

1. General

The Contract comes into effect either as a result of an order confirmation or due to a delivery or repair by the Provider. The following Terms and Conditions apply to all services rendered by the Provider or by a subcontractor named by the Provider within the framework of this Contract. The Customer's purchasing terms are hereby excluded for the legal transaction and the entire business relationship.

2. Offerings

All offers are subject to change. Costs charged for the reimbursement of a cost estimated by the Provider in conjunction with repairs are waived solely in the event of an order being placed. The Provider's binding cost estimates shall no longer be binding if they include prices for spare parts that change between the cost estimate being made and the Customer placing an order due to the order being placed.

3. Software Licences/Software Use Rights/Ownership and Copyright

3.1. On payment of the agreed licence fee, the Customer receives the non-exclusive and non-transferrable right of use in accordance with the respective licensor's current licensing and use terms, to which the Customer expressly agrees.

Software programs (excluding material contained on storage media) as well as service programs and routines used by them plus the documents added to them include the licensor's confidential intellectual property; this indefinitely remains the licensor's unrestricted property. The paid or unpaid transfer to third parties, the making of copies for such purposes or any other act that impairs ownership and/or licensing rights is not permitted. A violation of the licensor's ownership and usage rights entitles the Provider or licensor to prohibit the Customer from any further use of the software and sue for injunction, publication of judgement, payment of appropriate recompense, and damages.

3.2. The basis for the creation of individual software programs is the service description written and signed by the Customer. The Customer is responsible for ensuring that the information and documents made available to the Provider for this purpose are accurate and complete.

If it is actually or legally impossible for an order to be completed in accordance with the service description, the Provider must immediately inform the Customer. If the Customer subsequently changes the service description to the extent that completion is possible, the Customer can reject completion. In any case, subsequent changes to the service description may lead to changes to prices/delivery dates.

4. Delivery

4.1. The costs and risks associated with transportation from the Provider's/suppliers' warehouses are borne by the Customer unless expressly agreed otherwise. The delivered

products covered by the contract are to be checked by the Customer for any damage caused during transportation as soon as they are received, with any damage reported to the Provider immediately in writing.

4.2. Partial deliveries, partial performance and pre-deliveries are permitted.

Any deliveries stored for reasons owing to the Customer shall be charged to the Customer and regarded as delivered.

4.3. All delivery times specified by the Provider are non-binding. If the agreed delivery times cannot be met due to reasons owing to the Provider alone, the Customer is entitled to withdraw from the contract in respect of the contractual performance in default after granting an appropriate grace period of at least ninety days.

4.4. The delivery period shall be extended by the period caused by the impediment resulting from circumstances outside of the control of both parties, such as late delivery by sub-suppliers, force majeure, unforeseeable operational disruptions, official interventions, transportation and customs delays, damage during transportation, and industrial disputes.

4.5. The contractually agreed services are seen as accepted insofar as no justified written report of defects is received by the Provider within 14 days of the delivery. Immaterial defects do not delay acceptance.

5. Prices

5.1. Prices are net and do not include VAT and are valid ex place of performance. The Provider is entitled to charge the list prices valid on the day of delivery. In the case of significant changes in circumstances, particularly in terms of salaries, transportation and insurance costs, customs, exchange rates and other expenses, the Provider is entitled to charge the prices valid on the day of delivery.

5.2. For the delivery of certain services, the expenditure information given by the Provider is approximate unless agreed otherwise. In any case, the Customer is responsible for any increase in expenditure it has caused (e.g. due to missing or incomplete test data, etc.)

5.3. With regard to all current contracts concluded with the Customer (e.g. maintenance and outsourcing contracts, warranty extensions), the Provider is entitled to increase the agreed flat rates accordingly as a result of an increase in salary and material costs or other costs that occur after the contract has been concluded. These increases shall then be charged to the Customer from the first day of the month following the increase. The increases are deemed as accepted by the Customer when they do not amount to over 5% annually.

5.4. For contracts concluded in connection to a pool of hours, the Customer is to redeem the agreed hours within 18 months of the order being placed. All hours not redeemed or used within this period will expire.

5.5. If services are not delivered at the place of performance as agreed, the Customer bears the costs for travel and accommodation for those commissioned to deliver the service by the Provider.

5.6. The current service prices are for normal business hours, Monday to Friday, 08:00 to 17:00. Any overtime to be worked outside of this period will be charged as follows:

Business days (Monday to Friday): 17:00 to 20:00 - 50% surcharge
20:00 to 08:00 am – 100% surcharge

Saturday: 08:00 to 17:00 - 50% surcharge
17:00 to 24:00 – 100% surcharge

Sunday and bank holidays: 00:00 to 24:00 – 100% surcharge (24/12 and 31/12 are bank holidays)

6. Payment Terms

6.1. The invoices issued by the Provider after each successful delivery are due in full within 14 days of the invoice date.

Payments related to bring-in repair services are to be paid on full on collection.

6.2. Compliance with the terms of payment agreed between the Contracting Parties in this and other legal transactions is an essential requirement for the Provider to fulfil the contract. If the Customer defaults on payment, the Provider is entitled to inform the Customer in writing of the withdrawal of services until full payment has been made and to charge interest on arrears at 8% above the Oesterreichische Nationalbank's rate. Moreover, the Customer is obliged to settle all costs of debt collection agencies, the involvement of creditor associations or out-of-court proceedings.

6.3. If in the case of partial payments two instalments are missed, the Provider is entitled to declare that payment has been defaulted on and demand the payment of any accepted order.

6.4. The Customer is not entitled to withhold payment due to warranty/guarantee claims or other defects.

7. Retention of Title

7.1. Contractual items remain the sole property of the Provider until full payment has been made (including interest and costs). The Provider is responsible for bearing the costs of proper maintenance during this period. Pledging or assignment of securities before payment has been completed is not permitted.

7.2. In the case of repairs, a lien on the contract item is due to the Provider until payment is made and can assert a right of retention until full payment (including costs and interest) is received. If the contract item is not collected within 6 months of the agreed collection date, the Provider has the right to use the item's proceeds of sales to offset any costs incurred.

8. Warranty and Liability

8.1. The Provider guarantees that the software covered by the contract has been copied onto easily readable storage media. Taking into account the software licensing conditions applicable between the Customer and vendor, other defects are only subject to warranty if they are reproducible.

8.2. Within the framework of the warranty or liability, the Provider is obliged to remedy any defects to the contractual objects or the contractually-defined services that were present at the time of handover within 6 months of delivery at the place of performance by improving, replacing free of charge, reducing the price for other use or supplying a credit note within a reasonable period of time. It is essential the Customer provide a written report of the defects to be sent promptly, but at the latest within 14 days of delivery or service provisioning, otherwise liability is excluded. Other legal consequences related to the deficiency of the contractual services provided are excluded. In any case, the specific provisions and licensing conditions for the contract items of the respective vendors are expressly applicable.

8.3. Wear parts and accessories, the failure to comply with installation requirements and terms of use, used sold contract items as well as repairs due to external factors (e.g. the use of unauthorised data storage media and third party interference) are excluded from the warranty.

8.4. If the contract items are used in connection with third party devices/programs, the warranty shall only cover deficient functionality / performance if these also arise when not used in this way.

8.5. The Provider is liable for damage only when intent or gross negligence can be proven. In each case, liability for consequential and financial losses particularly as a result of delay, impossibility of performance, lost profit, expected but unearned income, is excluded, third party claims against the Customer, indirect damage and damage to recorded data is excluded where legally permissible.

9. Non-solicitation Agreement

The Customer undertakes not to solicit, hire or solicit via third parties the Provider's employees. This applies for the entire duration of the relationship plus one year following. Should this provision be violated, a fine amounting to 12x the last gross salary of the person concerned shall be charged.

10. Final Provisions

10.1. Place of performance is the Provider's headquarters.

10.2. All the Provider's deliveries and services are subject to corresponding export licences being granted by the U.S. Department of Commerce or other states for whose regulations the Provider is responsible. It is the Provider's responsibility to obtain the necessary licences from the U.S. Department of Commerce, the responsible Austrian ministry or other foreign authority as required before the Customer exports the products covered by this contract.

10.3. The Customer declares its agreement to the processing of personal information (customer name, address, e-mail, telephone number) by the Provider for the purpose of sending promotional information/details concerning products and services by mail, telephone or electronic means (e-mail). Consent to this can be cancelled by the customer at any time.

10.4. Should a provision of the General Terms and Conditions and/or other agreement be invalid or unfeasible or become invalid or unfeasible after the respective contract has been concluded, the validity of the remaining provisions remains unaffected. The invalid or infeasible provision will be replaced by a provision that comes as close as possible to the commercial spirit and legal purpose of the invalid provision.

10.5. Unless otherwise agreed, the legal provisions applicable between registered traders apply. In the case of disputes, the exclusive place of jurisdiction is agreed to be Vienna. Austrian law applies. The United Nations Convention on Contracts for the International Sale of Goods and the UNCITRAL Convention on the Use of Electronic Communications in International Contracts are excluded.

10.6. For the sale to customers within the meaning of the Consumer Protection Act, the above provisions only apply in so far as the Consumer Protection Act does not allow for others.

As of July 2020