carried out after prior notification and exclusively on workdays, i.e. Monday to Friday (with the exception of Good Friday, 24 December and 31 December) from 8:00am to 3:00pm. Any work undertaken outside these hours shall require the express consent of the *Client*.

5. PERSONNEL

- 5.1 The *SP* shall engage suitable personnel for the execution of the *SPC* and fulfil all its employment law obligations towards them, especially as regards compliance with the labour and social welfare regulations. Furthermore, the *SP* shall ensure that all regulations on employment of foreigners are complied with in respect of its personnel and shall indemnify and hold harmless the *Client* from and against all claims and liabilities in this regard.

5.2 In the event that employees of the *Client* are co-opted by the *SP* for the execution of the *SPC*, a separate written agreement shall be concluded for this purpose. In any case, such employees shall then be considered as vicarious agents of the *SP*.

6. CHANGE REQUESTS

6.1 The *Client* is entitled to request changes to the scope of services at any time. However, any such change requests shall be precisely defined in writing. The *SP* undertakes to provide the *Client* with professional advice regarding the wording of the change request and to suggest various alternative solutions. Furthermore, the *SP* shall provide the *Client* with a detailed analysis of the change request's impact on the project schedule and costs.

6.2 Prior to implementation of the change request the contracting parties shall conclude a binding agreement detailing the work to be delivered and the associated schedule and costs.

7. PASSAGE OF RISK

7.1 The Risk shall be deemed to have passed to the *Client* once the work has been handed over to its authorised member of staff, the latter has inspected the work in its final destination and duly accepted delivery, and the *SP* has faultlessly complied with all secondary obligations such as supplying the required test certificates, descriptions, operating instructions and user manuals, copies of the drawings attached to the order and all other necessary documentation, as well as making all further arrangements required in the individual case.

7.2 Furthermore, the risk shall not pass to the *Client* until both parties have undersigned a written acceptance document in which no defects are recorded, as specified in clauses 3.8 and 3.9. The mere signing of a delivery note shall not constitute passage of risk.

8. NON-PERFORMANCE

8.1 The *SP* undertakes to perform the work in accordance with the contract. The work shall always comply with the applicable public regulatory requirements and conform to the current state of the art.

8.2 The *SP* expressly warrants to the *Client* that the work shall remain free of defects throughout the entire warranty period.

8.3 The warranty period shall be three years. The warranty period commences upon signature by both parties of a written acceptance document in which no defects are recorded, as specified in clauses 3.8 and 3.9.

8.4 The *Client* shall be entitled to choose, at its discretion, rectification, replacement, price reduction or – provided that it is not a minor defect – rescission of the contract as remedy for defects. The hierarchy of warranty remedies set out in Art. 932 paras. 2 to 4 ABGB (Austrian Civil Code) shall not apply. If the *Client* demands rectification, the *SP* shall rectify defects occurring during the warranty period without delay at its own risk and expense. At the request of the *Client* the *SP* shall replace defective parts of the work with defect-free ones without delay at its own risk and expense.

8.5 In urgent cases the *Client* shall be entitled to remedy defects itself or have them remedied by third parties, without a grace period and at the expense of the *SP*, without prejudice to the *Client's* claims in connection with these defects. Otherwise the *Client* shall only be entitled to exercise this right to substitute performance if the *SP* is called upon to remedy the defect and has failed to do so after elapse of a 7-day grace period.

8.6 For both apparent and concealed defects, the *SP* shall waive any objection on the grounds of delayed notification of defects. Art. 377 UGB (Austrian Commercial Code) shall be waived by mutual agreement.

Payments made by the *Client* despite awareness of a defect shall not be construed as a waiver of warranty claims.

8.7 For orders with a value greater than EUR 20,000, the *Client* shall be entitled to retain a holdback of up to 5% of the invoice amount (including VAT) for up to four weeks after expiry of the warranty period to cover any warranty claims and claims for damages.

8.8 In all cases of non-performance the *Client* shall be entitled to claim for damages in accordance with the statutory provisions. The order of the type of substitute performance in Art. 933a para. 2 ABGB and the onus of proof rule in Art. 933a para. 3 ABGB (Austrian Civil Code) shall be waived by mutual agreement.

9. CONTRACTUAL PENALTY

9.1 If the *SP* defaults in the delivery of the work, the *Client* – without prejudice to other claims – shall be entitled to withdraw from the contract, subject to a grace period of 14 days.

9.2 Moreover, as well as demanding completion of the work without delay in accordance with the contract, the *Client*, regardless of culpability, shall be entitled to claim a contractual penalty in the amount of 0.5% of the agreed remuneration, however at least EUR 200, for each day or part thereof beyond the agreed delivery deadline. The total contractual penalty may not exceed 20% of the agreed remuneration. The contractual penalty shall be due irrespective of any actual damage incurred and in addition to any damages to be paid.

9.3 Payment of the contractual penalty – which may not be credited against any damages to be paid – shall not release the *SP* from its contractual obligations.

9.4 The above regulation shall also apply in full and without exception to contractual penalties that are agreed for other reasons (to ensure the work has particular qualities, for instance).

10. LIABILITY AND INDEMNITY

10.1 The contracting parties are liable to one another for damages of any sort (in particular also damages and consequential damages resulting from defects) that are proven to be caused by their own negligence; throughout the entire statute of limitations period the onus shall be upon the *SP* to prove that it was not at fault (reversal of onus of proof).

10.2 Any exclusions and limitations of liability and any obligations to assign these to the detriment of the *Client* shall be void.

10.3 Claims for damages and compensation, including all claims pursuant to the Austrian product liability legislation, shall lapse in accordance with the statutory provisions.

10.4 If the *SP* performs the work with the help of third parties and warranty and/or liability claims vis-à-vis these third parties arise in this connection, the *SP* shall assign these claims to the *Client*. The *SP* shall be vicariously liable for the fault or negligence of these third parties to the same extent as for its own fault or negligence.

10.5 In the event that the *Client* uses a defective piece of work produced by the *SP* and is exposed to third-party claims as a result, the *SP* shall indemnify and hold harmless the *Client* from and against all claims and liabilities in this regard. In particular, this shall also apply to claims pursuant to the Austrian Product

Liability Act (PHG) and public law claims.

11. INVOICING

- 11.1 A separate invoice shall be issued for each order; invoices shall comply with the VAT regulations and be single sided, in a format suitable for scanning and quote the *Client's* order reference, the date of delivery and details of an account with an EEA-domiciled bank. The proof of performance duly confirmed by the *Client's* staff shall also be attached. Any duplicate invoices and partial invoices shall be clearly marked as such.
- 11.2 If the *SP* is domiciled outside the EU or wishes remittance to be made to a foreign bank account, the IBAN and BIC shall be quoted together with the bank account details on all relevant invoices to facilitate cross-border payment. If no such information is provided, all resulting additional costs, expenses, fees and the like shall be borne by the *SP*. In addition, all fees and expenses for foreign bank transfers shall always be borne by the *SP*, so that any difference between the value of the payment remitted by the *Client* and the amount credited to the foreign bank account of the *SP* shall be borne exclusively by the *SP*.
- 11.3 If a receivable against the Client has been assigned, notice of assignment shall exclusively take the form of an assignment clause highlighted in bold type on the invoice.

12. REMUNERATION

- 12.1 The remuneration to be paid by the *Client* and the associated terms of payment are as specified in the *SPC*. The remuneration includes and covers all measures required for fulfilment of the contract, in particular also preparatory work and post-processing as well as any ancillary services.
- 12.2 Once a written acceptance document is available in which no defects are recorded, as specified in clauses 3.8 and 3.9, the *SP* shall issue the *Client* with an invoice that complies with the VAT regulations.
- 12.3 If payment is made within 14 days – including payment of individual partial invoices – the *Client* shall be entitled to deduct a discount of 3% of the net invoice amount; otherwise invoices are due for payment within 30 days. The payment deadlines shall only commence once a written acceptance document is available in which no defects are recorded, as specified in clauses 3.8 and 3.9.
- 12.4 Payments made shall not be construed as a waiver of warranty claims or claims for damages.
- 12.5 The *Client* shall be entitled, at any time, to offset receivables due to the *SP* from the *Client* against any receivables whatsoever nature due to the *Client* or its affiliated companies from the *SP*.
- 12.6 If the *SP* is a consortium it shall, at the time of commissioning, nominate a bank account into which all payments relating to this commission can be remitted with debt discharging effect.
- 12.7 The *Client* shall effect payments exclusively by remittance to a bank account nominated by the *SP*.
- 12.8 If the *Client* defaults on payment, the *SP* shall be entitled to charge default interest at 3-month EURIBOR plus 1.5%. In the event of payment default, the *SP* shall in any case not be entitled to suspend performance and demand immediate payment of the remuneration for all work and services already rendered, irrespective of any payment deadlines.

12.9 All taxes and duties payable in connection with the contract, e.g. legal transaction fees or withholding tax, shall be borne by the *SP*.

13. FORCE MAJEURE

13.1 Insofar and as long as obligations cannot be fulfilled on time or properly due to force majeure, e.g. war, terrorism, natural disasters, fire, strike, lockout, embargo, government intervention, power failure, transport failure, failure of telecommunications networks or data lines, this shall not constitute a breach of contract.

13.2 Lawful strikes or lockouts and materials, components or finished goods turning out to be spoilt or defective shall not be regarded as force majeure.

14. THIRD PARTY RIGHTS

14.1 The *SP* shall warrant that no third-party rights are infringed by the work performed under this contract or through the use of this work by the *Client*.

14.2 The *SP* shall indemnify and hold harmless the *Client* from and against all third-party claims in connection with the *SPC* – in particular in respect of infringement of intellectual property rights.

14.3 In the event that claims are brought or threatened against the *Client* in respect of infringement of third-party intellectual property rights, the *SP* shall compensate the *Client* for all resulting damages and costs, and if necessary shall also intervene in support of the *Client* in the civil proceedings. The costs to be compensated by the *SP* also include payments negotiated by the *Client* at its own discretion with or without support from the *SP* and the costs of the working hours spent by the *SP* on clarification and rectification of the situation.

15. OWNERSHIP, COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS

15.1 Any pre-existing rights shall remain with the respective contracting party.

15.2 Any patterns, samples, models, drawings, sketches, tools, moulds and other accessories ceded to the *SP* for the purpose of drawing up offers or performing the work shall remain the sole property of the *Client*. Such materials shall be treated as confidential and may not be made available to third parties or used for other purposes, including marketing purposes; they shall only be ceded to the *SP* for the intended use and for the length of time necessary for fulfilment of the contract. They shall be handed back to the *Client* without delay in the event of withdrawal from the contract and at any other time upon the *Client's* request.

15.3 All rights, in particular ownership, copyright and other intellectual property rights in the work produced by the *SP* within the framework of the *SPC*, shall be ceded unencumbered to the *Client* upon their creation. The *Client* shall thus be entitled to employ, modify, copy, exploit and otherwise use the work produced by the *SP* in any way it chooses and also to pass it on to third parties.

15.4 As far as any licences are required, the *SP* shall procure them on behalf of the *Client*. In particular, through payment of the agreed remuneration the *Client* shall also be deemed to have covered the cost of all rights and licences mentioned above.

16. TERM AND TERMINATION OF THE SERVICE PROVISION CONTRACT

16.1 The *SPC* shall enter into force upon signature by both parties and shall run for an indefinite period. The *SPC* can be terminated by any contracting party by

registered letter as of the last day of the month subject to a period of notice of 3 months, but no earlier than the end of the minimum term agreed in the *SPC*. The minimum term shall in any case also cover the period through to completion and handover of the work and drawing up of a written acceptance document in which no defects are recorded, as specified in clauses 3.8 and 3.9. In the event that the *SP* terminates the *SPC* before the minimum term has elapsed, it shall compensate the *Client* for all damages so that the latter's assets are as they would have been if the *SP* had performed its work properly until expiry of the minimum term. This shall also include the costs of a necessary substitute performance by third parties. In the event that the *Client* terminates the *SPC* before the minimum term has elapsed or cancels individual parts of the work, it shall compensate the *SP* for the costs and expenses incurred to date, though not for any loss of profit. Articles 1155 and 1168 ABGB (Austrian Civil Code) shall be waived.

16.2 Each contracting party is entitled to terminate the *SPC* prematurely and without notice for good cause by registered letter. In particular, good cause shall be deemed to exist if the respective counterparty violates essential obligations under the *SPC* despite a written warning and threat of termination subject to a grace period of 14 days, or if the performance of the work is hindered or prevented for a period of more than 4 weeks due to force majeure. In the event that the *SP* terminates the *SPC* prematurely for good cause through fault of the *Client*, the *SP* shall not be obliged to pay compensation as set out in clause 16.1 above. In this case the *Client* shall compensate the *SP* for the costs and expenses incurred to date in accordance with clause 16.1.

17. CONFIDENTIALITY

- 17.1 The *SP* undertakes to maintain the confidentiality of all information, documentation and data that become known to it during the course of the work, and, in particular, shall not make the latter available to third parties or use them in any other way (trade secret).
- 17.2 The *SP* and its staff undertake to comply with the provisions of the Austrian Data Protection Act (DSG); in particular they shall protect any personal data and information that become known to them during the course of the work, maintain their confidentiality, and use them exclusively for the purpose for which they were disclosed. The *SP* may not pass on these data or make them available to third parties in any other way.
- 17.3 The *SP* shall take all necessary measures to safeguard data and information belonging to the *Client* and stored by the *SP* against unauthorized access by third parties.
- 17.4 The data required to perform the work may only be passed on or made available to third parties whose involvement in the performance of the *SPC* is authorised by the *Client*. These third parties shall be subject to the same confidentiality obligations as above.
- 17.5 Press releases or other public notifications relating to the commission may only be circulated or passed on if authorised by the *Client*. This shall also apply to presentation of the results of the work and citation of the services rendered by the *SP* as a reference project in publications and circulars, in particular also on the Internet homepage of the *SP*.
- 17.6. The obligation to maintain the confidentiality of all data and trade secrets and to transfer this obligation to others shall continue in full and without exception beyond the term of the *SPC*. It shall likewise extend to any data and trade secrets that are entrusted or otherwise made available to the *SP* and its staff in

the course of further contractual negotiations at a later date, even if these negotiations do not result in conclusion of a contract.

18. MISCELLANEOUS

18.1 The place of performance shall be as specified in the *SPC*; unless agreed otherwise this is the registered domicile of the *Client*.

18.2 In the *SPC*, the contracting parties shall nominate knowledgeable, capable members of staff to take or initiate any necessary decisions.

18.3 Any amendments and supplements to the *SPC* or these *GTC* must be made in writing. The same shall apply to any waiver of this written form requirement.

18.4 In the event that any or several provisions of the *SPC* or these *GTC* be or become void or unenforceable, whether wholly or in part, all other provisions hereof shall remain in full force and effect. The said void or unenforceable provision shall be replaced, *mutatis mutandis*, by a valid provision, the commercial purpose of which comes as close as possible to that of the void or unenforceable provision.

18.5 Any disposal of the rights or obligations under the *SPC* shall require the prior written consent of the respective counterparty.

18.6 The *Client* shall be entitled, at any time, to assign or transfer its rights and obligations under the contract to its affiliated group companies within the meaning of Art. 115 GmbHG (Austrian Limited Liability Companies Act) and/or Art. 15 AktG (Austrian Stock Corporation Act). The *SP*, on the other hand, is only entitled to make use of third parties to fulfil all or part of its contractual obligations with the prior written consent of the *Client*.

18.7 Upon termination of the contract, the *SP* undertakes to return all records, plans, documents and data (physical and electronic) pertaining to the *SPC* to the *Client*, without retaining any copies, etc. thereof. In the event that the *SP* refuses to surrender the documentation, the *Client* is entitled to withhold remuneration until it has been returned in full.

18.8 The *SP* shall notify the *Client* without delay in writing by fax or e-mail of any changes to its legal status and/or its banking details.

18.9 The *SPC* and these *GTC* shall be governed by and construed in accordance with the laws of Austria – excluding conflict-of-laws rules and the UN Convention on Contracts for the International Sale of Goods – and are subject to the business customs and practices prevailing in the place of performance.

18.10 The parties agree that the commercial court of the registered domicile of the *Client* shall have exclusive jurisdiction in any disputes.

18.11 In the event of a dispute the *SP* shall not be entitled to withhold or suspend performance of the work under contract.