

# **GENERAL TERMS AND CONDITIONS (GTC)**

**for the procurement of  
plants, plant components and services**

**Version of: January 2022  
(GTC 1/2022)**

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## 1 DEFINITIONS

### 1.1 In these “General Terms and Conditions”, the following definitions apply:

PR =	Principal (company name and address: <b>DS AUTOMOTION GmbH</b> , Lunzerstrasse 60, 4030 Linz / Austria).
CO =	Contractor, the legal entity (natural or legal person) obligated to perform the supplies and services in accordance with the order.
EC =	End customer of the entire system (customer of the PR).
Total plant =	The work to be constructed for the EC, that is technically or contractually to be regarded as a unit, the parts of which form the supplies / services of the CO.
Plant / plant components =	Parts required by the PR for the construction of the entire plant.
Customer contract =	Contract between the PR and the EC for the delivery of the complete plant.
Purchase order / order =	Contract between the PR and the CO for the supplies and services to be provided by the CO.
Supplies / services =	All supplies and services to be provided by the CO in accordance with the purchase order / order, where the term service alone is to be understood as the provision of a service.

### 1.2 The following definitions shall apply in connection with the gradual handover of plants, plant components or services thereof:

End of installation =	Completion of the mechanical and electrical installation of the entire system. Once the installation has been completed, the commissioning phase of the plant will begin.
Start of trial operation =	Commissioning = start of hot test = start-up of the entire plant under operating conditions.
Performance test =	Test of the entire plant under normal operating conditions over a defined period of time. Any and all contractually specified plant specifications (e.g. availability and transport performance) shall be fulfilled. The performance test is to be assessed as positive if these specifications are met throughout the entire observation period (on the required average).
Positive performance test =	Achievement of any and all performance data of the entire plant and ensuring operation in accordance with the requirements of the customer contract, provided that the supplies / services have been provided in full in accordance with the contract and without defects.
Start of Production (SOP) =	Start of the (serial) production of the end customer. Upon SOP, the plant will be put into normal operation by the end customer.
Acceptance =	The recorded confirmation by the EC that the overall plant has been constructed or provided by the PR with the deliveries and services of the CO in accordance with the contract and free of defects. This also includes proof of compliance with the performance values (e.g. capacity, product quality, consumption, emissions) in a performance test.

## 2 GENERAL

### 2.1 Supplies and services of the CO:

The CO's supplies and services shall be part of a complex overall plant to be erected. Therefore, disruptions in the CO's deliveries or services usually cause problems in the overall project organisation with corresponding additional costs, e.g. in connection with delays in the network plan, claims by third parties, disruptions in logistics, delays in the acceptance by the EC, idle times, etc. The cost consequences are particularly serious in the case of complete plants constructed abroad, i.e. outside Austria.

The CO therefore undertakes to exercise the due care and diligence of a prudent businessman in the performance of their contract and, in addition, to exercise special care and diligence which is appropriate to these circumstances.

This also includes, in particular, the procurement and provision of all information to be taken into account for the fulfilment of the order under the concrete prevailing conditions of the transport route and the place of use of the supplies and services as well as for the integration of its supplies and services into the overall plant.

### 2.2 Quality assurance:

The CO undertakes themselves and commits their subcontractors for whose conduct they are responsible like for their own (vicarious agents pursuant to Sec. 1313a of the ABGB [Austrian Civil Code]) to apply the principles of a quality management system in accordance with the series of standards **ISO 9001:2008, ÖNORM EN ISO 9001:2008**, as amended, in the performance of its supplies and services and to prove this in writing to the PR at the latter's request.

The PR and the EC each have the right to audit the quality management system, the quality assurance regulations and the quality assurance plan of the CO and its subcontractors at any time and wherever they are located and to have them verified to determine whether the said series of standards and these General Terms and Conditions are being complied with. The verification shall be carried out at the expense of the CO or the EC. Should deviations from the above-mentioned series of standards or the General Terms and Conditions arise to the detriment of the PR or the EC, the CO shall bear the costs. This obligation shall be transferred by the CO to the subcontractors.

### 2.3 Validity of General Terms and Conditions:

These "General Terms and Conditions" provide for the relationship between the CO and the PR, unless the purchase order / order contain any deviations for individual cases, and specify individual provisions for the relationship between the CO and the EC.

The CO's terms and conditions (e.g. offers, terms and conditions of sale) shall not apply, unless such were explicitly accepted by the PR in writing.

If reference is made to the CO's quotation documents in the PR's purchase order / order, that shall not constitute any acceptance of the CO's commercial terms and conditions or other terms and conditions. The PR's General Terms and Conditions shall be deemed to have been accepted not later than upon commencement of the execution of the purchase order by the CO.

### 2.4 Legally binding nature of declarations:

Declarations of the PR concerning the conclusion of or amendments to purchase orders / orders or supplements to purchase orders / orders shall only be legally binding for the PR if they have been submitted by the PR in writing or by e-mail.

The following shall be exempted from the written form requirement:

- the use of options on packaging and transport in the form of the transmission of definitive shipping conditions to the PR.

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### 2.5 Clarification of inconsistencies:

In the event of any inconsistencies between the individual components of the contract concluded between the CO and the PR (purchase order / order), the following priority shall apply:

- the purchase order / order letter (letter form, fax or e-mail);
- the enclosures mentioned in the purchase order / order letter, in particular the minutes of the negotiations;
- these GTC including the annexes to these GTC.

If no clarity results from the priority order, the principle of the best possible suitability of the supplies and services for the respective purpose shall apply with regard to questions of the scope of supplies / services. In any case of ambiguity regarding the performance of the contract, the CO shall inform the PR and reach an agreement on the solution. The CO shall be obliged to draw the attention of the PR to any discrepancies in the specification, without undue delay.

## 2.6 Legal claims:

Notwithstanding the provisions in these GTC and the contractual provisions applicable in each case (Art. 2.5), further legal claims of the PR shall remain unaffected.

## 3 PRICES

### 3.1 Type of price:

The prices of the purchase order / order are to be understood as fixed prices excluding VAT, which cover all expenses of the CO in connection with the performance of the supplies and services. This includes, in particular, all costs for transport, insurance, packaging, taxes, customs duties and levies associated with the CO's supplies and services in or to the countries in which they will be provided / transferred. The PR will only bear such costs which are expressly stated as an obligation of the PR in the written purchase order / order. For any extensions and supplements of the purchase order / order as well as for orders of spare and wear parts, the terms and conditions of the respective main purchase order shall apply, unless otherwise agreed in writing.

### 3.2 Pricing:

Insofar as the purchase order / order does not contain any other provisions, the pricing shall be "Delivery Duty Paid" (DDP) to the named place of destination in accordance with Incoterms **2020**. This includes the costs of documentation, technical inspection, painting, corrosion protection, labelling, lettering, etc. In the case of deliveries abroad, i.e. outside Austria, the CO's services shall include export customs clearance (customs clearance with own documents incl. assumption of all associated costs and duties).

### 3.3 Contract currency:

Payment obligations shall be settled exclusively in EURO, unless otherwise agreed, in writing, upon conclusion of the contract.

## 4 PAYMENT TERMS

### 4.1 Accounting:

Invoices are to be sent by the CO, together with any and all documents necessary for identification, such as order number, item number, etc., **preferably by e-mail to: [Invoice-pdf@ds-automotion.com](mailto:Invoice-pdf@ds-automotion.com)** (for company name and address see the purchase order / order).

COs from EU countries shall state the movement of goods (movement certificate, certificate of origin) in all invoices, in addition to the legally prescribed information for tax exemption.

### 4.2 Payment:

The (partial) payments agreed in the purchase order / order shall be made in each case with the agreed payment term after receipt of the invoice by the CO and after its complete fulfilment of all prerequisites specified for this in the purchase order / order, in particular also the proper delivery of documentation. Payment by the PR

does not imply any acknowledgement of the regularity of the supplies and services and thus no waiver on the side of the PR of performance, warranty, damages, contractual penalties, etc.

**4.3 Security retention:**

The PR shall be entitled to retain an agreed security retention as a non-interest-bearing security for claims for performance, warranty, guarantee or damages for a period of 45 days beyond the warranty period (Art. 11.2). This shall also apply in the event of insolvency of the CO, unless otherwise provided for in the *Insolvenzordnung* [Austrian Insolvency Code] (IC).

**4.4 Final invoice:**

The release of the last payment shall only be effected upon presentation of a total final invoice for all supplies and services rendered by the CO in accordance with the purchase order / order and related claims. By submitting the final invoice, the CO declares that they have thereby asserted all claims arising from the business case in question and that no further claims will be made.

**5 SUBCONTRACTS**

**5.1 Approval:**

The CO shall be obliged to inform the PR in good time of any intended subcontracting to subcontractors and to obtain the PR's written approval of such subcontracting prior to awarding the contract. Upon request, the CO shall provide the PR with a copy of the respective subcontracting. In the event of non-compliance with these obligations, the CO (as well as their legal successors) shall indemnify the PR (as well as its legal successors) against any liability in connection with the subcontracting to subcontractors. In the event that any third parties assert claims against the PR, in or out of court, as a result of or in connection with the involvement of subcontractors by the CO, the CO (as well as its legal successors) shall indemnify and hold harmless the PR (as well as its legal successors) for all consequences arising therefrom.

The CO (and its legal successor) shall fully reimburse the PR (and its legal successor) for any costs of legal action or legal defence incurred in this context.

In the event of any subcontracting not approved by the PR, the PR shall also be entitled to withdraw from the contract with the CO, in whole or in part, without prejudice to any other claims.

The approval of a subcontracting by the PR shall not further restrict the CO's obligations. The CO shall remain fully responsible to the PR for the fulfilment of the entire purchase order even in the event of subcontracting. The CO shall be liable for acts and omissions of its subcontractors as for its own acts / omissions (vicarious agents pursuant to Sec. 1313a of the ABGB).

**5.2 Value creation:**

A minimum share of value added from a specific country or relevant certificate of origin regulations stipulated in the purchase order / order within the meaning of the requirements of the Austrian Kontrollbank (ÖKB) or other financing and/or insurance institutions shall be complied with by the CO and proven to the PR in writing accordingly upon request.

The PR and the ÖKB or the respective other financing / insurance institution abroad shall be entitled to free audits or inspections in this respect, at any time.

In addition to any agreed transfer of the exporter's liability to the CO by means of a counter-guarantee to the PR, the CO shall full indemnify the PR in the event of a breach of this obligation, taking into account the relevant statutory provisions as amended from time to time with regard to

- the additional costs due to the elimination of a preferential export credit for the entire financing term;
- and the consequences of withdrawing coverage for the economic and political default risk in the event of a claim;

and hold them fully harmless.

## 6 DOCUMENTATION

### 6.1 Importance of documentation:

Documentation shall mean all documents of a written, drawn or other nature accompanying the CO's supplies and services which serve to enable the CO and the PR to fulfil their mutual obligations as well as the obligations towards their contractual partners and the governmental authorities affected by the respective transaction in a timely and most economical manner.

Such documents relate, in particular, to manufacturing, quality control, potential hazards, safety regulations, shipping, transport, export, transit, import, customs clearance, taxation, identification of parts, logistics, storage, assembly, commissioning, training, accounting, bookkeeping, operations management, repair, maintenance, spare parts procurement, etc.

The documentation, which may also include the shipping, origin, testing and assembly documentation referred to below, constitutes an integral part of the CO's scope of performance.

The PR acquires a right to use the documentation, free of charge, and shall be entitled, among other things, to use and apply the documentation received from the CO or its subcontractors, free of charge and without any restrictions in terms of time and space, as well as to hand it over to their other contractual partners and the EC. The granting of rights also includes the processing in any form and in any technical process by the PR as well as the partial or complete transfer of the rights granted or the forwarding of the documentation to third parties, provided that these are contractual partners of the PR.

The CO confirms and warrants that he himself is in the exclusive and sole possession of the rights to the documentation required for the above-mentioned grant of rights and expressly waives the application of a copyright or manufacturer's note. The CO also transfers to the PR the right to affix the PR's own designation (or another copyright or manufacturer's mark), free of charge, as well as the right to transfer this right to third parties.

The CO (and its legal successor) warrants that the documentation provided is free from material defects and defects of title and releases the PR (and its legal successors) from any liability in connection with the use and application of the documentation provided that is unrestricted in terms of time and space and free-of-charge. In the event that claims are asserted against the PR, in or out of court, by third parties arising from the use and application of the documentation, in particular due to the infringement of copyrights or other intangible rights, the CO (and its legal successor) shall fully indemnify and hold harmless the PR (and its legal successors). The PR (and its legal successor) shall fully reimburse the CO (and its legal successor) for any legal costs of prosecution or defence incurred in this connection.

### 6.2 Scope:

The documentation shall be submitted by the CO in writing to the extent prescribed in the purchase order / order and at the time agreed therein. If no details are available, the documentation shall correspond to the specific business case in terms of scope, quality and time and shall be prepared in the German language. Unless otherwise agreed, the delivery of the documentation by the CO shall also be made "Delivered Duty Paid" (DDP) in accordance with Incoterms **2020** to the address of the PR.

### 6.3 Shipping documentation:

The shipping documentation has to correspond to the details of the purchase order / order of the PR. The shipping documentation shall clearly disclose the complete and correct order number, identification number, contract item number and item number as well as the description of the goods, inter alia, for the unambiguous allocation of the respective customs tariff. The part designation must be the same in all documentation. Above all, this part designation must indispensably have the same wording in the drawings, parts lists, packing lists and shipping documents.

### 6.4 Documentation of origin:

The CO shall enclose with the goods to be delivered in cross-border traffic, free of charge, the valid proof of preference (movement certificate, preferential certificate of origin, certificate of origin, confirmation of origin, declaration of origin, etc.) which is required in the country of destination of the goods for preferential import customs clearance.

The proof of preference must in particular also contain the purchase order number and the order number of the PR.

Values of goods must not be disclosed!



Unless otherwise agreed, the CO's country shall be deemed to be the country of origin.

**Certificate of origin:**

The certificate of origin shall be obtained by the CO at the PR's request and at the CO's expense through the competent chamber of commerce and certified by the competent consulate or embassy.

**Confirmation of origin:**

If the certificates of origin are obtained by the PR, the CO shall, at the PR's request, submit a confirmation of origin for each individual part, stating the manufacturing company (with exact address) and/or the country of origin.

Any and all charges, fees and additional costs arising from failure to provide such documents or from incorrect information shall be borne in full by the CO.

**6.5 Test documentation:**

Insofar as this is necessary in connection with the transaction, the written test documentation to be provided by the CO, free of charge, shall consist, in particular, of quality control reports, test reports, etc. as well as scheduling plans and progress reports.

**6.6 Assembly documentation:**

Documents to enable proper and economic assembly shall be provided by the CO free of charge and in writing in accordance with the schedule and the actual delivery process.

**6.7 CE marking:**

If the affixing of the CE marking and/or proof of conformity is prescribed or permitted for the supplies / services, the CO shall be obliged to affix the CE marking and to provide the PR with the necessary proof of conformity in the language prescribed for the documentation, free of charge.

## **7 ACCOMPANYING CONTROL**

**7.1 Inspections:**

The CO shall grant the PR and the EC the right to inspect the activities associated with the execution of the purchase order / order, at any time or to have them inspected by commissioned third parties (for costs, see Art. 7.3). This includes the checking of planning, production with regard to quality and deadlines, sampling, packaging with regard to quality and conformity of the packing lists with the contents of the packages, loading inspections, etc. For this purpose, the CO shall grant the PR and the EC access to the relevant work rooms and documents at the CO and their subcontractors and shall keep the PR constantly informed about the actual progress of the deadline and announce foreseeable deadline postponements.

The CO shall be obliged to carry out a complete inspection itself prior to the technical inspection by the inspection team (of the PR and/or EC) and to submit detailed inspection results (inspection report, measurement records, etc.) to the PR for the final inspection and to participate in this at the PR's request. For the performance of the tests, the CO shall provide, at their own expense, auxiliary services, materials, labour, interpreters, energy, suitable testing equipment, testing means, skilled and unskilled labour for e.g. also restacking, opening / closing of the boxes, etc., for proper and effective testing.

The CO shall be obliged to present the plants / plant components etc. for inspection in an easily accessible, accident-proof manner on all sides or, unless otherwise stipulated, in an unpainted and pre-assembled state.

The performance of an inspection or a waiver of an inspection on the part of the PR must not limit the obligations of the CO and must, in particular, not constitute a waiver by the PR of any rights to which they are entitled, such as contractual penalties, damages, claims under warranty / guarantee, etc., even if no reservation is made in this respect. Subject to the provision of Art. 11.2, the CO shall immediately remedy any defects discovered in the course of the inspections at their own expense.

## 7.2 Documentation:

The CO shall provide the prescribed test documentation for the tests, and the packing lists in the case of packaging tests. Incomplete / incorrect test documentation may lead to repeat tests.

The test documentation shall be presented to the inspector / inspection team of the PR and/or EC during the inspection and handed over in the required number or sent within an agreed period. In the event of a waiver of testing (by the PR / EC), the test documentation shall be submitted to the PR in writing immediately or as agreed, but not later than before delivery of the plant / plant components.

The test documentation shall be prepared by the CO separately according to item numbers in a clear, informative form with table of contents etc. in portfolios / folders.

## 7.3 Costs:

The CO or the PR / EC shall each bear the costs for their own personnel or inspection team.

If a (positive) inspection does not initially take place for reasons attributable to the CO, all costs resulting from a renewed inspection shall be borne exclusively by the CO.

## 8 SHIPPING

### 8.1 Shipping terms:

The CO undertakes to comply with the shipping terms specified in the purchase order / order.

The PR reserves the right to adapt the shipping terms to the respective current requirements during the construction of the overall plant. Additional costs arising from non-compliance with the shipping terms, e.g. special transports (air freight) with corresponding packaging requirements, shall be borne by the CO to the extent of the additional costs actually incurred, but at least EUR 1,000.00 per individual case of non-compliance with the shipping terms.

### 8.2 Export clearance:

If "export cleared" has been agreed in the pricing, the CO shall carry out the customs treatment with its own documents and bear all associated costs and duties.

## 9 DATES

### 9.1 Delivery date:

The respective date of the PR's receipt stamp or the PR's confirmation of acceptance shall be deemed to be the date of delivery for the documentation (Art. 6, Art. 7.2), if it has been submitted completely and correctly in the sense of the purchase order / order.

For supplies and services, the date of delivery shall be the date of complete and defect-free performance of the respective CO's obligations according to the purchase order / order, including the complete and correct documentation according to Art 6. and 7.2.

### 9.2 Default:

If the CO recognises that they will not be able to meet the agreed deadlines and dates, they shall be obliged to inform the PR in writing without delay, by stating the reasons and the expected duration of the delay.

In the event that the purchase order / order results in timeline-related conditions for the PR, the CO shall be obliged to urgently request these demonstrably and in good time. In case of failure to do so, the CO may not invoke delayed provision by the PR in the event of delays in its supplies and services. Should it be impossible for the CO to meet the deadline despite the urgent request, due to the PR's delayed supplies / services, the agreed dates and deadlines shall be postponed by a maximum of the period of the delay attributable to the PR, without additional costs for the PR. The new dates subject to a contractual penalty (Art. 10.1) shall be the original dates extended by this delay.

In all cases of imminent or actual delays, the CO shall be obliged, irrespective of their cause, to organise their performance of the order in such a flexible manner and to take all reasonable steps to minimise delays.

**9.3 Storage:**

Should the delivery / performance dates agreed in the purchase order / order change for reasons beyond the control of or not attributable to the CO, the CO agrees to provide proper storage for up to 3 months at the expense and risk of the CO for the PR.

In the case of storage, total or partial deliveries are only permitted after written release for dispatch by the PR.

**9.4 Premature fulfilment:**

Supplies / services made before the due date shall only be permitted with the prior written consent of the PR and shall not give rise to an early claim to payment.

**10 LIABILITY OF THE CONTRACTOR**

**10.1 Contractual penalties for late delivery and defective delivery / performance:**

If the CO fails to comply with the deadlines, interim or final dates or delivery dates (Art. 9.1) agreed in the purchase order / order or does not fulfil them in the stipulated manner (Sec. 918 of the ABGB), they shall bear the following contractual penalty, calculated in each case from the total order value, until the actual supply / service or until the purchase order / order has been fulfilled in accordance with the contract. The contractual penalties may also be deducted from the CO's current invoices or claims, as the case may be.

- Supplies and services  
1 % per week of delay or part thereof, up to a maximum of 10 % of the total order value;
- Documentation according to Art. 6. and/or Art. 7.2  
0.5 % per week of delay or part thereof, maximum 5 % of the total order value.

The obligation to pay a contractual penalty for delay shall arise for the CO upon the occurrence of the delay. Reservations on the part of the PR upon acceptance of the supplies / receipt of the service are not necessary to preserve the claim to a contractual penalty. The payment of contractual penalties shall not release the CO from their performance obligations and resulting liabilities.

**10.2 Non-compliance with warranted characteristics:**

Even if the purchase order / order provides for contractual penalties for defects, warranted characteristics or guarantees not achieved (e.g. performance penalties), the CO will not be released from their obligation that their supplies and services shall comply with the purchase order / order, in particular with the intended use. The CO guarantees this within the meaning of Art. 11.

**10.3 Liability for documentation:**

The CO declares that they are aware of the particular importance of complying with their obligations in connection with documentation and that they are therefore liable for the consequences of any delays and defects in connection with the documentation and guarantees compliance with the provisions of Art. 6 and Art. 7.2.

**10.4 Expert liability:**

With regard to engineering services, consulting activities and documentation, etc., the CO guarantees their correctness and completeness and vouches for them as an expert within the meaning of Sec. 1299 of the ABGB.

#### 10.5 Product liability:

If a claim is made against the PR on the grounds of violation of official safety regulations or on the basis of domestic or foreign product liability regulations or laws, and if this claim is attributable to defective products supplied by the CO, the CO shall compensate the PR, in full, for any and all resulting damages and shall otherwise fully indemnify and hold the PR completely harmless.

The CO undertakes to take out sufficient insurance against all risks arising from product liability and to submit the insurance policy to the PR on request.

The conclusion of this insurance shall in no way limit the obligations and liability of the CO under Art. 10, even if the PR raises no objection to the insurance policy submitted.

### 11 GUARANTEE

#### 11.1 General:

In addition to the properties expressly specified or otherwise promised or generally to be assumed, the CO guarantees the completeness and suitability of their supplies and services for the specific requirement, in particular also the suitability of the supplies and services for the operating conditions prevailing at the place of use in continuous operation as part of the overall plant, compliance with all standards and official regulations applicable at the place of use (in particular with regard to safety and environmental protection), undisturbed availability in compliance with the performance and consumption values, ease of assembly, maintenance and repair as well as execution in accordance with the recognised rules and the respective current state of the art.

#### 11.2 Guarantee period, remedy of defects:

The guarantee period shall end 24 months after acceptance of the complete plant established by the PR at the EC.

The guarantee period will be extended by the period of shutdowns of the entire plant due to defects. In the event of replacement or repair of a part, a new guarantee period of the same duration as for the initial delivery shall commence upon installation of the new part or completion of the repair.

The CO waives the objection of delayed notification of defects.

An inspection obligation of the PR with regard to the supplies and services of the CO prior to the scheduled function and performance tests shall be excluded.

**Any defects occurring before or during the guarantee period, including serial defects, even if the defect has not yet actually occurred in all supplies / services, shall be remedied by the CO at the place of use of their supplies within the shortest possible period by replacement or repair, at the option of the PR. All necessary services and ancillary costs, such as transport, customs duties, dismantling and assembly, etc. shall be provided or borne by the CO.**

**In the case of minor defects (in a scale up to EUR 10,000 per individual case) or in the case of defects whose rectification cannot be postponed, in particular in time-critical phases (e.g. trial operation), the PR shall be entitled to rectify them immediately or have them rectified at the risk and expense of the CO without informing the CO in advance, whereby other claims of the PR shall remain unaffected thereby. This shall also apply if the CO fails to remedy the defects on time despite being requested to do so.**

#### 11.3 Spare parts:

The CO guarantees that the spare parts, wear parts and operating replacement parts offered as necessary and selected by mutual agreement will be absolutely sufficient for the period from commissioning and a continuous operation of 2 years, unless otherwise agreed. Otherwise, the CO shall make the corresponding subsequent deliveries "Delivered Duty Paid, (DDP)" to the destination named by the PR (usually the construction site) packed and free of charge in accordance with the **INCOTERMS 2020**. The guarantee period ends 24 months after the installation and commissioning of these parts. The CO guarantees the availability of spare parts, wear parts and operating replacement parts or – if such are not available – so-called "compatible replacements" for the delivery item ~~until~~ 10 years after expiry of the guarantee period (Art. 11.3).

#### 11.4 Irrespective of the aforementioned guarantee provisions, the CO shall be liable for defects in the supplies and services provided by them in accordance with the statutory warranty provisions (Sections 922 et seq. of the

ABGB). In order to assert defects and damage attributable to the CO, the PR may assign to the EC their warranty and guarantee claims to which they are entitled against the CO.

## **12 ACCEPTANCE**

### **12.1 Performance test:**

In principle, the contractual conformity of the supplies / services will be verified during the performance test of the entire plant. However, the PR will be entitled to carry out additional special tests to check the supplies / services. The CO shall cooperate in the performance tests or special tests to the extent specified by the PR.

### **12.2 Delay in acceptance by the CO:**

If a performance test is unsuccessful or acceptance by the EC or by third parties commissioned by the EC does not take place due to other defects, the PR shall grant the CO a reasonable period of time, depending on the context of the overall plant, to make subsequent improvements. Any expenses incurred by the PR in terms of personnel, material, equipment, etc. caused by the CO as a result of unsuccessful performance tests shall be borne in full by the CO.

If the acceptance does not take place within a reasonable period of time for reasons attributable to the CO, the PR may claim the contractual penalties agreed in the purchase order / order as well as in these General Terms and Conditions and/or damages due to the delay or demand a price reduction or withdraw from the contract by setting a reasonable period of time for subsequent performance (Sec. 918 of the ABGB).

## **13 RIGHTS TO THE SUBJECT MATTER OF THE CONTRACT**

### **13.1 Third party rights:**

The CO undertakes to ensure and guarantees that the use of the CO's supplies and services will not be impaired in any way by the assertion of third party rights (trademarks, designs, patents, territorial protection, etc.) or that existing boycott clauses, blacklists, etc. will not be violated. The CO shall inform the PR, without delay, of any infringement of third-party rights or of boycotts, blacklists, etc. that become apparent at a later date.

Should such impairments or infringements of rights be alleged, the CO undertakes to fully indemnify and hold harmless the PR and/or the EC without limitation against claims of third parties and to guarantee the PR and/or the EC the unrestricted use of the CO's supplies and services or to secure other alternatives acceptable to the PR and/or the EC free of charge for the PR and the EC.

### **13.2 Duty of secrecy**

The CO must not disclose to third parties the content of the purchase order / order, the transaction and all information received, directly or indirectly, from the PR or the EC and all information to be provided by the CO based thereon without the written consent of the PR, nor may they publish such information or use it for advertising or other purposes. In particular, the CO shall keep in secret the execution documents and the documentation provided by the PR (Articles 6. and 7.2) and shall use them exclusively for the execution of the respective purchase order / order. Persons who gain knowledge of information and documents in connection with the purchase order / order or the transaction shall be subject to a corresponding duty of secrecy. The CO shall, in particular, also impose this obligation, in writing, on its employees and other staff and shall prove this to the PR (or the EC) upon request. In the event of a violation of this duty of secrecy, the CO shall be obliged to fully indemnify and hold harmless the PR (and the EC) also against claims of third parties.

### **13.3 Copyright:**

The ownership and exclusive right of use of the drawings, information and know-how provided by the PR to the CO shall remain with the PR. The CO acknowledges that these are protected by copyright exclusively for the

PR and that the CO may only use them for the purpose of providing the supplies and services within the scope of the purchase order / order.

#### **13.4 Inventions**

The CO shall be obliged to notify the PR of any inventions (further / new developments, improvements, etc.) made by them or their employees in connection with the execution of the order using the information provided by the PR and, at the PR's request, to claim or obtain protection for these inventions in accordance with the relevant statutory provisions (e.g. the relevant patent law). The CO shall unconditionally and finally transfer the invention claimed with all rights and obligations to the PR against reimbursement of the remuneration granted to the inventor and the costs for obtaining an industrial property right – to the extent permitted by law – so that the PR acquires the full right or exclusive right of use thereto.

The claiming of the invention, the application for the industrial property right and the determination of the remuneration to which the inventor is entitled under the law shall be carried out by the CO in agreement with the PR, whereby the CO shall create the necessary conditions for this.

The CO shall ensure that their subcontractors assume a similar obligation in favour of the PR. In this respect, they are liable for the conduct of their subcontractors as for their own (Sec. 1313a of the ABGB).

#### **13.5 Subsequent commissioning / follow-up orders (non-competition clause):**

In order to protect the know-how of the PR acquired by the CO in connection with the purchase order / order and to ensure optimum operation of the overall plant even after expiry of the warranty / guarantee, the CO shall grant the PR corresponding customer protection for any subsequent orders placed by the EC for the overall plant supplied by the PR for a period of 10 years from acceptance of the overall plant, insofar as this is permissible under EU competition law. The CO undertakes, in particular, not to make any direct or indirect offers to the EC (in particular for spare parts and wearing parts) without the prior consent of the PR as a distribution partner.

### **14 FORCE MAJEURE**

The CO shall be released from the timely performance of the contract, in whole or in part, if they are prevented from doing so by events of force majeure.

Events of force majeure are deemed to be, in particular, fire, forces of nature, war and riot.

However, the CO hindered by an event of force majeure may only invoke the existence of force majeure if they provide the PR with a registered letter containing the statement on the beginning and foreseeable end of the hindrance, confirmed by the respective competent government authority or chamber of commerce of the country of supply / service, stating the cause, the expected effect and duration of the delay, immediately, but no later than within 5 calendar days from the occurrence of the event.

In cases of force majeure, the CO shall make every effort to eliminate or reduce the difficulties and foreseeable damage and shall keep the PR informed thereof.

Dates and deadlines that cannot be met due to the effects of force majeure shall be extended by the duration of the effects of the force majeure.

Should a case of force majeure last longer than 4 weeks, the PR may withdraw from the contract, in whole or in part, setting a reasonable grace period (Sec. 918 of the ABGB).

The PR shall not be liable to the CO for the consequences of impairments to the performance of the contract caused by force majeure.

## **15 WITHDRAWAL and CANCELLATION OF THE CONTRACT**

### **15.1 Breach of contract:**

In the event of a breach of contract by the CO (if the contract has not been fulfilled at the appropriate time, at the appropriate place or in the agreed manner), the PR may withdraw from the entire contract; in whole or in part, after having set a reasonable period of grace (as a rule 14 days).

The PR may also withdraw from the contract without setting a grace period,

- if, following a reminder by the PR, the CO has in fact had a reasonable period of grace, even if without expressly setting a period of grace or threatening to withdraw from the contract; or
- if the PR already had reason to assume prior to the respective contract date that the CO is not willing or able to fulfil essential contractual obligations on time or will not be able to do so.

In such cases, the PR shall be entitled to carry out or have carried out the omitted or insufficiently performed supplies and services themselves or by third parties at the expense of the CO (substitute performance). The costs incurred in this connection may be invoiced directly to the CO by the PR, whereby a payment period of 45 days after invoicing shall be deemed agreed.

The CO shall repay any amounts already paid by the PR for supplies and services not yet performed plus the financing costs incurred by the PR.

If the exercise of the right to substitute performance requires access to equipment or materials etc. located at the CO or their sub-suppliers, the CO shall be obliged to surrender them to the PR.

If the exercise of the right to substitute performance requires access to property rights, to documentation (such as e.g. workshop drawings, calculations) or other information, the CO shall be obliged to obtain the rights, documentation, information required for this purpose for the PR.

Right of use:

In the event of withdrawal from the contract, the PR shall be entitled to use, free of charge for the PR and/or the EC, the supplies / services already performed in accordance with the purchase order / order until the acceptance of a replacement solution by the PR and/or the EC.

### **15.2 Creditworthiness of the CO:**

In the event that insolvency proceedings are threatened or initiated against the CO or their suppliers or in the event of a change in the CO's ownership structure, the PR shall be informed thereof immediately and in full by the CO, in writing.

If an application for the initiation of insolvency proceedings is filed against the CO or in the event of a change in the CO's ownership, the PR may immediately withdraw from the contract, in whole or in part.

### **15.3 Cancellation of the contract:**

The PR has the right to cancel the contract, in whole or in part, even without any fault on the part of the CO. In such a case, the PR shall be obliged to pay to the CO the contract price in proportion to the supplies and services already handed over and also to reimburse the proven direct costs of supplies and services in progress or of the cancellation of subcontracts. After declaration of cancellation of the contract, the CO shall be obliged to make every effort to keep the costs to be reimbursed by the PR as low as possible.

### **15.4 Suspension:**

The PR has the right to demand that the CO interrupts the further execution of the order at any time. In such a case, the CO shall explain the consequences to the PR, in detail, and offer the PR the economically best possible change to the schedule in the context of the project. The PR will not make any claims from suspensions of up to a maximum of 3 months.



## **16 MISCELLANEOUS PROVISIONS**

### **16.1 Transfer of risk:**

The provisions of INCOTERMS 2020 shall apply to the transfer of risk. If assembly of the supplies is included in the CO's scope of delivery, the risk shall pass upon acceptance (Art. 12.2).

### **16.2 Transfer of ownership:**

The transfer of ownership to the PR shall generally take place simultaneously with the transfer of risk.

### **16.3 Assembly devices:**

Assembly devices, commissioning parts, etc. which are only intended for temporary use on the construction site shall remain the property and in the sphere of risk of the CO. The CO shall ensure that no costs are incurred by the PR, in particular in connection with their import and export.

In all other respects, the respective assembly conditions of the PR and/or EC shall apply to activities on the construction site and shall be complied with by the CO.

### **16.4 Insurances:**

Unless special agreements have been made, it shall be the CO's responsibility to take out the appropriate and necessary insurances in sufficient amounts. The insurance policies concluded by the CO must contain a waiver of recourse in favour of the PR and the EC. The CO shall prove this to the PR upon request.

### **16.5 Power of attorney:**

Persons who make declarations on behalf of the CO vis-à-vis the PR shall be deemed to be unrestrictedly authorised to do so (vicarious agents pursuant to Sec. 1313a of the ABGB). The power of attorney shall be evidenced in writing at the request of the PR.

### **16.6 Liability towards the CO:**

The PR shall not be liable to the CO (and their vicarious agents) for damage caused by the EC or third parties.

### **16.7 Third party claims:**

The CO shall fully indemnify and hold harmless the PR and EC against all claims of third parties in connection with defects or non-contractual performance of its supplies and services.

### **16.8 Assignment:**

Any assignment of the CO's rights is only permitted with the prior written consent of the PR.

### **16.9 Changes in performance:**

The CO undertakes to notify the PR immediately, in writing, of any improvement options for the subject matter of the contract (supply or service) of which they become aware and to offer them. However, changes may only be made on the basis of a supplementary order / a subsequent order on the part of the PR.

### **16.10 Liens / Retention Rights:**

The acquisition of liens, rights of retention or other securities on the parts provided by the PR as well as on the supplies / services or parts thereof shall be excluded.

The CO shall ensure and guarantee that a provision to this effect is included in all contracts with their subcontractors.



**16.11 Corporate reorganisation:**

The CO shall immediately inform the PR, in writing, of the initiation, cancellation or discontinuation of corporate reorganisation proceedings pursuant to the *Unternehmensreorganisationsgesetz* [Austrian Corporate Reorganisation Act] and shall report to the PR on the status of the reorganisation on a monthly basis during the reorganisation period.

**16.12 Severability:**

Should individual provisions of these General Terms and Conditions be invalid, ineffective, unlawful or unenforceable, the remaining provisions shall remain in full force and effect. In such a case, the CO and the PR shall be obliged to replace the invalid, ineffective, unlawful or unenforceable provision by mutual agreement with a provision that comes as close as possible to the economic purpose of this provision in a legally permissible manner. This applies, mutatis mutandis, in the event that there is a regulatory gap.

**17 LAW AND PLACE OF JURISDICTION**

**17.1 For purchase orders / orders to COs having their registered office outside the territory of the Republic of Austria:**

All disputes arising out of this purchase order / order or relating to their making, violation, cancellation or nullity and which cannot be settled by mutual agreement shall, subject to Art. 17.3, be finally settled in accordance with the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber, Vienna, by one or more arbitrators appointed in accordance with these Rules. Austrian substantive law shall apply exclusively, to the exclusion of the UN Convention on Contracts for the International Sale of Goods of 1980. The language of arbitration shall exclusively be the German language. The registered place of the arbitral tribunal shall be Vienna, Austria.

**17.2 For purchase orders / orders to COs who have their registered office in the territory of the Republic of Austria:**

All disputes arising out of this purchase order / order or relating to their making, violation, cancellation or nullity and which cannot be settled by mutual agreement shall, subject to Art. 17.3, be finally settled in accordance with the Rules of Arbitration for the Permanent Court of Arbitration of the Chamber of Commerce at the registered office of the PR by a court of arbitration appointed in accordance with these Rules. Austrian substantive law shall apply exclusively, to the exclusion of the UN Convention on Contracts for the International Sale of Goods of 1980. The language of arbitration shall exclusively be the German language.

**17.3 Legal Recourse**

In both cases mentioned above (Art. 17.1 and 17.2), the PR reserves the right to assert claims against the CO in the ordinary course of law before the court having jurisdiction for the PR in accordance with Austrian substantive law (excluding the UN Convention on Contracts for the International Sale of Goods of 1980) instead of through arbitration.

For the PR

For the CO

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