

General Terms and Conditions of Purchase and Payment (GTC) of the Institute of Science and Technology Austria

1. Scope of Application

1.1. These Terms and Conditions apply to all of our purchases and orders and constitute an inseparable component part of all quotes we request and orders we place for goods or services. Anything deviating from our GTC, as well as the supplier's differently worded general terms and conditions of sale, are binding only if they have been specifically accepted by us in writing.

1.2. Likewise, should the contractor's general terms and condition of sale and delivery conflict with our GTC, the former are ineffective without our being required to object to them. In particular, all acts of fulfilment by us may not be deemed consent to contractual terms and conditions that deviate from our GTC.

1.3. Delivery to us in any event constitutes full acceptance of our GTC by the supplier.

1.4. These GTC and the contracts to be concluded under the GTC are subject to Austrian law.

2. Conclusion of Contract

2.1. Orders and changes to same are valid only if made in writing.

3. Scope of Performance

3.1. The scope of the contractor's duty to perform results from the obligations described in our order or from the information contained in the contractor's offer.

3.2. All deliveries and services must conform to the relevant Austrian standards (ÖNORMEN) in effect, as well as to other standards and guidelines (hazardous materials provisions) customary in the industry.

3.3. Accompanying the supplier has to submit the agreed technical documentation such as manuals, drawings, certificates and documentation.

4. Change in Performance

4.1 Should changes to the originally agreed obligations prove to be necessary or appropriate after the order has been placed, the contractor must give us prompt written notice of this circumstance, including any cost changes.

5. Place of Performance and Default in Delivery

5.1. Unless agreed otherwise, delivery is to be made free of charge to our place of business (point of receipt of goods), including unloading.

5.2. In choosing the means of transport, the contractor must select the one that is the least expensive and that offers the greatest certainty as to delivery date.

5.3. If demands by IST to move forward the delivery date or other special circumstances lead to increased transport costs, these must be indicated separately, and we must be given prompt written notice thereof.

5.4. Agreed delivery dates are to be adhered to without exception. In the event of delays, the contractor must give us prompt written notice as to the anticipated duration of the delay, together with the reasons for same.

6. Transfer of Risk and Acceptance of Delivery

6.1. For deliveries covering assembly or installation by the supplier's personnel, risk passes to us only after the final inspection. If an authorised technician is not available at the time of delivery and, in addition, storage is not possible at IST Austria, the contractor must at its own expense arrange for proper safekeeping and give us prompt written notice thereof.

6.2. With respect to amounts, acceptance of delivery occurs with its acceptance at the place of delivery; with respect to quality, however, acceptance of delivery occurs only after an inspection at the place of use has demonstrated proper functioning or with the processing or use of delivery.

6.3. The supplier waives the objection of untimely claim for defects. Exclusions of liability by the supplier are not accepted by us.

6.4. Our employees are not authorised to confirm absence of defects during acceptance of delivery.

6.5. If equipment is delivered that requires training for our operating personnel, such training must be provided without any additional fee, unless agreed otherwise.

7. Shipping Documents

7.1. All documentation relating to our order must indicate the appropriate identifying information, specifically, the order number and the like.

7.2. All deliveries must be accompanied by a packing list/bill of lading. If proper shipping documents are not provided with the delivery, it will not be accepted by us in fulfilment of the order.

7.3. Invoices must be sent to us along with the shipping documents. If invoices do not conform to our stipulated requirements – in particular, with respect to Point 7.1 – we are entitled to return these without further processing. Invoices are not considered as presented until such time as they have been properly generated and resubmitted to us.

8. Payment

8.1. Unless agreed otherwise, the payment period begins to run on the date of receipt of an invoice properly generated in accordance with these GTC, but in no event prior to complete performance.

8.2. Once delivery has been received in accordance with these GTC at the agreed place of delivery, and once a properly generated invoice has been received, net payment is made within 30 days by bank transfer, unless agreed otherwise. The payment period is suspended if invoices and/or shipping documents contain errors or have not been generated properly.

8.3. If delivery is made prior to the agreed date, the payment period for the corresponding invoices nevertheless begins to run on the agreed delivery date.

8.4. If defects are discovered, we are entitled to postpone payment until all defects have been corrected. Our payment does not constitute unconditional acceptance of the goods.

8.5. If the contractor is a consortium, then, during order issuance, a bank account must be designated to which we are able to remit our payment in full discharge of the debt.

8.6. It is not permitted to offset our claims with counterclaims of any nature.

8.7. If we are in default in payment, we owe the contractor default interest in the amount of 1.25 times the base interest rate then in effect, beginning with the expiry of the payment period. The payment of additional default interest, as well as claims for damages and collection fees, are precluded by IST Austria.

9. Warranty

9.1. The contractor must provide a warranty that deliveries and services conform – in addition to the requirements set forth in Point 3.2 – to general and special standards in force in Austria; if the foregoing is not the case at the time of delivery, such deliveries and services are considered to be defective.

9.2. We are entitled to all statutory warranty claims; the period for asserting such claims begins to run upon our acceptance of the delivery or service. We will notify the contractor in writing of visible defects within two weeks, such period beginning with the date of delivery, and of latent defects within two weeks of their becoming known.

9.3. In the event a delivery has defects, we may request, at our discretion, repair, replacement, or reduction of the price or instead annul the contract, unless such defects are merely minor.

9.4. If the contractor fails to meet its warranty obligations within a reasonable period, we may undertake the required correction of defects at the contractor's expense or arrange for third parties to do so. The same applies if the contractor unjustly refuses to honour its duty to correct defects, if correction of defects is faulty, or if we cannot reasonably be expected to accept having the contractor correct the defects.

9.5. In the event repair is made by the contractor, warranty periods begin to run anew upon correction of the defects.

10. Third-Party Industrial Property Rights and Liability Provisions

10.1. The contractor must ensure that delivery does not infringe any third-party industrial property rights (inter alia, rights relating to trademarks, designs, and patents). If the contractor does not comply with this obligation, we may at its expense obtain the required use approvals for the affected goods/services from the holder of the rights. If a third party lodges a claim against us in this regard, the contractor must indemnify us.

10.2. We are specifically entitled to all claims for damages and to claims under the Austrian Product Liability Act. Statutory prescription periods apply; curtailment of such period or exclusion of liability is not accepted.

10.3. If a claim is lodged against us for consequential damages relating to a defect or for defective material within the meaning of the Austrian Product Liability Act, the contractor must in any case indemnify us and hold us harmless

10.4. Where required, the contractor is obligated to recall defective goods at its own expense and, within two weeks, to name the manufacturer or importer.

10.5. If a claim is lodged against us under product liability provisions, and if the defectiveness of our products is based on a defect in the contractor's goods, then we may claim damages against it to the extent caused by the defect in the contractor's goods.

10.6. In order to cover the aforementioned risks, the contractor must obtain corresponding insurance.

11. Reservations

11.1. With confirmation of our order, the contractor declares that it agrees to waive any form of retention of title.

11.2. In no event is the contractor permitted to refuse or delay performance.

12. Place of Jurisdiction and Applicable Law

12.1. It is agreed that the competent courts of Vienna (Austria), Innere Stadt District, have jurisdiction over all disputes arising directly or indirectly from this contract. We also have the right to bring action at the contractor's place of jurisdiction.

12.2. The contract is subject to Austrian law under exclusion of all conflict-of-law rules. The United Nations Convention on Contracts for the International Sale of Goods is excluded. Unless agreed otherwise in writing, Incoterms in their current version apply to the interpretation of the contract clauses used.

13. Final Provisions

13.1. All delivered items or parts of such items that are considered "hazardous waste" (*Sondermüll*) must be disposed of or taken back by the contractor at its own expense and risk.

13.2. If insolvency proceedings are initiated against the contractor (or if such proceedings are dismissed for lack of assets sufficient to cover costs), we may, at our discretion, rescind the contract either in whole or in part.

13.3. The contractor may not, without our prior written consent, assign its claims against us to third parties or arrange for third parties to collect same (prohibition of assignment).

13.4. Should any one or more provisions of these GTC be or become void or ineffective, all other provisions nevertheless remain in full force and effect.

The current version of these General Term and Conditions of Purchase and Payment is available online at <http://www.ist.ac.at/agb.pdf>.

April 1st 2011