

# AIT – Supply- and Payment conditions (General Terms of Sale – GT)



as dated Aug 2015

which we, **AIT Austrian Institute of Technology GmbH, Nuclear Engineering Seibersdorf GmbH, LKR Leichtmetallkompetenzzentrum Ranshofen GmbH and Seibersdorf Labor GmbH**, as the contractor, take as the basis for all our supplies and services to customers.

## 1. Scope of application

These terms apply to all our supplies and services and are an inseparable part of our offers and confirmations of orders. Deviations are only binding if expressly acknowledged by us in writing. The GT in the valid form as amended also extend to future transactions between the contracting parties even if not referred to again in case of future conclusion of contracts.

## 2. Offer

- 2.1. Our offers are not binding.
- 2.2. Details contained in catalogues, brochures and similar as well as other oral statements are only relevant if expressly confirmed in writing by us in the confirmation of the order.
- 2.3. Permits eventually required from authorities or third parties to carry out the order are to be obtained by buyer who is obliged to inform us accordingly and eventually has to hold us free of harm and claim. We are not obliged to start works before such permits have been validly granted and were evidenced to us.
- 2.4. The adequate expense allowance for drawings, sketches or samples made is to be reimbursed to us even if the planned order will not be given.

## 3. Conclusion of contract - termination of recurring obligations

The contract is deemed to be concluded the moment that we have mailed the written confirmation of the order or effected the supply. Modifications and amendments of the contract require the written form in order to be valid.

## 4. Prices

- 4.1. Price offers will be binding the moment that we have confirmed them in writing indicating the scope of supply. Any supplies or services exceeding such scope of supply may be invoiced by us separately.
- 4.2. To the extent not otherwise agreed in writing prices are ex works resp. our storehouse excluding packaging, loading, insurance and VAT. In case in connection with the supply fees, taxes or other levies are raised, they are to be borne by buyer. If supply including delivery is agreed prices are to be understood without unloading and carrying. Discounts, rebates, credit items etc. are computed on the basis of the sales price excluding VAT.
- 4.3. Prices are based on the costs at the time of publication. We are entitled to adapt the prices if the order deviates from a total offer or if the costs have changed till the date of supply. In case of conclusion of contract leaving the prices open the prices at the day of supply or completion of supply will be invoiced.
- 4.4. In addition, we are entitled to invoice additional costs for delay not caused by us, mainly for clarification of technical or legal prerequisites for the supply or because of extra hours, night or Sunday works requested by buyer.

## 5. Supply

- 5.1. The term for supply according to confirmation of order begins on the latest of the following dates:
  - Date of confirmation of order;
  - Date of clarification of all technical and legal prerequisites by buyer;
  - Date on which we receive the partial payments or guarantee (letter of credit, bank guarantee etc..) required before carrying out works.
- 5.2. We are authorised to advance and partial supply and invoicing. To the extent the deviation does not exceed or goes below ten per cent of the total quantity buyer is obligated to accept such additional or minor supply at the calculated price pro rata.
- 5.3. Mode and route of dispatch are decided by us to the extent no other written agreement exists. To the extent not agreed differently the price risk passes to buyer in case of his default in acceptance at the time when we are ready for dispatch.
- 5.4. Raw materials, half- and completely finished goods are stored only in case of prior written agreement and storage is to be paid separately to us. If goods ready for dispatch are not shipped within three months after invoicing without our fault or shipping has been postponed upon request of buyer our service is deemed to have been rendered, authorising us to store the goods at the costs of buyer. Pertinent storage costs are to be paid immediately. Payment conditions agreed are not affected from such modification.
- 5.5. Packing will be invoiced at self-costs and will not be taken back.
- 5.6. In case the term of delivery is exceeded because of our fault buyer is entitled to withdraw from the agreement, allowing a period of grace of 4 weeks. Such period starts the day that we are served the declaration of withdrawal of buyer to be sent by registered mail. Any compensatory claims of buyer because of delayed supply or in case of withdrawal, to the extent allowed by law, are excluded.
- 5.7. **In case a penalty is fixed by agreement for default of delivery the following shall apply: In case of delay evidently caused by our gross negligence the buyer is entitled to claim per week of delay completed a compensation for delay of half a percent, not exceeding a maximum of 5 % of the invoiced amount of such parts of the supply or service concerned, which cannot be used because of delayed supply of an essential part, to the extent buyer evidently has suffered a damage in this amount. Any further claims for compensation by buyer are excluded.**

## 6. Performance and passage of the risk

- 6.1. Profit and risk pass to buyer the moment the object to be supplied leaves our works or our storehouse or is stored in the sense of items 5.4. or 6.3. of the subject conditions, independently from the payment conditions agreed for supply or service.
- 6.2. Extra agreements on examination of quality or specimen products do not affect the regulations on the place of performance and the passage of the risk.
- 6.3. If it is agreed that the goods are to be called by buyer during a certain period we are entitled to withdraw from the contract completely or in part in case of delayed calling. We are, however, in any case entitled to invoice storage fees for the duration of the time exceeded and may regard the goods to have been called one year after the placing of the order and claim performance owed by buyer in such case.
- 6.4. All additional services necessary for the performance of the contract not reserved in the confirmation of the order to be borne by us are to be carried out at buyer's own costs.
- 6.5. Materials to be acquired by buyer irrespectively of which kind are to be delivered free works to us. Our receipt is no confirmation of the correctness of the kind and quantity described as supplied. Upon our request buyer is obliged to reimburse to us immediately the costs and storage fees in connection with counting and quality examination.
- 6.6. Any manuscripts, originals, drafts, sketches, samples, models, films and other documents or goods handed to us are kept at the exclusive risk of buyer. The insurance of such goods against what risk ever is within the sole responsibility of buyer. We are relieved from any liability for damages or loss of such items, for what reason ever, except in case of gross negligence for damage or loss.

## 7. Payment

- 7.1. Unless stipulated otherwise in writing 40 per cent of the price are due upon receipt of the confirmation of the order, 30 per cent at the half of the time allowed for delivery and the remaining 30 per cent at delivery. The VAT contained in the invoice is in any case to be paid the latest 30 days after the date of invoicing, to the extent no earlier payment date has been agreed.
- 7.2. In case of partial invoicing the relevant partial amounts are due upon receipt of the respective invoice. This also applies to amounts invoiced based on subsequent supplies or other agreements going beyond the original contractual amount, not being subject to the payment conditions agreed for the main supply.
- 7.3. Payments are to be effected by bank withdrawal (debiting) or in time without any deduction, free at our address for payment in the currency named in the invoice. Payment day is deemed to be the day of the crediting with us or our address for payment.
- 7.4. Buyer is not entitled to withhold payments for guarantee or other claims of what kind ever or to set off with counterclaims.
- 7.5. In case buyer is in delay with his payment or other services, most of all in the sense of items 2.3. and 6.4. we may
  - a) postpone the performance of our obligations till the delayed payments or other services have been effected,
  - b) make use of an adequate extension of the time for delivery,
  - c) demand immediate payment of the total purchase price still open (immediate maturity) and
  - d) invoice costs for the reminder at the amount of 10,00 Euros (second reminder) and 40,00 Euros (third reminder) as well as upon maturity default interest of 9,2 per cent above the actual basic interest rate, or
  - e) withdraw from the agreement in case an adequate period of grace is disregarded,
  - f) in any case invoice costs prior to litigation like costs for reminders and lawyers.  
Rebates, discounts or bonifications depend on the complete payment in due time.
- 7.6. Till all our claims out of the mutual legal transaction with buyer are fully liquidated including interests and price the goods remain our property. Buyer hereby assigns his claim from reselling goods under reservation of title, even when having been manufactured, reshipped or mixed, to us to secure our claim for the purchase price and undertakes to make corresponding notes in his books or invoices. Upon request buyer has to inform us about the claim assigned and the debtor and to make available to us all information and documents required for the collection of the sum due and to inform the third party debtor on the assignment.  
Buyer is required to comply with the identification requirements and other provisions as to form to safeguard the retention of title. In case of seizure or other persecution buyer is held to give information on our property and to inform us immediately.

## 8. Warranty

- 8.1. In accordance with the following regulations we are obliged to remedy eventual defects impairing functionality during the two year warranty period of the items supplied, having existed already at the time of delivery and being based on defective design or manufacturing by us or the materials supplied by us.
- 8.2. Warranty is only granted if buyer immediately reports the defects appeared in writing with detailed description. This particularly applies also to defects in case of service contracts. Defects affecting a part of a shipment cannot lead to

the objectioning of the total shipment. In case of justified complaint for defects it is within our discretion to either replace defective goods or defective parts or to choose subsequent improvement, have the defective part sent to us for subsequent improvement or grant adequate price reduction. From the moment of discovery of the defect on by buyer any further disposition concerning the goods without our express consent is not permitted; if buyer, however, does dispose he thus waives eventual claims for warranty with regard to us. Defects, which are not reported immediately the latest within three days after the goods have been received at the point of destination in writing, including exact description of the defect, are deemed to be accepted. Excepted are such defects, which cannot be detected within the three day period in spite of careful examination. Such defects are deemed to have been accepted if they are not reported within three days after discovery in the same manner as above.

- 8.3. To carry out works for warranty in the company of buyer he has to make available to us the required auxiliary workers, materials and tools free of costs. Buyer has to take all other necessary measures at his place to allow us to implement the works for warranty.
- 8.4. If something is manufactured according to construction details, drawings, kites or other specifications of buyer our liability is limited to the realisation according to the conditions. We do not take responsibility for the sale of used goods or for repair orders or modifications and alterations.
- 8.5. Excluded from the warranty are defects caused by overstress, negligent or improper treatment, use of inadequate operation materials by buyer materials supplied by third parties, instructions of buyer or assembly work of third parties. We, in particular, are not liable for damages by acts of third parties, atmospheric discharges, overvoltage and chemical influences. Parts subject to normal attrition are excluded from warranty.
- 8.6. Warranty ceases to exist immediately if the object delivered is altered or overhauled. Works and supplies because of warranty do not extend the warranty period.
- 8.7. If the materials used by us are different from the quality agreed this may only constitute a defect if the agreed or allowable variation is essentially exceeded.
- 8.8. Claims according to § 933b Austrian Civil Code Law Book prescribe in any case with expiry of the period named in 8.1.
- 8.9. Reporting defects does not release buyer from his payment obligation.
- 8.10. Returning the defective goods, except samples of defective goods required by us, is not admitted without our prior written approval. In case goods should nevertheless be returned all resulting costs, caused to us, are to be reimbursed. Acceptance of the returned goods does not grant buyer any claims or other legal consequences. Also our examination of the defect does not entitle buyer to any claims or legal consequences. The risk for the usability of the goods for a certain purpose or in a certain way is borne by buyer unless we have made a different written promise.
- 8.11. In case of service contracts we are unanimously relieved of the duty to warn according to § 1168a Austrian Civil Code Law Book and similar regulations in other legal provisions.

#### 9. Compensation

To the extent not differently provided in the subject conditions our liability is in all cases limited to such damages having appeared at the object of our supply. Any further compensation, most of all for consequential harm caused by the defect is excluded unless in case of our gross negligence.

- 9.1. Buyer has to pass on the limitation of our liability to his customers who in their turn are obliged to pass it on to the enduser, so that the validity of our limitation of liability to the enduser is safe guarded.
- 9.2. In case eventual conditions for assembling, taking into operation and use (as contained for example in the operation manual) or official conditions for approval are not met any compensation is excluded.
- 9.3. To the extent penalties are agreed any further claims for any reasons are excluded.

#### 10. Consequences of default and withdrawal

- 10.1. In case we are in delay in delivery through our gross fault though having been granted adequate period of grace (5.6.) in writing buyer may withdraw from the agreement.
- 10.2. In addition to the cases mentioned above we are particularly entitled to partially or completely withdraw from the agreement:
  - In case the performance of the supply or the beginning or the continuation of the service is made impossible for reasons for which buyer is responsible or further delayed inspite of a period of grace,
  - if buyer, in case of doubts concerning his solvency, refuses to make an advance payment upon our request before supply in order to provide sufficient collateral security.
- 10.3. Force majeure affecting us or one of our sub-suppliers entitles us to interrupt the supplies for the duration of the impediment and an adequate period of restarting or, corresponding to its effects, partially or completely withdraw from the agreement. In case shipment is delayed because of the effects of force majeure for more than three months buyer is entitled to withdraw from the affected part of the supply by registered mail within two weeks.
  - As events of force majeure are deemed, without restriction:
  - all effects of natural elements, like earth quakes, lightning, frost, storm, floods;
  - furthermore war, laws, official acts, seizure, destruction of transports, export, import and transport interdictions, international payment restrictions, raw material and energy drop out;
  - interruptions of operations like explosion, fire, strike, sabotage and all other events to be prevented only at inadequate costs and means economically unreasonable.
- 10.4. In case solvency proceedings are instituted or an application for bankruptcy is refused for lack of assets of our buyer we are entitled to withdraw from the agreement without allowing a period of grace.

- 10.5. Aside from our claims for compensation in case of withdrawal we are entitled to claim payment of supplies shipped and services rendered so far as well as for the preparatory actions taken with regard to the agreement, even if the agreement has only been partial completed. Even if nothing has been supplied we are in such case entitled to the reimbursement of costs having arisen for its preparation.

#### 11. Trademarks, trademark rights and industrial property rights

We are entitled to print a company or trade mark name onto the products to be manufactured even without express approval of buyer. In general our goods are marked with a trade mark and/or our company logo. In case such goods are further processed, mixed with other products etc., the marks mentioned above may in the following only be used upon our prior written approval.

#### 12. Industrial property rights and copy right

- 12.1. We reserve all rights with regard to the drafts, offers, projects and pertinent drawings, images and descriptions used by us. Such documents must not be used by buyer in a manner beyond the content of the agreement, even if not having been made by us. They must particularly not be copied or made accessible to third parties. Upon our request they are to be returned to us immediately. Buyer has to return such documents without being requested and immediately to us if the order is placed elsewhere.
- 12.2. Buyer is obligated to keep us free of harm and claim with regard to all claims from third parties for violation of copy rights, creative services protection rights, other industrial property rights or personality rights made against us. In case of litigation against us we reserve the right of third party notice to buyer. In case buyer does not intervene as joint party on our side we are entitled to recognize the claim.

#### 13. Forum and applicable law

For any dispute arising out of this contract directly or indirectly - including such on its existence or non-existence - the jurisdiction of the court of general jurisdiction in 1010 Vienna having jurisdiction is agreed. This agreement is subject to Austrian Law excluding the rules of renvoi. The application of the UN sales convention is excluded. To the extent not having been agreed differently in writing the "INCOTERMS", 14. as amended, are to be used to interpret the contractual clauses used.

#### 14. General

Using and/or reselling our goods, buyer is responsible that all relevant legal and official provisions are met.

In case one or several stipulations in the subjects conditions should be void or legally in-effective or loose there effectiveness through later events or in case both parties unanimously state a gap in the agreement, this does not affect the validity of the remaining stipulations. In such case the contracting parties agree to supplement the agreement by a stipulation corresponding with the legal and business purpose of the invalid or incomplete stipulation.