

# **General Terms and Conditions of Assembly:**

## **1. GENERAL, SUBJECT MATTER OF THE CONTRACT**

- 1.1 Between the Customer and the Contractor, the General Terms and Conditions of Assembly shall apply, unconditionally and in their entirety, to any and all performance effected by the Contractor for the Customer or for the Customer's customer and/or client. Under this contract, the Contractor as a subcontractor of the Customer shall perform the work and provide the services covered by this contract. Moreover, the Contractor shall meet any and all obligations relating to its system/product and any obligations relating to the place of performance/property until the date of acceptance.
- 1.2 The subject matter of this contract shall be any and all performance required for delivering a functional, turnkey, complete state-of-the-art system/product that meets high visual demands and is ready for approval.

## **2. SUBCONTRACTOR'S DECLARATION**

- 2.1 The Contractor hereby irrevocably declares that in its capacity as a subcontractor (or in whatever legal position assumed after entering into this contract) it acknowledges the content of the main contract as well as all contractual provisions pertaining thereto, including without limitation the legal provisions of the contract and warranty regulations, and irrevocably declares to be bound by such provisions and regulations to the same extent as they are applicable to the Customer.
- 2.2 It is understood that quantities, other products delivered and services provided, or any additional cost claims, will only be settled to the extent recognized by the Main Customer and payments will only be passed on to the extent effected by the Main Customer.
- 2.3 The Customer shall collect claims for compensation for work from the Main Customer and shall take any measures required to collect such claims at reasonable expense. If part payment is made, such payment shall be prorated among all subcontractors and the Customer according to the respective contract value, taking into account the collection expenses. If the amount retained by the Main Customer can be allocated to performance effected by individual subcontractors or by the Customer, such subcontractors and/or the Customer shall be excluded from the proration of payment to the extent of the retained amount attributable to them.
- 2.4 No later than on the date performance commences, the Contractor shall provide proof that it is included in the Overall List of Companies Relieving from Liability (*Gesamtliste der haftungsfreistellenden Unternehmen, (HFU-Gesamtliste)*) within the meaning of § 67b of the Austrian Federal General Social Security Act (*Bundesgesetz über die Allgemeine Sozialversicherung, ASVG*). If such proof is not provided, the Customer shall be entitled to transfer 20% of the Contractor's compensation of work (liability amount pursuant to § 67a of the Austrian Federal General Social Security Act) to the Service Centre with a discharge of liability *vis-à-vis* the

Contractor within the meaning of § 67a of the Austrian Federal General Social Security Act.

## **3. BASIS OF THE CONTRACT**

- 3.1 At all events, the Contractor shall be obligated to comply with any and all legal and/or regulatory provisions. In the event of any adaptation being required as a result of amendments of legal and/or regulatory provisions, such adaptation shall be performed by the Contractor and will be deemed to be covered by the agreed prices.
- 3.2 Any terms of delivery, general terms and conditions of business and terms of payment that diverge from these General Terms and Conditions of Assembly and that are separately and/or additionally asserted by the Contractor shall not form an integral part of the contract.

## **4. SIDE AGREEMENTS/AMENDMENTS TO THE CONTRACT**

- 4.1 Any side agreements to the contract as well as any amendments thereto must be in writing and signed by the parties hereto. This requirement of the written form may only be waived in writing.

## **5. CONTINUATION OF PERFORMANCE**

- 5.1 Disputes concerning performance shall not entitle the Contractor to discontinue or limit the performance incumbent upon the Contractor or to withhold information or performance due under the contract.

## **6. DOCUMENTS AND DRAWINGS**

- 6.1 The Contractor shall provably request the Customer in writing, in sufficient time to allow the Customer to make preparations, to submit the construction documents and calculations to be made available by the Customer. In the event of the Contractor failing to request any documents in due time or to prove such request, any resulting delays shall be borne by the Contractor.
- 6.2 The Contractor shall submit the required construction documents taking into account a stage of review and approval by the Customer of reasonable duration and shall incorporate any subsequent corrections within two weeks from the date the result of such review is made available. The said documents shall be provided without any separate remuneration.

## **7. OBLIGATION OF SECRECY, DATA PROTECTION**

- 7.1 In accordance with its legal obligation of secrecy, the Contractor shall keep secret any knowledge obtained in connection with performing this contract unless the Customer releases the Contractor in writing of such obligation in a particular case.

## **8. RESCISSION OF THE CONTRACT/WITHDRAWAL FROM THE CONTRACT**

- 8.1 In the event of the contract between the Main Customer and the Customer being rescinded through no fault of the Customer, this contract shall also be rescinded with immediate effect, and no claims against the Customer for compensation for the canceled scope of performance shall arise therefrom for the Contractor.

- 8.2 In the event of the contract between the Main Customer and the Customer being rescinded for reasons within the control of the Contractor, the Contractor shall fully indemnify and hold the Customer harmless from any costs and losses incurred, including lost profit.
- 8.3 The Customer shall be entitled to withdraw from the contract with immediate effect in the event of circumstances within the control of the Contractor which obviously prevent performance from being duly effected; in the event of performance already effected being lost; in the event of the Contractor failing to meet other material obligations under the contract, or in the event of interim or completion dates being expected to be exceeded, or in the event of work not being properly performed or not being performed on schedule in any other way.
- 8.4 The Customer's right to withdraw from the contract shall expire no earlier than 90 calendar days from the time the Customer obtains knowledge of the existence of facts entitling the Customer to withdraw from the contract.
- 8.5 In the event of a withdrawal ascribable to the Contractor, only such performance rendered in accordance with the Agreement as is completed and can actually be utilized by the Client shall be taken over by the Client and billed to and paid by the latter. The Contractor shall not be entitled to any compensation in excess thereof, including without limitation compensation for performance not effected.
- 9. DATES AND DEADLINES**
- 9.1 A penalty will be imposed if any interim deadlines or the final deadline are/is not met or are/is exceeded.
- 9.2 Moreover, a penalty will be imposed if any dates that are binding upon the Customer under the main contract and that relate to the system covered hereby are not met or are exceeded.
- 9.3 The Customer shall be entitled to demand that the production process be changed and that any work the Customer may deem urgent in view of the progress of overall work be performed ahead of schedule. Such changes in schedule shall not give rise to any claims on the part of the Contractor.
- 9.4 Acceleration measures shall not be paid unless the Contractor can prove that such measures were ordered by the Customer in writing in advance.
- 10. SUBCONTRACTORS**
- 10.1 The Contractor shall request the prior written consent of the Customer to subcontract part of the Contractor's work. Subcontracting complete systems shall not be permissible.
- 10.2 In the event of the Contractor employing any subcontractors without the approval of the Customer, the Contractor agrees to pay a penalty in the amount of 10% of the price pursuant to civil law plus VAT.
- 10.3 The Contractor unilaterally and irrevocably offers the Customer to assign any existing and future subcontracts and/or any and all warranty/damage claims under subcontracts to the Customer. The Customer shall be entitled to take over existing contracts with subcontractors in place of the Contractor in the event of the Contractor becoming bankrupt, delaying performance or effecting defective

performance. In the event of the Customer taking over a subcontract, the Contractor's remuneration shall be reduced by the amount of the performance no longer to be effected.

**11. OBLIGATION TO VERIFY AND WARN**

- 11.1 Prior to the commencement of work, the Contractor shall satisfy itself that it can perform such work without any damage or defects.
- 11.2 The Contractor shall be under full obligation to verify and warn and shall, without delay, notify the Customer in writing of any objections to the intended workmanship and shall provide information and make suggestions for remedying or improvement.
- 11.3 The Contractor undertakes to ensure that its performance is effected in accordance with valid, correct and state-of-the-art documents.

**12. SPECIAL REQUESTS**

- 12.1 Direct orders placed by the Main Customer with the Contractor (special requests) shall not be accepted or executed except with the prior written consent of the Customer.

**13. CONTRACT ADAPTATION**

- 13.1 The Customer shall be entitled to modify the type and scope of the obligations owed by the Contractor and the circumstances of the rendering of the Contractor's performance and/or to request additional performance. The Contractor shall be obligated to effect such modified and/or additional performance.
- 13.2 In the event of any changes in performance ordered by the Customer or performance being otherwise interfered with (impediment), the Contractor shall provably file, and state the merits of, its claim for adaptation of the performance period and/or of the remuneration with the Customer in writing, irrespective of whether or not the claim is obvious, and shall do so within no more than seven calendar days but at any rate prior to the date additional costs are incurred and/or the production time is extended. In the event of the Contractor failing to file its claim, such claim shall be forfeited, however, with respect to the remuneration, only for the additional costs resulting from change in or interference with performance (impediment).
- Moreover, the Contractor shall assert its claims in terms of amount in writing prior to the commencement of any changed and/or additional performance, enclosing an additional quotation, providing a full statement of reasons, failing which the Contractor shall forfeit its claims.
- 13.3 The Contractor shall be obligated to perform continuous cost control. In the event of the contract value being likely to be exceeded by 10%, the Contractor shall provably give notice in writing, without delay, but at any rate prior to the commencement of the performance resulting in exceeding the contract value. In the event of the Contractor being late in giving notice or failing to give notice, the Contractor shall forfeit any claim to payment of additional performance with respect to the exceeding of the contract value.

- 13.4 Furthermore, the Contractor shall be obligated to notify the Customer of any increases in quantity, supplementary and additional performance, on the merits and in terms of amount, failing which the Contractor shall forfeit its claims.
- 13.5 In the event of the contract value not being reached or performance being reduced or canceled as a whole or in part, there shall be no compensation for loss (whether based on sec. 1155 and/or sec. 1168 of the Austrian General Civil Code (*ABGB*) or on the law on damage compensation).
- 14. PRICES, REMUNERATION FOR PERFORMANCE**
- 14.1 Any and all prices offered shall be fixed prices for the construction period (including any extension of the time for completion of construction by no more than 24 months for any reason whatsoever) and shall not be subject to any increase in wages and/or material prices.
- 14.2 The agreed contract value shall be a guaranteed maximum price as defined by sec. 1170a of the Austrian General Civil Code.
- 14.3 Prior to order acceptance, the Contractor shall have checked the quantities specified in the bill of quantities and shall recognize such quantities as being binding. Any calculation errors or miscalculation or other errors in price calculation that are subsequently detected shall not lead to price increases.
- 14.4 The agreed prices (unit prices, force-account rates, lump-sum prices) shall include any and all ancillary performance required to appropriately produce the specified work or workpieces and make such work or workpieces fully usable, free from any defects, in accordance with the schedule, the contract, any and all regulatory requirements and conditions and relevant standards and generally accepted engineering rules, irrespective of whether or not any necessary details are mentioned in the bill of quantities or in the main contract, which, however are technically required due to the circumstances, foreseeable or customary.
- 15. FORCE-ACCOUNT WORK**
- 15.1 Force-account work shall not be commenced until mutually agreed with the Customer and shall not be performed unless ordered in writing by the Customer.
- 16. PENALTY**
- 16.1 In the event of any agreed dates and deadlines not being met, the Customer shall be entitled to claim payment of a no-fault penalty in the amount of 0.4% of the price under civil law plus VAT for each day of delay or part thereof. The Customer shall not be required to furnish proof of damage.
- 16.2 In the event of the dates specified in the time schedule being adjusted for any reason whatsoever, exceeding of the new dates shall be subject to the penalty imposed for exceeding the original dates.
- 16.3 The Customer shall be entitled to assert damage claims (including pecuniary or other consequential damage) against the Contractor over and above the amount of the penalty.
- 16.4 The Contractor's failure to claim the penalty, even over an extended period of time, shall not constitute waiver thereof.
- 16.5 In the event of performance being delayed in whole or in part, the Customer shall be entitled to effect substitute performance at the Contractor's expense, without further notice and without inviting competing bids.
- 17. ACCOUNTING**
- 17.1 Any and all invoices shall meet the statutory requirements and shall be issued in the form of a single hard copy addressed to the registered office of the Customer, failing which no due dates or deadlines are triggered.
- 17.2 The final invoice shall not be issued until formal acceptance has taken place.
- 18. PAYMENT**
- 18.1 Invoices on account, force-account invoices and damage accounts shall become due for payment 30 calendar days after the expiration of the verification period of 14 calendar days commencing on the proven date of receipt of the invoice.
- 18.2 Final invoices shall become due for payment 60 calendar days after the expiration of the verification period of 30 calendar days commencing on the proven date of receipt of the invoice.
- 18.3 At all events, the term of payment shall not commence until the date the verifiable original invoice with enclosures is received by the Customer's invoice receipt department. From December 24 through January 6, the running of verification periods and terms of payment shall be suspended.
- 18.4 Provided payment order is placed no later than 14 calendar days prior to the expiration of the respective due date, a cash discount in the amount of 3% of the invoice amount shall be allowed. The cash discount agreement shall also apply to any partial payment, and the entitlement to claim a cash discount shall be effective irrespective of whether or not other payments are made beyond the discount period.
- 18.5 In the event of the Customer defaulting on payment, it is understood that the Customer shall pay default interest in the amount of 4 percentage points.
- 18.6 Issuing a final or partial final invoice shall preclude any subsequent claims with respect to performance effected by the Contractor, except where a reservation is stated in the final or partial final invoice.
- 19. ACCEPTANCE**
- 19.1 The Customer shall accept the Contractor's performance exclusively by formal acceptance. Implied acceptance shall be excluded. In particular, the use of performance effected, or of part(s) thereof, will not be deemed acceptance.
- 19.2 At the date of acceptance, an acceptance report shall be prepared in which any and all defects and any performance not effected shall be specified and which shall state whether performance was completed within the agreed periods of time. The Contractor shall, without delay, remedy the recorded defects and/or complete any performance not effected.
- 19.3 The Customer may refuse to accept performance, irrespective of whether or not the defects recorded are minor, in which case the Contractor shall remedy such defects without delay.

- 19.4 In the event of defective performance being accepted, the Customer shall have the right to withhold the remuneration up to an amount ten times the expected costs of substitute performance until any and all defects are completely remedied. The Contractor shall not be entitled to substitute any non-cash collateral for the retention.
- 20. WARRANTY**
- 20.1 Within the scope of warranty, the Contractor shall be liable for proper and workmanlike performance as ordered and agreed in accordance with generally accepted architectural rules as applicable at the time performance is effected and according to the state of the art. Furthermore, warranty shall also fully cover obvious defects and defects that become apparent from public records.
- 20.2 The warranty period shall expire no earlier than six months from the date the warranty period provided for in the main contract expires and shall be no less than 42 months.
- 20.3 In the event of a defect being notified within the warranty period, it shall be presumed to have already existed at the time of acceptance. Defects shall be notified within the warranty period. Over and above this, there shall be no obligation as regards the notification of defects.
- 20.4 Sec. 377 and sec. 378 of the Austrian Commercial Code (*UGB*) are hereby waived by mutual agreement.
- 20.5 The Customer shall be free to choose a warranty remedy.
- 20.6 If a defect occurs in the work to be performed according to the main contract and the party responsible for such a defect cannot be identified using commercially reasonable means, the Customer shall request the parties potentially responsible to remedy the defect. If the parties potentially responsible fail to reach agreement on the remedying of the defect within 14 calendar days from the date of the Customer's request, the Customer shall be entitled to cause the defect to be remedied through substitute performance. The costs of such substitute performance shall be proportionally borne by those parties potentially responsible that are unable to prove that they are not responsible for the defect.
- 20.7 In the event of the Customer becoming liable for damages to the Main Customer or any third parties, even by way of a settlement, for any performance not properly effected by the Contractor, the Customer shall be entitled to bill such claim to the Contractor.
- 21. RISK ALLOCATION, FORCE MAJEURE**
- 21.1 Events of force majeure shall include, but not be limited to, war, governmental acts, sabotage, strikes and lockouts, natural disasters, geological changes and effects.
- 21.2 In the event of force majeure resulting in interruption of work, the Customer shall be relieved of its obligations under the contract for the duration of the said interruption of work. In the event of force majeure permanently and completely preventing performance, the Customer shall be entitled to withdraw from the contract with immediate effect.
- 22. DAMAGES**
- 22.1 The Contractor shall (also in the event of slight negligence) be fully liable for any personal injury, damage to property and pecuniary loss, including lost profit (satisfaction in full), caused by the Contractor, the Contractor's representatives, workers or any third parties employed (subcontractors, suppliers, etc.) and suffered by the Main Customer, the Customer or any third parties. Liability shall include, without limitation, damage caused by a defect, consequential damage caused by a defect and damage caused by default. Moreover, the Contractor shall be responsible for proving the absence of fault.
- 22.2 The Customer shall be liable to the Contractor for gross negligence only.
- 23. LIABILITY FOR CONSTRUCTION DAMAGE**
- 23.1 If several contractors are employed on site and damage is caused to any performance effected, whether already accepted or not, and to existing inventory while such subcontractors are working on site and the party responsible for such damage cannot be identified, the Contractor will be charged the costs of remedying such construction damage, prorated according to the ratio of its final invoice amount to the final invoice amounts of the other contractors unless such damage demonstrably is not attributable to the Contractor's fault..
- 24. COMPETITION CLAUSE AND NON-COMPETE AGREEMENT**
- 24.1 The Customer undertakes, for a period of 36 months from the date the contract is entered into, not to offer its knowledge or skills to any competitor of the Customer, not to establish a competing business and not to participate in the establishment of a competing business, except when approved in writing by the Customer.
- 24.2 In the event of the Contractor violating the said provisions, the Customer shall be entitled to impose a penalty in the amount of € 250,000 for each such violation.
- 25. INSURANCE**
- 25.1 To secure the Customer's rights to claim compensation or rights of recourse, if any, hereunder, the Contractor shall, prior to the date the contract is entered into, furnish written proof, submitting the respective documents, of having taken out and maintaining liability insurance with adequate amounts insured in respect of any and all performance to be effected and any and all duties to be performed by the Contractor and of having paid the respective insurance premiums. The amount covered shall be ten times the contract value, however, no less than €3 million, and shall be available for each claim, with no less than five years' run-off cover, and shall be maintained until the date the warranty period expires. The Customer shall be entitled to withhold any payments hereunder until the said proof has been delivered.
- 26. PRODUCT LIABILITY**
- 26.1 The Contractor represents that the product is in perfect condition, fit for the intended use without restrictions and poses no particular handling risks or risk involved in its use.

26.2 The Contractor shall not exclude or limit any claims for damages or claims under the Austrian Product Liability Act (*Produkthaftungsgesetz*).

**27. ADDITIONAL STIPULATIONS**

- 27.1 To the extent permitted by law, the Contractor hereby waives any and all rights of retention and rights to refuse performance.
- 27.2 Any reservation of title by the Contractor is hereby expressly excluded.
- 27.3 The Customer failing to enforce any of the provisions of the contract set forth hereinabove or ignoring breach of contract, if any, by the Contractor, will not be deemed a change of these terms of contract and will not curtail or nullify the legal effect of such terms.
- 27.4 The Contractor shall not be entitled to set off any claims asserted by the Contractor against any claims asserted by the Customer unless such claims have been recognized in writing by the Customer or established by court decision.
- 27.5 The Contractor hereby waives its right to avoid the contract on the ground of error or frustration of contract or on the ground of *laesio enormis*.
- 27.6 If any of the provisions hereof is or becomes invalid, in whole or in part, the validity of the remaining provisions shall not be affected thereby.
- 27.7 The court having subject-matter and local jurisdiction over the registered office of the Customer shall be the place of jurisdiction for any and all disputes directly or indirectly arising out of this contract. This contract shall be governed by and construed in accordance with the laws of Austria, to the exclusion of the UN Sales Convention.