

# General Terms and Conditions of Contract (GTC)

Status 01.02.2024

## 0 General

These General Terms and Conditions of Contract (GTC) shall apply without restriction to the contractual relationship existing between AustriaTech - Gesellschaft des Bundes für technologiepolitische Maßnahmen GmbH (hereinafter referred to as the "Contracting Authority") and the Contractor, unless expressly agreed otherwise in individual contracts.

These General Terms and Conditions are binding for all present and future business transactions with the Contractor, even if no express reference is made to them.

Any provisions deviating from or supplementing these General Terms and Conditions - in particular general terms and conditions of business or purchase of the Contractor - shall only become part of the contract if this has been expressly confirmed in writing by the Contracting Authority.

The rights and obligations of the contractual relationship between the Contracting Authority and the Contractor are set out in the following documents in the following order:

- i. the contract (or the letter of agreement);
- ii. the present GTC;
- iii. if applicable, the service description of the Contractor;
- iv. the offer of the Contractor, which is expressly referred to in the contract (or in the letter of agreement).

These GTC shall also apply without restriction to all service changes and additional services.

If contradictions arise from the listed contract components, the contract components shall apply in the descending order listed above. Excluded from this order of precedence are those contents of the offer of the Contractor that extend its performance obligations in relation to the other parts of the contract. In this respect, the offer of the Contractor shall take precedence.

## 1 Scope of services and obligations of the Contractor

The services performed by the Contractor are set out in the specific contract (or letter of agreement).

No rights and obligations arise from the offer unless they are expressly designated as binding. The contract is concluded with the placement confirmation sent by the Contractor.

Services not expressly mentioned in the contract (or the letter of agreement), in the offer of the Contractor and in the other components of the contract shall nevertheless be the subject of the contract insofar as they are necessary and expedient for the contractual provision of the services and their functionality and for achieving the performance objective.

### *The Contractor*

- a) may only accept orders that correspond to their knowledge and skills;
- b) shall carry out the work assigned to it with due care and to the best of its knowledge and shall refrain from doing anything that could harm the interests of the Contracting Authority;
- c) shall be obliged to examine all documents, records, data, information or specifications for the provision of services provided by the contracting authority without delay with due professional care, in particular with regard to feasibility, suitability for the intended purpose and completeness. If concerns arise, it shall inform the client in writing and submit alternative proposals. If it breaches its inspection and notification obligations, it shall not be entitled to raise any claims or objections against the contracting authority as a result;
- d) must comply with the statutory provisions, official regulations and the generally recognised rules of technology

- when performing the service;
- e) must provide the operating and auxiliary materials required to fulfil the order. This shall not give rise to any claims on the part of the person accepting the order against the Contracting Authority;
  - f) is not entitled to withhold or suspend its contractual services in the event of disputes;
  - g) is obliged to provide the services on the dates or within the execution periods specified in the offer. Minor additions commissioned by the Contracting Authority shall not affect the specified performance dates or execution deadlines;
  - h) shall be obliged to commence and perform the service in good time, taking into account the necessary preparation time, so that the contractually agreed performance deadlines can be met. At the request of the Contracting Authority, proof of the progress of performance must be provided;
  - i) names a contact person to the Contracting Authority immediately, but at the latest within 5 working days, after the order has been placed,
  - j) shall, as soon as it becomes aware of any circumstances that could jeopardise the contractual fulfilment of the agreed services, immediately notify the contracting authority in writing of these circumstances and any measures to be considered by it. If the Contractor fails to do so, it shall be responsible for any resulting disadvantages;
  - k) shall be obliged to provide reports and information on the progress of performance or other circumstances relevant to the fulfilment of the contract at any time at the request of the Contracting Authority in writing or - if expressly requested by the contracting authority - in writing or verbally. Written statements shall also include information provided electronically, in particular by e-mail or fax. Enquiries from the Contracting Authority must be answered appropriately within a maximum of three working days;
  - l) is obliged to ensure compliance with all labour and social law provisions applicable in Austria when providing services;
  - m) shall not dispose of the claim arising from the contract for work by assignment, instruction or pledge or in any other way. Any assignment, instruction, pledge or other disposal of claims arising from the present contract shall be ineffective vis-à-vis the client unless the latter's written consent has been obtained in advance;
  - n) shall obtain or ensure that it obtains all official authorisations or third-party consents necessary for the performance of its work at its own expense and shall indemnify and hold the client harmless in this respect;

- o) shall bear the costs and risk of providing the contractual services at the place of fulfilment; this shall also apply to the costs and risk of transport until handover at the place of fulfilment (also for sales shipments). The risk of damage and loss shall pass to the Contracting Authority upon handover of the goods;
- p) must inform the Contracting Authority without delay if it comes under a changed controlling influence as a result of the change in the ownership structure or if it intends to discontinue the business area relating to the contractual services or to transfer it to third parties or to merge it with the company of a third party. The Contracting Authority must be informed immediately of any initiation of reorganisation proceedings in accordance with the Corporate Reorganisation Act, insolvency proceedings or the rejection of a bankruptcy petition due to a lack of assets likely to be sufficient to cover the costs of the bankruptcy proceedings.

If a service that is not provided for in the contract becomes necessary in the course of its execution, the Contractor must reach agreement with the Contracting Authority on this prior to its execution. If the necessity or expediency of this service is determined by mutual agreement, the corresponding remuneration must be agreed at the same time, insofar as this is permissible under public procurement law - in particular in accordance with Section 37 (1) no. 6 BVergG 2018 as amended. If the Contractor provides a service not provided for in the contract without prior written agreement on remuneration, the Contracting Authority is not obliged to pay remuneration for this service.

Communications to the media concerning the underlying content of the contract are not permitted unless the Contracting Authority has given its prior written consent.

## **2 Intellectual Property / Rights of Use and Commercialization**

- 2.1 If the contractually agreed service or activity of the Contractor or one of its vicarious agents leads to a technical invention that is eligible for patent or utility model protection or if a semiconductor product, a design or a trademark has been developed that is eligible for protection, the Contractor shall notify the Contracting Authority immediately and - subject to the Contracting Authority's consent or order - apply for the patent, utility model, semiconductor, trademark or design protection right. The Contractor and their vicarious agents must refrain from doing anything that could be detrimental to the registration of the property right.
- 2.2 The Contractor shall transfer its right from the application or the IP right already applied for at the request of the Contracting Authority. In the event of a gross disproportion between the financial value of the right to be transferred and the contractually agreed remuneration, appropriate compensation may be agreed. Inventions that are jointly achieved by the contracting parties during the execution of the order (co-inventions) may be used and licensed by each contractor without financial compensation.
- 2.3 The Contractor shall grant the Contracting Authority an exclusive licence to use the registered property right in its entirety (unlimited in terms of time, place and content).
- 2.4 The Contractor shall grant the Contracting Authority all intellectual property rights, in particular the exclusive and transferable right to use the work, unlimited in time and content, for all types of utilisation within the meaning of Sections 14 to 18 UrhG (German Copyright Act), including the right to modify, edit and further process work results, for all services provided by the Contractor and work materials and results in connection with the provision of services. This granting of rights is covered by the service fee. The Contracting Authority is authorised to transfer these rights of use and exploitation to any universal or partial successors of the Contracting Authority without the consent of the person accepting the order. In addition, the Contracting Authority shall be entitled to transfer sub-licences to these rights of use and exploitation to third parties without the consent of the Contractor.
- 2.5 To the best of the Contractor's knowledge, no work results infringing the contractual rights of use and exploitation are currently being produced or marketed by third parties.

- 2.6 If existing industrial property rights are used by the Contractor during the execution of the order, which are necessary for the utilisation of the research and development result by the contractual partner, the Contracting Authority shall receive a non-exclusive, free-of-charge right of use to be agreed separately, insofar as this does not conflict with any other obligations of the Contractor.
- 2.7 The rights of use to the work results of third parties shall be transferred to the Contracting Authority by the Contractor to the extent licensed in each case. If these rights of use are limited in terms of time, territory, content and types of use and the transfer pursuant to the above paragraph is therefore not possible, the Contractor shall inform the Contracting Authority of this and, at the Contracting Authority's request, endeavour to obtain a corresponding unrestricted grant of rights.
- 2.8 Insofar as the Contractor commissions services to a third party or procures services from a third party, the Contractor undertakes to make appropriate agreements with this third party at its own expense so that the Contracting Authority acquires the rights to the respective work results and creations within the meaning of this product.
- 2.9 The Contracting Authority declares that it accepts the transfer of all rights. Cancellation or termination of the contract for work, for whatever reason, shall not affect the reciprocal rights and obligations under this clause.
- 2.10 The Contractor warrants that it has all the necessary rights to grant the Contracting Authority rights of use in accordance with the above paragraphs and shall indemnify and hold the Contracting Authority harmless in this respect.

### **3 Duty of confidentiality and use of data/data protection**

- 3.1. The Contractor undertakes to treat all information and documents of which it becomes aware in the course of the contractual relationship as confidential and to comply with all statutory and contractual confidentiality obligations, unless the Contracting Authority releases it from this obligation in writing in a specific case. The disclosure of information for purposes other than the fulfilment of this contract is not permitted. The Contractor must ensure that its employees and any authorised third parties comply with this obligation.
- 3.2. This confidentiality obligation does not apply to documents and information,
- for which there is a legal obligation to disclose;
  - which are demonstrably generally known or become generally known without this being the responsibility of the person accepting the order;
  - which were demonstrably and legitimately known to the Contractor before they were made accessible to them by the Contracting Authority.
- 3.3. If the Contractor wishes to involve third parties in the fulfilment of its contractual obligations, it must notify the Contracting Authority in advance, who may object to the involvement of the third party to be named within 5 working days. The Contractor shall demonstrably oblige all persons who may gain access to this confidential information on the basis of this contract to likewise comply with all confidentiality obligations imposed on the Contractor, even after the termination of the activities of these persons for the Contractor or after the end of the contractual relationship between the Contracting Authority and the Contractor. In addition, the Contractor undertakes to impose these confidentiality obligations on all other persons engaged by it for the performance of the work and to use only those employees and vicarious agents who have been expressly obliged to maintain confidentiality in writing, in the event that it uses other persons to perform the work, otherwise it shall be liable regardless of fault.
- 3.4. Data and/or documents transmitted by the Contracting Authority must be returned to the Contracting Authority after the service has been provided or destroyed immediately.

- 3.5. The obligation to maintain the confidentiality of confidential information and to keep it confidential shall continue to apply without restriction even after termination of the contractual relationship; it shall also extend to confidential information entrusted to the contractor or to third parties obliged to maintain confidentiality on the occasion of contractual negotiations or made accessible in any other way, irrespective of whether a contract is concluded.
- 3.6. The Contractor is obliged to comply with the Austrian Data Protection Act (DSG idgF) and the European General Data Protection Regulation (GDPR).
- 3.7. The Contractor agrees that all services, data and information provided to the Principal may be used by the Contracting Authority without restriction and made available to any third parties, unless otherwise agreed. In particular for the purpose of electronic data management by the Principal. The Contractor may revoke its consent at any time without giving reasons with effect for the future. The cancellation does not affect the legality of the processing carried out up to this point in time.
- 3.8. In particular, data, information and documents may be passed on to bodies and authorised representatives of the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology, the Austrian Court of Audit (in particular § 3 para. 2, § 4 para. 1 and § 13 para. 3 of the Austrian Court of Audit Act, BGBl No. 144/1948, as amended), the Federal Ministry of Finance (in particular Sections 43 to 47 of the Federal Budget Act, Federal Law Gazette No. 213/1986, as amended), the European Commission and other bodies in accordance with EU or national regulations. This can also take place within the framework of the fulfilment of the statutory duties of the contracting authority (§ 7 DSG 2000). The Contractor acknowledges that the Contracting Authority is obliged to disclose media co-operations and media funding in accordance with the Media Transparency Act, Federal Law Gazette I No. 125/2011, as amended from time to time.

## 4 Cancellation and default

- 4.1 The Contracting Authority shall be entitled to withdraw from the contract immediately; if
- a) the Contractor breaches contractual provisions arising either directly from the contract, the General Terms and Conditions or other contractual components and continues the behaviour in breach of the agreement despite a grace period of a maximum of 30 calendar days,
  - b) the Contractor is in default with the agreed performance. If the work is to be performed in parts as agreed and if the person accepting the order is only in default with a partial performance, the cancellation can only be declared with regard to individual partial performances or all partial performances still outstanding, in particular if the partial performances already performed are completely or almost worthless for the Principal. The declaration of cancellation shall be made subject to the setting of a reasonable grace period and shall only remain legally effective if the contractor has still not provided the outstanding service or partial service within this grace period,
  - c) circumstances exist that make timely fulfilment of the contract obviously impossible or lead to significant changes, unless the principal itself is responsible for them,
  - d) the Contractor concludes a subcontract without the required consent of the principal,
  - e) the Contractor directly or indirectly offers, promises or grants a pecuniary advantage to an organ of the principal that is involved in the conclusion and fulfilment of the contract or to a third party,
  - f) the Contractor itself or a person engaged by it to fulfil the contract breaches the duty of confidentiality,
  - g) the Contractor - if there are several of them, only one of them - dies or loses their personal authorisation,
  - h) there is a material breach of contract, in particular any breach of contractual obligations if the contractor does not fulfil the contractually agreed requirements and procedures in the provision of services and the missing services are not made up within a reasonable period of time after a written reminder or verbal request,
  - i) the Contractor has taken actions to cause damage to the principal, in particular if it has entered into agreements with other companies that are detrimental to the principal, contrary to common decency or the principle of competition,
  - j) if there are violations of public law regulations, for example tax law, public procurement law or labour and social law regulations in connection with the contract.
- 4.2 If the Contracting Authority declares its withdrawal from the contract in accordance with the above provisions, the Contractor shall lose any claim to remuneration, unless it has already provided a partial service that can be utilised by the Principal. Insofar as there is no entitlement to remuneration, the person accepting the order must immediately return to the Contracting Authority any payments already made plus interest in the amount of 9,2%

above the applicable base interest rate per year.

4.3 The Contracting Authority is entitled to cancel the contract at any time. If there is no reason for cancellation in accordance with the above provisions, the Contracting Authority shall, however, in this case reimburse the contractor for the proven necessary cash expenses and - with appropriate proof and comprehensible written records - pay a portion of the remuneration corresponding to the work performed to date by the contractor.

4.4 Unless otherwise stipulated in the contract, the contractor shall pay 1% of the order fee as a contractual penalty for each calendar day by which the performance deadline is exceeded (delay in performance). The contractual penalty may be offset by the Contracting Authority against outstanding remuneration payments.

4.4.1 The contractual penalty shall become due as soon as the Contractor is in default and cannot prove that it is not responsible for the default; the right to assert the contractual penalty does not require proof of damage.

4.4.2 The contractual penalty shall be calculated for the period in which the performance period is exceeded until the service is fully completed; however, if the contract is cancelled beforehand by withdrawal and the circumstances that led to the withdrawal are on the side of the Contractor, the contractual penalty shall - without prejudice to the other consequences of withdrawal - only be calculated for the period up to the delivery of the declaration of withdrawal.

4.5 If the Contractor has culpably breached its obligations in one of the ways described in Section 4.1 (e), (f) and (i), the Contracting Authority shall be entitled to liquidated damages in the amount of 50 % of the agreed remuneration.

4.6 In the event of non-compliance with the performance deadlines and in the absence of or refusal to provide the service in breach of contract, the client shall also be entitled, after the unsuccessful expiry of a reasonable grace period set in writing, to have the service performed by another company of its choice at the expense of the Contractor. The existing contractual relationship and the charging of contractual penalties shall remain unaffected by this.

## 5 Acceptance of the service

- 5.1 Once the service has been provided in accordance with the contract, the Contractor must request the client in writing to accept the service. Upon acceptance of the service by the client, the service shall be deemed to have been rendered.
- 5.2 The acceptance shall generally take place within the framework of a formal acceptance, unless such an acceptance is not customary due to the type and scope of the service or an informal acceptance is agreed or otherwise specified by the Contracting Authority. A formal takeover shall take place at a joint meeting. The result shall be recorded in writing and must be legally signed by the Contractor and the Contracting Authority. The mere operational use of the goods does not replace the formal declaration of acceptance that is generally required. Only if no formal acceptance is required shall acceptance be deemed to have taken place if the Contracting Authority has unconditionally accepted the service into its power of disposal.
- 5.3 The fulfilment of the commissioned overall service in partial services is only permitted on the basis of an express written agreement. Partial services may be accepted separately at the request of the Contractor in agreement with the Contracting Authority.
- 5.4 The risk shall not pass to the contracting authority until the Contractor has handed over the goods to an employee of the contracting authority, this employee has inspected the goods at the place of performance and accepted them as proper and the Contracting Authority has properly fulfilled all ancillary obligations, such as the provision of the necessary test certificates, descriptions, operating and usage instructions, copies of the drawings attached to the order and all other necessary documents as well as assembly, installation, commissioning, training and all other precautions necessary in individual cases. The contracting authority may refuse acceptance if the service has defects that are not merely minor, or if the documents relating to the service, which must be handed over at this point in time in accordance with the contract (e.g. operating instructions and test instructions, plans, drawings, etc.), have not been handed over to the Contracting Authority. In this case, the consequences of default shall apply until the defects have been rectified or eliminated.
- 5.5 If the Contracting Authority accepts the service despite the existence of defects, the warranty provisions shall apply.

## 6 Liability



- 6.1 The Contractor shall be fully liable to the Contracting Authority for all direct and indirect damage and consequential damage for which it is responsible and for the careful and professional provision of the contractually agreed service in accordance with the contractual provisions as an expert pursuant to §§ 1299f ABGB. The Contractor shall be liable for the fault of all persons whose services it uses to fulfill its contractual obligations, as well as for the conduct of third parties attributable to it (e.g. owners, corporate bodies, etc.) to the same extent as for its own fault.
- 6.2 The Contractor shall indemnify, defend and hold the Contracting Authority harmless against third-party claims. In the course of this, the person accepting the order shall bear any costs incurred by the client through legal representation. The Contractor shall inform the contracting authority of any legal proceedings as soon as they become known.

## 7 Defects

- 7.1 From acceptance of the specific services, the contracting party warrants that its services and those of its subcontractors and suppliers have the expressly stipulated and usually assumed characteristics and, in particular, that they correspond to the current state of the art.
- 7.2 After handing over the work to the contracting authority, the Contractor is obliged to remedy any defects (rectification or supplementation by adding what is missing) or to replace the work without delay and without any additional claim to remuneration, within a reasonable period of time and with the least possible inconvenience for the contracting authority.
- 7.3 The Contractor must rectify the defects within the grace period set and notify the Contracting Authority in writing that the defects have been rectified. If the service is accepted with remediable defects, the Contracting Authority shall be entitled to withhold payment up to three times the anticipated costs of a replacement until the defects have been fully remedied.
- 7.4 The obligation pursuant to point. 7.2 shall lapse if the Contracting Authority does not bring such a request to the attention of the Contractor within a maximum of two years after handover of the work.
- 7.5 If the rectification of defects or replacement is impossible or involves a disproportionately high effort for the Contractor - compared to the other remedy - or if the Contractor fails to rectify the defect at all, in good time or in full, or if this is associated with considerable inconvenience for the client or is unreasonable for valid reasons attributable to the Contractor, the following shall apply - subject to the assertion of further claims, irrespective of the legal grounds on which they are based:
- 7.5.1 If the defect is not minor, the Contractor shall lose the claim to remuneration; the Contractor shall repay any amounts already received plus interest at a rate of 9.2% above the applicable prime rate p.a., calculated from the date of receipt of the amounts.
- 7.5.2 If the defect is minor, the Contracting Authority shall be entitled to an appropriate reduction in the remuneration.
- 7.5.3 If, in cases 7.5.1 and 7.5.2, it is possible for a third party to rectify the defect, the Contracting Authority shall - without prejudice to the claims under 7.5.1 and 7.5.2 - additionally be entitled to compensation for the actual costs incurred in rectifying the defect, insofar as these exceed the contractually agreed remuneration in case 7.5.1 or the price reduction in case 7.5.2.
- 7.5.4 The provisions on the notification of defects pursuant to § 377 et seq. of the Austrian Commercial Code (UGB) shall not apply.

## 8 Storage

The Contractor shall retain all documents for the period stipulated by law. If the Contractor is commissioned as part of a nationally and/or European funded project, the retention period depends on the respective requirements, but is at least 10 years after completion of the project. In cases of cause, the Contractor must grant the relevant national and European auditing bodies access to the original documents stored and provide the necessary information.

## 9 Subverträge

If the Contractor hires workers or concludes contracts for work in the course of fulfilling the order, it must act as the employer or Contractor and conclude the service or work contracts in its name and for its account or bear the resulting obligations.

The Contractor shall only be entitled to subcontract parts of the contractual service to the extent that these subcontractors have been named in the contractor's offer. The Contractor may only use other subcontractors with the prior written consent of the contracting authority. The Contractor shall impose on its subcontractors the obligation to comply with the regulations binding on itself.

The Contractor shall be liable for the fault of all persons whose services it uses to fulfill its contractual obligations to the same extent as for its own fault. The Contractor must ensure compliance with tax regulations and the payment of any social security contributions or take out any compulsory insurance itself.

## 10 Several Contractors

If several Contractors work together for the Contracting Authority, they shall form a joint contractor, which shall be jointly and severally liable to the contracting authority for the fulfillment of all obligations arising from this contract. If one of the contractors in the group of contractors ceases to exist, the contract for the services still to be provided shall remain in force with the remaining contractors, but the contracting authority shall be entitled to terminate the contract for good cause.

## 11 Place of jurisdiction and applicable law

This contract shall be governed by Austrian law to the exclusion of the provisions of the UN Convention on Contracts for the International Sale of Goods. All disputes and claims arising out of or in connection with this contract, or relating to its breach, termination or nullity, shall be subject to the exclusive jurisdiction of the competent court in Vienna..

## 12 Final provisions

These GTC and the contract conclusively regulate the legal relationship between the contracting authority and the contractor. It is expressly stated that there are no verbal collateral agreements. Furthermore, it is expressly stated that point 0 (General) remains unaffected by this provision.

Amendments and supplements to this contract must be made in writing in order to be valid, unless a stricter form is mandatory; this also applies to any waiver of this formal requirement.

Should individual provisions of these GTCS or other parts of the contract be or become invalid, unenforceable or unenforceable in whole or in part, the validity, enforceability and enforceability of the remaining provisions shall not be affected thereby. A void, impracticable or unenforceable provision shall be replaced by a legally valid, practicable and enforceable provision that comes as close as possible to its legal and economic purpose.

The Contracting Authority is entitled to transfer its rights and obligations under the GTC to a third party.