

## AIT – Terms and Conditions of Purchase and Payment (AEB)

which we, Austrian Institute of Technology GmbH, Seibersdorf Labor GmbH, Nuclear Engineering Seibersdorf GmbH, Leichtmetallkompetenzzentrum Ranshofen GmbH, as the customer, take as the basis for all our inquiries, orders and purchase orders to contractors.

### 1. Scope:

1.1. The following Terms and Conditions apply to all our purchases and purchase orders and are an integral part in particular of our inquiries, orders and purchase orders. Deviations therefrom are only binding if we have expressly recognized said deviations in writing. The current version of the general terms and conditions of purchase (AEB) shall also apply to future transactions between the contracting parties, even if reference is not again made thereto when future contracts are concluded. The current version can be downloaded from the Internet at <http://www.ait.ac.at/meta-menu/agb>

1.2. Terms and conditions of any kind, in particular the contractor's terms and conditions of sale, that conflict with these Terms and Conditions of Purchase and Payment are ineffective in their entirety with no objection being required.

In order to amend our Terms and Conditions of Purchase and Payment, general reference to the contractor's general terms and conditions, printed or duplicated in any way, shall in no way suffice; rather, any deviation requires precise particular consent in writing. Delivery shall in any event be deemed to constitute acceptance of our Terms and Conditions of Purchase and Payment. This also applies if we accept a delivery from the contractor, made without a purchase order, with no objection to the contractor's general terms and conditions. Verbal agreements or promises by our employees are only binding if said agreements or promises are confirmed by us in writing.

1.3. Our statutory rights appertaining to our Terms and Conditions of Purchase and Payment remain unaffected thereby.

### 2. Conclusion of the Contract:

2.1. Purchase orders or changes that we make thereto are deemed legally binding only if they are made in writing, specifying a purchase order number. Fax and e-mail are recognized as legally binding.

2.2. Acceptance of the order shall be confirmed to us in writing without delay, at the latest within one week, in particular indicating prices, quantities, specifications and delivery times.

### 3. Scope and Content of Performance Obligations:

3.1. The scope of the contractor's performance obligations shall be based on the specifications and descriptions of performance submitted on conclusion of the contract or, in the absence of said specifications and descriptions, from the particulars contained in the contractor's quotations and brochures.

3.2. Unless expressly agreed otherwise in writing, all deliveries shall comply with the valid Austrian ÖNORM standards as well as with any other customary industry standards and guidelines or EU standards.

3.3. To the extent that work drawings, operating instructions and spare part lists and the like are relevant for operation and maintenance of the purchase item, these form an integral part of the order and shall be submitted to us in duplicate, at the latest on delivery.

3.4. We shall accept only the quantities or numbers of items ordered. Overdeliveries or partial deliveries shall only be permitted with our prior consent.

### 4. Change in Performance:

4.1. Should it become evident during performance of the contract that deviations from the specification originally agreed are necessary or expedient, the contractor shall notify us thereof without delay, specifying the associated additional or reduced costs. We shall then advise expressly in writing whether we agree to the proposed change. In the event that we agree to said change, the remuneration agreed with the contractor shall be reduced or increased in accordance with the proposed change submitted as above.

4.2. We shall reserve the right to change our purchase order or order even after the contract has been concluded to the extent that such changes are customary in this line of business or the contractor can be reasonably expected to accept said change. In the event of a change in performance, we shall take the effects into appropriate consideration, in particular with regard to additional or reduced costs and delivery dates.

### 5. Delivery and Delay in Delivery:

5.1. Unless otherwise agreed in writing or described in the purchase order, delivery to us shall be made DDP according to Incoterms 2010 packaged, to the place of delivery specified by us in the purchase order, at the contractor's risk.

5.2. The contractor shall as a basic principle choose the mode of transportation that is most cost-effective and reliable in terms of delivery date. In the event of time-critical shipments, agreement with our Purchasing Department shall in any event be reached before special measures (such as air freight or express service) are taken. If shipments are made at higher costs as a result of deadline constraints or other circumstances, said costs shall be recorded separately and we are to be informed thereof.

5.3. Products subject to particular product regulations shall be classified, packaged and labeled in accordance with these regulations. All approvals and permits required for delivery shall be obtained by the contractor and we are to be provided with evidence thereof.

5.4. The delivery dates agreed shall be adhered to under all circumstances. If it becomes apparent to the contractor that the delivery date cannot be met, it is obliged to notify us in writing without delay, specifying the reasons and anticipated duration of the delay, and to request an extension to the delivery date.

5.5. Any delay in delivery shall in no way diminish our statutory rights. Notwithstanding such rights, we shall be entitled to demand from the contractor from the date on which the delay in delivery commences a contractual penalty of 0.5% for each week or part thereof, but not exceeding a maximum of 10% of the total order value of the delivery, and to set off said penalty.

### 6. Documents:

6.1. All documents pertaining to our order or purchase order shall cite our order data, in particular the purchase order number, description of goods, etc.

6.2. If another place of delivery is agreed, dispatch and delivery notes shall be sent to both our Purchasing Department (as the orderer) and the recipient's shipping address. A packing list is to be enclosed with shipments; deliveries not accompanied by proper shipping documents will not be accepted for order fulfillment, but will be stored at the contractor's expense and risk. All correspondence relating to the purchase order shall be conducted exclusively with the Purchasing Department (orderer).

6.3. The invoices shall also be sent to us (in duplicate) with the shipping documents. We reserve the right to return invoices unprocessed that are not executed in accordance with our specifications, including in particular Item 6.1. In this case, the invoices are deemed not to have been rendered until they have been properly issued and received again by us.

6.4. Furthermore, the mode of dispatch shall be stated in invoices for the delivery of goods; copies of the approved pay slips or time sheets shall also be enclosed with invoices for services performed.

6.5. In the case of intra-community purchasing, the contractor from another EU member state shall not charge value added tax, but shall specify its value added tax identification number (UID) and the value added tax identification number, article number and exact company name of our ordering firm according to our purchase order. For deliveries from abroad, Section 7 + 8 shall also be observed:

### 7. Original Documentation:

7.1. The contractor shall enclose free of charge with the delivery in cross-border traffic the valid proof of preference (declaration of origin, movement certificate, certificate of preferential origin, certificate of origin, and the like) required for import or to facilitate import clearance in the country of destination of the goods.

7.2. Unless otherwise documented, the country of delivery is deemed the country of origin.

### 8. Export License, Reexport License:

8.1. The contractor shall be obliged to obtain any export licenses for export to Austria at its expense. The contractor asserts that at the time of the purchase order, complete delivery of the subject of the order is ensured and that no regulatory or other restrictions whatsoever conflict with complete delivery/service. The contractor will notify us without delay of possible export bans or export restrictions and submit alternative options to us at no charge. In this case, right of withdrawal for us at no cost is deemed to have been agreed.

8.2. The contractor shall also meet all prerequisites required for future reexport (such as providing a clearance certificate). Should this not be possible, it shall inform us in writing without delay and in any event before performance of the order.

### 9. Risk Transfer, Acceptance:

9.1. In the event of deliveries (services) with assembly or installation, risk is transferred with acceptance by us, otherwise upon delivery to our authorized employees at the place of delivery. If, at the time of delivery, no employee authorized to accept delivery is present at the place of delivery, the contractor shall ensure proper and sufficiently secure storage for the delivery at its own expense and shall notify us without delay. Said risk transfer applies irrespective of the commercial term agreed (Incoterms 2010).

9.2. The delivery is accepted quantitatively on its acceptance at the place of delivery, but is only accepted qualitatively after inspection at the place of usage has shown that it functions correctly, or with processing or usage. If a defect is revealed at a later date, the provisions of § 377 of the Austrian Companies Code (UGB) shall apply. The contractor waives the objection of a delayed notification of defects. We do not accept disclaimers of liability.

9.3. Our employees are not authorized to confirm freedom from defects on acceptance. If, however, an employee confirms that the delivery was in order on acceptance, his declaration does not extend to freedom from quantitative, qualitative and functional defects.

9.4. On delivery of technical installations and devices, our operating staff are to be given training with no additional charge. On delivery of installations and devices that are to be installed by third parties, the installation plans required (including all necessary connections and precautions) shall be attached to the order confirmation unsolicited.

9.5. All labels are to be attached in German and English; operating regulations and instructions are likewise to be issued in German and English.

9.6. Delivery/service shall only be deemed fully rendered on complete fulfillment of these provisions.

### 10. Prices and Payment:

10.1. All prices are deemed flat fixed prices, DDP place of fulfillment according to Incoterms 2000 and include all ancillary services and expenses including transport, unloading and packaging required.

10.2. The agreed prices cover all services to be rendered under the contract until said contract is fulfilled, including any ancillary services. Expenses of the contractor's employees and any subcontractors, such as travel expenses, traveling time, overnight costs, daily diet, etc., are borne by the contractor.

10.3. The agreed term of payment commences on the day of receipt of the contractually compliant invoice, but never before complete fulfillment. Incorrectly issued and/or incomplete shipping documents, certificates or documentation hinder payment. If goods are delivered before the dates agreed, which requires our approval, the payment periods for the relevant invoices do not commence until the delivery date agreed.

10.4. Payment shall be made following contractual receipt of the goods at the place of delivery agreed, functional acceptance and receipt of the correct, verifiable invoice, unless otherwise agreed, within 30 days less 3% discount or 60 days net, at our option in cash, by bank transfer, crossed check or three months' acceptance.

10.5. If a down payment and installments are agreed for large purchase orders, these shall amount to a maximum of 90% of the total value of the order, depending on demonstrable production progress. The contractor is obliged to request the payments by means of partial invoices. Each payment made remains stable in value, in other words the payment definitively covers the corresponding percentage share of the delivery value on the day of payment. The prices of such purchase orders shall be divided into a fixed component, a wage-proportional component and at least one material-proportional component. A performance escrow and security deposit shall be agreed in each case.

10.6. In the event of a defect, we shall be entitled to withhold payment until the defect is properly corrected. Our payment does not imply unconditional acceptance of the goods.

10.7. If the contractor is a consortium, upon granting of the order said consortium shall notify us of a bank account into which all payments from our order are made with debt-releasing effect.

10.8. If payments by us are not made by the due date, the contractor shall be due interest on the outstanding amount from the end of the payment period up to a maximum of 1.25 times the current base rate as announced by the Österreichische Nationalbank [Austrian Central Bank]. The right hereto expires if it is not asserted in writing by the contractor within 6 weeks of receipt of the invoice amount. Any other interest or claims for compensation are excluded.

10.9. We shall be entitled to set off payments due to the contractor at any time against claims by us or companies associated with us (allied companies, subsidiaries, parent companies or affiliated companies) against the contractor, whether or not said claims are already due, including claims from other business connections. In the event that payments are set off against claims that are not yet due, interim interest shall be offset in line with banking practice.

#### **11. Warranty, Guarantee:**

11.1. The contractor guarantees and assures that all deliveries and services meet current Austrian general and specific standards, in particular for the protection of employees and in the field of safety engineering, and that said deliveries and services also comply with the recognized rules of science and engineering and our specified quality standards, even if the contractor is not notified of the intended use. Current regulations on the transportation of dangerous goods and on hazardous waste as well as special storage and operating regulations shall also be observed; in this respect the contractor also has a duty to us of care and disclosure.

11.2. If the delivery does not comply with these regulations when it is received by us, it is deemed defective. If deviations from these regulations and criteria are necessary in individual cases, the contractor must obtain our prior written consent. Such consent shall in no way diminish the contractor's warranty obligations.

11.3. If the contractor has concerns, in particular with regard to the type of performance requested by us, the contractor shall notify us accordingly in writing without delay. This shall not affect the binding nature of the delivery date originally envisaged.

11.4. Our statutory warranty rights shall not be prejudiced in any way. We shall notify the contractor in writing without delay of any defects in the delivery and of any damage incurred during transport or packaging as soon as said defects are detected during the normal course of business, however in the case of visible defects no later than 14 days following delivery of the goods and in the case of hidden defects within 14 days of their discovery.

11.5. If the delivery is defective, it is at our discretion whether we first request rectification, replacement, a price reduction or – other than for mere minor defects – rescission. If we request rectification, the contractor shall correct defects that arise during the warranty period without delay and at its risk and expense. The contractor shall at our request replace defective parts of the delivery or service with parts that are free of defects without delay and at its risk and expense.

11.6. If the contractor does not fulfill its obligation of subsequent performance within a reasonable period of time stipulated by us, if subsequent performance has been unjustly refused by the contractor or has been unsuccessful or makes unreasonable demands on us, in particular in the case of imminent danger, we may commission a third party to carry out the required measures or undertake said measures

ourselves at the expense and risk of the contractor and notwithstanding the contractor's warranty obligations.

11.7. In the event that the goods delivered are resold or used in the manufacture of products by us, the warranty periods do not commence until the goods purchased from the contractor are dispatched by us for the purpose of resale or the warranty period for the product equipped or manufactured by us with the goods begins for our customer, but no later than 12 months following delivery of the goods to us.

11.8. We shall be entitled to the full legal extent of the warranty period; any other warranty and guarantee commitments remain unaffected thereby. These periods do not commence until acceptance (see Section 9) by us.

11.9. The contractor expressly guarantees us freedom from defects during the warranty period. If rectification is requested, the warranty period shall recommence upon correction of all defects.

11.10. The contractor guarantees the availability and delivery of spare parts for machines and equipment that it has sold for a period of 5 years after acceptance of said machines or equipment by us.

#### **12. Liability/Limitation:**

12.1. We are entitled without restriction to bring claims for compensation and recourse, including all claims under Austrian product liability regulations. In the event of any type of damage, the contractor has the burden of proof that it is not at fault for the entire duration of the limitation period. Disclaimers of liability or the obligation to transfer disclaimers of liability to customers are not agreed and are not accepted by us.

12.2. If a claim is brought against us by third parties for defective material under the product liability regulations, the contractor shall entirely indemnify us against all claims and actions.

12.3. If a claim is brought against us due to consequential damages or if consequential damages arise for us, the contractor shall entirely indemnify us against all claims and actions.

12.4. The contractor is obligated to us to provide complete, easily understandable instructions for use, to store all necessary documents, to observe the product closely and also if necessary to recall defective goods at its expense, to hand over the production documents without delay and to provide every conceivable assistance, as well as to name the producer or importer within 14 days.

12.5. If a claim is brought against us for breach of official safety regulations or under domestic or foreign product liability regulations due to defects in our products that can be attributed to defective goods from the contractor, we shall be entitled to demand compensation for such damage from the contractor to the extent that said damage was caused by goods delivered by the contractor. Furthermore, to the extent that the contractor is responsible, it shall reimburse the costs of any precautionary exchange or recall operation required under the circumstances, according to the proportion of its contributory negligence.

12.6. The contractor shall take out appropriate product liability and recall insurance against the risks mentioned above and shall provide us with evidence of said insurance on request.

12.7. The contractor shall perform quality assurance of an appropriate kind and extent based on the latest state of the art and shall provide us with evidence of said quality assurance on request. If deemed necessary by us, the contractor shall conclude a corresponding quality assurance agreement with us.

12.8. The contractor is in any event liable under statutory regulations. We shall not accept any exemption from liability, even on the grounds of slight negligence. The statutory limitation periods apply at the very least; we shall not accept any reduction.

#### **13. Fire and Environmental Protection:**

13.1. If the contractor should work at one of our operating sites as part of the contractual relationship (installation, maintenance, correcting defects, etc.), it shall request without delay in particular the fire, safety and environmental protection regulations that we issue and shall strictly comply with said regulations and/or ensure that said regulations are strictly complied with by its workforce. The contractor shall indemnify us against all claims and actions for breaches of said regulations.

#### **14. Property Rights:**

14.1. The contractor guarantees and assures that all deliveries are free from any third party property rights and that delivery and use of the goods in particular do not infringe patent rights, licenses, trademark rights or any other property rights of third parties.

14.2. The agreed price shall in any event cover the acquisition of industrial property rights, in particular of patents, to the extent that we require acquisition of said rights for free usage, for partial or complete renewal and for the resale or use of the delivery item. To the extent that licenses are necessary, the contractor shall obtain these. We may use inventions made by the contractor during the performance of our order free of charge.

14.3. The contractor shall indemnify us against third party claims for any property right infringements and shall also bear all costs that we incur in connection therewith. In this connection, we are entitled to obtain, at the expense of the contractor, permission from the rights holder to use the relevant goods and services.

14.4. Ownership of tools, molds, devices, models, etc. is transferred to us upon payment for the same. They are made available to the

contractor for the intended usage for only as long as required for the contractor to fulfill its order.

14.5. All rights of use acquired apply without restriction to our company and our entire group of companies.

**15. Inquiry/Purchase Order Documents:**

15.1. The diagrams and drawings, patterns, models and the like that we make available to the contractor remain our property and may not be made accessible to third parties or used elsewhere. They shall in any event be returned to us without delay at our request on delivery or in the event that the purchase order is canceled (cancellation of contract).

15.2. Our purchase order and all information relating thereto shall be treated confidentially as our trade secret.

**16. Retention of Title:**

On acceptance of our purchase order, the contractor waives the right to assert any retention of title for the goods to be delivered. After down payments have been made or installments paid, the material corresponding to the purchase order specification and the items produced wholly or partly therefrom become our property in each case up to the value of said down payments or installments. Said material and items shall therefore be stored separately from this time, shall be designated as belonging to us and shall be held in safekeeping for us, with however liability for number, quality, completeness and future loss remaining with the contractor until final acceptance by us at the place of fulfillment. Said retention of title with the storage regulations and liability also applies to materials supplied.

**17. Withholding:**

The contractor is on no account entitled, for whatever reason, to delay and/or withhold its services. Likewise, it is not entitled to the right to withhold items that we have supplied.

**18. Packaging/Problematic Materials:**

18.1. The risk and costs of packaging shall be borne by the contractor. If we should exceptionally accept the packaging costs, the original cost thereof is to be calculated for us and shown separately on the invoice; in this case too, the contractor bears the risk for the consequences of defective packaging.

18.2. If the contractor participates in a nationwide packaging disposal system in Austria (such as ARA Altstoff Recycling Austria AG), the following legally binding statement shall be included in the quotation and also in every delivery note and invoice: "Die Verpackung aller angeführten Waren ist über die Lizenznummer ..... verpflichtet/The packaging of all goods specified is released from liability via license number .....". Additional charges or costs, such as deposits or disposal costs, are not recognized by us. If the contractor refrains from making such a declaration of release from liability, it shall collect and take back the packaging material or issue a credit note therefor; if the contractor does not fulfill this obligation, we are entitled to commission third parties to dispose of the packaging material at the risk and expense of the contractor.

18.3. The contractor shall either itself dispose of all delivery items that are to be assessed as "hazardous waste" after the intended usage (meaning predominantly industrial or commercial waste that is to be collected and treated separately from household waste and that is closely monitored by the authorities under the Austrian Waste Management Act), or residues of such delivery items, or shall take back said delivery items or residues for disposal, always at its risk and expense. If the contractor does not fulfill this obligation, we are entitled to commission third parties to dispose of said delivery items or residues at its risk and expense.

18.4. In the event of shipment using pallets, the contractor shall use its own EUR pool pallets, which will be exchanged on acceptance by us.

18.5. The order number shall always be attached to the container and also specified in the delivery note; in addition, the safety data sheets and accident procedure sheets shall be enclosed when goods are transported by road. If the order number is not specified, we are entitled to refuse to accept the delivery or to return items that have already been accepted at the expense and risk of the contractor.

**19. Dangerous Goods:**

19.1. If goods are delivered under this purchase order to which the relevant provisions of international dangerous goods regulations apply, by accepting the order the contractor assumes responsibility for full compliance with these regulations or for the legal consequences resulting from nonobservance of these regulations.

19.2. For any dangerous goods delivered under this purchase order, the contractor shall submit to us the relevant dangerous goods certificate prepared by the company, irrespective of the stipulated delivery condition, unsolicited and in sufficient time before the goods are shipped. The goods shall be accompanied by a further copy, also prepared by the company.

**20. Final Provisions:**

20.1. The contractor may not transfer our order or parts thereof to third parties, in particular to other suppliers, without our prior written consent. As soon as a petition for the opening of insolvency proceedings is dismissed due to insufficient assets or insolvency proceedings are opened against the contractor's assets, we shall be entitled to rescind the contract in whole or in part.

20.2. The competent court of law in 1010 Vienna shall have jurisdiction to deal with all disputes arising directly or indirectly from this contract,

including disputes over its existence or nonexistence. The contract is subject to Austrian law, excluding provisions on referring the case to the law of a third country. Application of the UN Convention on the International Sale of Goods is excluded. Unless otherwise agreed in writing, the contract clauses used are to be construed in accordance with the latest version of the "Incoterms".

20.3. If one or more of the provision(s) contained in these Terms and Conditions are void or invalid or become invalid as a result of subsequent circumstances or one of the two parties detects a gap or omission in the contract by mutual accord, the validity of the remaining provisions shall remain unaffected. In this event, the contracting parties undertake to supplement the contract with a valid provision that corresponds to the legal and economic purpose of the invalid or incomplete provisions.