

## 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 conditions of sale and delivery conflict with our GTC, the former are ineffective without our being required to object to them. In particular, acts of performance by us are not to be considered consent to contractual terms that deviate from ours.

1.3. By accepting and/or carrying out our orders, the contractor acknowledges the exclusive, full applicability of our GTC.

### 2. Conclusion of Contract

2.1. Orders and changes to same are legally effective only if made in writing (or via the ISTOS procurement platform or by email). All notifications relating to the contractual relationship are to be sent by the supplier to the (email) address from which the order was placed.

2.2. The contractor must confirm the order in writing, including notation of order and item numbers, by the deadline set by the client, or otherwise within 14 days of the day the order is placed. Receipt of orders made by email must likewise be confirmed by email.

2.3. The contract comes into effect with the confirmation of the order or with the timely delivery of the ordered goods.

2.4. Contracts always come into effect with the content of the written order sent through ISTOS or by email, under inclusion of the client's GTC. Additions, amendments, and deviations of any kind become binding on the client only if it confirms them in writing (by email). The day the order is placed is the order date.

### 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 suppliers 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. The supplier must concurrently send the agreed technical documents, such as operating instructions, drawings, attestations, and other 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 (by email) to the address from which the order was placed, including any cost changes.

4.2. Deviations from the client's orders must be clearly noted. In addition, deviations are valid only if the client expressly accepts same in writing (by email). Acceptance of goods without objection does not constitute such consent.

### 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. 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 (by email).

5.3. Agreed delivery dates are to be adhered to without exception. In the event of delays, the contractor must give us prompt written notice (by email) to the address from which the order was placed as to the anticipated duration of the delay, together with the reasons for same.

5.4. In the event of default in delivery, we are entitled to rescind the contract after setting a reasonable extension for delivery.

## 6. Transfer of Risk and Acceptance of Delivery

6.1. Delivery is always made at the risk and expense of the contractor to the place of delivery designated by the client. Risk passes to the client only after the contractor has handed over the delivery to an employee authorised by the client and such employee has inspected and properly accepted the delivery at the destination. In addition, the contractor must have fulfilled all ancillary obligations, such as provision of the required testing certificates, descriptions, use instructions, copies of drawings attached to the order, and all other necessary documentation.

6.2. 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 (by email) to the address from which the order was placed.

6.3. 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 same.

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

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

6.6. 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 pertinent 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. Setting off counterclaims of any nature against our claims is always precluded.

8.7. The relevant provisions of the Austrian Business Enterprise Code (*Unternehmensgesetzbuch*, UGB), as currently in effect, apply in the event of payment default. Payment of farther-reaching default interest, as well as damage claims and reminder charges, is 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 rescind 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 at the contractor's expense undertake the required correction of defects ourselves 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 the corrected 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. In particular, we are 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, Innere Stadt (Austria) have jurisdiction over all disputes arising directly or indirectly from this contract. In addition, we have the right to bring suit at the place of jurisdiction of our contract partner.

12.2. The contract, including these GTC, 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. Construction Services

13.1. The contractor undertakes to comply with labour and employment laws applicable in Austria (especially the pertinent collective bargaining agreements, the Employee Protection Act – ASchG (BGBl. [Federal Law Gazette] no. 450/1994), the Law on Working hours – AZG (BGBl. no. 461/1969), the Rest Periods Act – ARG (BGBl. no. 144/1983), the Employment Contract Law Adaptation Act – AVRAG (BGBl. no. 459/1993), the Law against Wage and Social Dumping – LSD-BG (BGBl. I no. 44/2016), the Income Tax Act 1988 – EStG (BGBl. no. 400/1988) and the Equal Treatment Act – GIBG (BGBl. I no. 66/2004) when carrying out building contracts (refer to Annex for the definition). This also includes ILO agreements no. 29, 87, 94, 95, 98, 100, 105, 111, 138, 182 and 183 of the International Labour Organisation (BGBl. no. 228/1950, no. 20/1952, no. 39/1954, no. 81/1958, no. 86/1961, no. 111/1973, BGBl. III no. 200/2001, BGBl. III no. 41/2002 and BGBl. III no. 105/2004). These regulations may be viewed at the local section of the statutory employers' and employees' special interest group responsible for execution of the contract.

13.2. The abovementioned obligation shall also apply to all subcontractors the contractor may appoint in the execution of the contract. The contractor shall obligate subcontractors to comply with the abovementioned obligations in the course of carrying out their tasks, monitor such compliance and report any violations to IST Austria without delay.

13.3. IST Austria shall on written request be informed of all appointed subcontractors and planned change of subcontractors to be engaged towards fulfilment of the order and shall be provided with proof of professional reliability of the contractor or appointed subcontractors without delay – in particular constituting submission of information from the central administrative penalty register of the BMF [Federal Ministry of Finance] pursuant to § 28b AuslBG [Act Governing the Employment of Foreign Nationals] (BGBl [Federal Law Gazette] no. 218/1975), information from the LSDB [Law Against Wage and Social Dumping] administrative penalty register pursuant to § 7n AVRAG (BGBl no. 459/1993) or, as from 1.1.2017, pursuant to § 35 LSD-BG (BGBl no. 44/2016), an excerpt from the companies register, professional register or ZKO [Central Coordination Office] Notification of Services (with provisioning of cross-border services), an excerpt from the Criminal Records Bureau, the latest arrears certificate pursuant to § 229a BAO [Federal Tax Code] (BGBl no. 194/1961) or the latest statement by the responsible social insurance body.

13.4. A contractual penalty in the amount of 10% of the total compensation shall be agreed in the event of a verifiably ascertained serious violation or repeated minor violations of labour and employment laws in the course of execution of the contract. IST Austria must nevertheless point out that serious or repeated violations of labour, employment or environmental laws shall constitute grounds for extraordinary termination of the contract or shall justify corrective measures as per § 73 BVergG [Public Procurement Act] 2006

13.5. Insofar as claims, of whatever nature, arising from violation of labour and employment laws by the contractor or subcontractor are asserted against IST Austria, the contractor shall undertake to indemnify and hold harmless IST Austria from all such claims (e.g. contributions, levies, wage-dependent fees, minimum wage) by employees of the contractor, his subcontractors or any employees of any other subordinate subcontractors and from other regulatory stipulations mandating liability. Such indemnity shall include all costs of courts and attorneys accruing to IST Austria in the defence against such claims.

## 14. Final Provisions

14.1. 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.

14.2. 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.

14.3. 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).

14.4. 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 Terms and Conditions of Purchase and Payment are also available online at <http://ist.ac.at/en/agb/>.

Klosterneuburg, July 12<sup>th</sup> 2016

## ANNEX

Construction services pursuant to GTC paragraph 13 shall include especially contracts comprising the following:

1. Execution or simultaneous planning and execution of "construction projects", i.e.:

Preparatory construction site work (demolition, earth-moving work); construction above and below ground (erection of buildings, incl. sealing of roofs, pipelines, etc.); roadworks (incl. building of sports venues, marking); electrical installation; isolation work (thermal, acoustic, etc.); installers, heating, air conditioning, ventilation, sanitary (installation); construction installation (lighting and equipment); Stucco trade (incl. rendering); constructional carpentry (installation, laying of wooden floors); laying of floors, floor and wall tiles / wallpapering, room furnishing (incl. carpet flooring); painters, glazers (indoors and outdoors); other building trades (façade cleaning); borderline case: maintenance and repairs (scope and type); supply and assembly, provided important to the functionality of the building and permanently connected to the building; planning services, provided these are awarded as an integral part of the construction execution services – "EPC contractor" (≠ general contractor: subcontracts all services).

or

2. The execution of a construction project:

Construction project includes the total of all above and below ground construction, designed in principle to perform a commercial or technical function.

Mixed contracts will be classified by the major part of the services in terms of value or, in case of doubt, classified as a construction service.