

The following provisions shall govern all contractual relations between the Ordering Party/Client/Customer/Purchaser and the Supplier/Contractor; they shall also apply to any additional deliveries or services. Any special terms agreed in the context of an individual agreement shall supersede these General Business Terms and Conditions

### 1 Offer and acceptance

- 1.a Offers submitted by the Contractor shall be valid for no longer than four weeks and shall be subject to confirmation. Orders must be accepted by means of a written order confirmation or an agreement legally ratified by both, Client and Contractor.
- 1.b Adherence to the proposed delivery and start-up schedules shall require the timely ratification of an agreement, timely receipt of agreed instalment payments, timely completion of the individual project milestones agreed, and performance of the partial acceptances planned by the Contractor (site approval, software acceptance, works acceptance (if applicable) and training).
- 1.c Insofar as a one-off price has not been specifically agreed, the Contractor shall bill according to actual deliveries and services rendered, whereby material shall be billed for at normal market prices, plus any additional cash outlays or labour time incurred by the Contractor (based on the Contractor's normal hourly rate).
- 1.d An order expansion placed orally and subsequently accepted by the Contractor (either explicitly in writing or implicitly through execution of the order) shall also be valid. The existing agreement shall apply *pari passu* to the expanded scope. The expanded scope of deliveries or services shall be spelled out in the order confirmation (and/or order expansion(s)).
- 1.e If the cost of materials for any given item in an agreement increases by more than 5%, the Contractor shall be entitled to make a corresponding price adjustment, if and insofar as the Contractor was not responsible for the increase.
- 1.f The Contractor shall reserve the right to deviate from an order with regard to the product actually delivered in order to allow for technical improvements, especially with regard to materials or execution.
- 1.g If the Client decides to conclude a leasing agreement for the products and services ordered from the Contractor, this shall also constitute a contractual relationship between the Client and the Contractor, and shall be governed by these General Business Terms and Conditions. In this case, the Contractor's delivery obligation *vis-à-vis* the Client shall be replaced by a delivery obligation *vis-à-vis* the leasing company, while the Contracting Parties shall be the Lessor and the Lessee.
- 1.h Insofar as the execution of an order requires the securing of government clearances, the Client shall explicitly grant the Contractor the legal authorisation to inspect the relevant paperwork, and/or shall inform the Contractor in a timely fashion with regard to any regulatory requirements which could hinder the execution of the order. If the Client fails to provide said information in a timely manner, the Contractor shall be entitled to charge the Client for any resulting excess costs.
- 1.i If the Client wishes to rescind an agreement due to default by the Contractor, he must first send the Contractor a registered-mail notice stating a reasonable deadline for correction (at least eight weeks). Claims for default-related damages shall be excluded, except in cases of grossly culpable conduct.
- 1.j The Contractor shall not be held responsible for delays caused by natural disasters or force majeure (especially strikes, lockouts, military mobilisation, war or civil strife).
- 1.k If contractual performance becomes impossible, either in whole or in part, and insofar as this is not the fault of the Contractor or the Client, the Contractor shall be entitled to charge the Client for the actual time-and-materials costs incurred up to that point, plus any additional cash outlays. If the contract works cannot be performed for reasons attributable to the Client, on the other hand, the Contractor shall be entitled to bill for the actual time-and-materials costs incurred up to that point, plus 30% of the remaining labour expense called for in the order. The foregoing shall not affect the Contractor's right to assert additional claims (especially those provided for in § 1168 of the Austrian Civil Code (ABGB)).

### 2 Delivery and start-up

- 2.a Usage and risk of loss shall pass to the Client once a delivery leaves the Innsbruck plant. This shall also apply when delivery is made in the context of an installation, or when transportation is organised by the Contractor. Unless otherwise agreed, the place of delivery shall be the Contractor's registered place of business. Partial deliveries shall be permissible. The Contractor may call upon the services of sub-contractors at any time.
- 2.b Acceptance of contract works by the Client must occur no later than thirty workdays after the start-up date. The presence of merely immaterial defects shall not entitle the Client to refuse acceptance. The start-up of the contract works shall be deemed to constitute acceptance unless the Client provides the Contractor with a written defect/error log within three workdays.
- 2.c The following tasks shall be the responsibility of the Client: timely completion of required on-site preparations according to Contractor's specifications (e.g. preparing the foundation using the installation equipment provided, establishing a code-compliant electrical hook-up, linking up equipment located at various sites); installation of the equipment at the agreed location(s).
- 2.d Insofar as start-up is part of the purchased services, the Contractor shall carry out the start-up of the purchased items by connecting the components pre-installed at the agreed locations and by running and calibrating the programs.
- 2.e Insofar as the performance of services is delayed for reasons for which the Contractor is not responsible (particularly if this is due to the failure of the Client or a third Party to complete a service in the agreed scope), then the Contractor shall be released from the obligation to perform for the duration of the delay. However, this shall not give the Client the right of rescission, nor entitle the Client to compensation for damages, or to any other claim against the Contractor, however defined. The Contractor shall be entitled to present a separate bill for any resulting excess costs.
- 2.f The brand names and models offered with regard to standard PC hardware shall be subject to change. The Contractor shall choose, at his discretion, the appropriate products to be delivered at the time of performance. Insofar as software programs are to be started up on computers provided by the Client, the start-up work shall be billed based on actual time and materials expended.
- 2.g The Contracting Parties hereby agree that the Client's personnel shall be trained with regard to the operation, troubleshooting and maintenance of the object of the agreement, in accordance with the scope specified in the itemisation of costs. Follow-up and remedial training, as well as training for newly hired employees of the Client, shall be billed separately.

### 3 Usage licenses for software programs

- 3.a The Contractor shall be the owner or licensee of, as well as the distributor of, software programs and their associated documentation. In return for full payment of periodic license fees, the Contractor shall grant the Client a simple, non-exclusive and non-transferable license for the in-house usage of the delivered programs, for the agreed purpose and for the period covered by the license fees. Any other rights, particularly copyrights, shall be retained by the Contractor and/or his Suppliers.
- 3.b The Client may not alter, edit, copy (or otherwise duplicate) the licensed programs or their associated documentation. He may also not decode or decompile said programs, nor transfer them to other computers.
- 3.c A usage right granted by the Contractor for software (software license) required to operate hardware (firmware or operating-system software) may not be transferred to third parties without the Contractor's prior written approval. Under no circumstances shall a license for application software be transferable. The Client may neither grant sub-licenses nor transfer software to third parties by means of lease agreements or other forms of assignment.
- 3.d The software programs may only be copied for purposes of archiving, backup or bug fixing. All copies must include the original software's copyright protection notices, and must be destroyed once their purpose has been accomplished. The Client must ensure that the programs, their documentation (and any copies/duplicates thereof) are not accessible to unauthorised third parties.
- 3.e Insofar as the scope of delivery includes licenses for third-Party programs, the corresponding license terms, warranty limitations and usage limitations set forth by these third parties shall apply.
- 3.f In the case of software developed by the Contractor especially for the Client, the scope of services to be performed shall be spelled out in a service specification (system analysis) to be counter-signed by the Client. Features that are not specified but nonetheless required shall be provided at the Contractor's discretion. The source programs and the rights thereto shall be retained by Axess AG.

### 4 Maintenance for software programs

Insofar as a valid software licensing and maintenance agreement is in place, the Contractor shall ensure that the support services detailed below are performed by sufficiently qualified personnel, and that they are carried out with due care and in a professional manner. As a rule, the Contractor shall perform his work during normal business hours by means of remote maintenance. At the Contractor's discretion, support services may also be performed on the business premises of the Client.

#### 4.a Bug-fixing service

- 4.a.i A correctable defect shall be deemed to exist whenever a given software program falling under the scope of an agreement is characterised by a reproducible deviation from the current version of its performance specification. Such a defect shall be corrected by means of a bug fix, a software update or some other appropriate workaround.
- 4.a.ii Identified defects that are the Contractor's responsibility must be resolved by the same within a reasonable time. The Contractor shall be released from this obligation, however, if a solution to the problem is hindered through some fault of the Client, and the Client fails to correct said fault.
- 4.a.iii The Client must make the following items available to the Contractor, free of charge: the Client's computer system, software programs, logs, diagnostic documents and data, plus an online connection to be used for remote diagnosis and maintenance. Moreover, the Client must give the Contractor all reasonable assistance.
- 4.a.iv The Contractor shall be entitled at any time to hire sub-contractors to assist with the performance of support services, without having to obtain the prior approval of the Client. In such cases, the sub-contractor shall act as an independent businessman.

#### 4.b Provision of a help desk

- 4.b.i During the agreed periods (summer season, winter season, occasional operations or all-year operations, depending on the purchase agreement), the Contractor shall provide a centralised email address and telephone number for the fielding of support-related queries and for performance of support services.
- 4.b.ii The Contractor shall respond to the Client's enquiries within a reasonable time. The normal business hours of the Contractor are 8:00 AM to 5:00 PM, Monday to Friday.
- 4.b.iii The Contractor's support services shall include separately scheduled, application-related counselling via telephone or email, as well as assistance during disruptions arising from the usage of the products by the Client. Said support services shall only be utilised by personnel of the Client with the proper training.

#### 4.c Software-update service

- 4.c.i As part of his support services, the Contractor shall make available various releases for his software programs. Update services shall include either the provision of new releases in their original functionality, or a corresponding expansion of the Client's software programs.
- 4.c.ii Unless the delivery of upgrades or the payment of upgrades fees has been arranged by separate agreement (e.g. a software-maintenance agreement), the Contractor shall not be obligated to deliver software upgrades (i.e. new versions, releases or in-line releases).

#### 4.d Cooperation obligations of the Client

- 4.d.i In order to expedite and optimise the processing of identified defects, the Client must report these to the Contractor by using the Contractor's defect-reporting forms and by including the proper agreement number as a reference.
- 4.d.ii The Client shall be obligated to follow the instructions and directions of the Contractor and to make every reasonable effort to solve a given problem in collaboration with the Contractor. Insofar as necessary and reasonable, the Client must supply the Contractor with information, assistance, and materials, as well as access to his operating facilities. Furthermore, the Client must promptly install all service packs and "hot fixes" provided by the Contractor, and must procure, install and maintain all operating equipment, telephone lines, internet connections, communication interfaces and hardware, insofar as these are required to use the product(s) of the Contractor.
- 4.d.iii In using the products licensed to him, the Client must deploy personnel that are sufficiently qualified and trained.
- 4.d.iv Before beginning each support service, the Client must secure all personal data in compliance with the relevant data-privacy laws, so that the Contractor, in the course of performing support, shall normally not have unintended access to said data.

### 4.e Price adjustments for maintenance and support

- 4.e.i If the annual reconciliation should determine that the time and materials expenses actually incurred exceed expenses billed (i.e. one-off cost-sharing charges) by more than 10%, the Contractor shall have the right to adjust the one-off cost-sharing charges.
- 4.e.ii The Client shall not be entitled to withhold payment on the grounds of incomplete overall delivery, or on the grounds of warranty/guarantee claims or defect claims.
- 4.e.iii The prices for support services shall be indexed to the rate of inflation by using the 2000 Consumer Price Index (the 2000 "VPI") as a benchmark. In other words, the contractually agreed payments shall be increased or reduced according to the rise or fall in the Consumer Price Index. If the aforementioned index should no longer be published, inflation indexing shall be based on some other index or (contractually defined) mechanism that comes as close as possible to achieving the same commercial result.
- 4.e.iv The costs associated with the travel, lodging and time away for those personnel of the Contractor charged with executing a given maintenance service shall be billed separately.
- 4.e.v One-off cost-sharing charges shall not include the following services: alterations to the operating systems or hardware; alterations to not contractually agreed, interdependent software programs and interfaces; individual program adjustments; new programming or program alterations due to changes in legal requirements, insofar as they necessitate a modification of the program logic; the correction of defects caused by improper operation, by the failure to follow prescribed steps such as data protection or by third parties; data conversions; recovery of data inventories; interface adjustments.
- 4.e.vi The Contractor shall be released from all maintenance obligations under the present agreement if the Client, his employees, and/or some third Party should fail to use the contractually agreed software programs for their intended purpose, or if they should make (or try to make) alterations to said programs without the prior approval of the Contractor.

## 5 Warranties

- 5.a Warranty coverage shall begin upon delivery or – insofar start-up-related services have been contractually agreed – once the Contractor has made his "run-capable" certification. Insofar as the Contractor does not make a specific "run-capable" certification, warranty coverage shall commence once the Client performs the start-up.
- 5.b The warranty period for defects already present at the time of delivery shall last (1) year, unless the law prescribes a longer mandatory warranty period.
- 5.c The warranty period for defects in parts or assemblies that become evident after the start of warranty coverage shall last six (6) months. Insofar as such defects are the Contractor's responsibility and more than immaterially impair functionality, the Contractor shall either perform the needed correction or replace the defective parts and/or assemblies. On-site repairs shall not be included in the scope of warranty coverage, unless this is specifically provided for in the purchase agreement. Replacement parts shall be covered by the same warranty periods as the original parts.
- 5.d Within the agreed warranty period, the Contractor shall correct any program defects by using correspondingly enhanced software versions as soon as they are available. Insofar as the contractually agreed performance includes program development, the first eight (8) weeks after start-up shall be deemed to be a testing period. During the testing period, any and all penalty or damage claims shall be excluded. Any defects associated with such Client-customised program development shall be corrected within the scope of warranty coverage.
- 5.e The Client is hereby expressly advised that the possibility of defects in software manufacturing cannot be fully excluded under the current state of technology. Insofar as defects arise which significantly impede the functionality of the software programs, the contractual provisions set forth above shall apply, with the added proviso that either the installation of an enhanced software version or instructions on how to correct or work around the consequences of the defect shall be deemed a sufficient correction, insofar as it restores normal functionality.
- 5.f Warranty limitations: The Contractor shall not assume any guarantee for defects or breakdowns caused by the following: unauthorised use of software or employment of non-approved materials by the Client or third parties; inadequate or improper operation and maintenance; normal wear and tear or parts attrition.
- 5.g Minor deviations within tolerances for the industry, particularly with regard to the surface features, colour scheme, construction, or the software shall not qualify as defects, and shall not entitle the Client to assert any of the corresponding warranty claims.
- 5.h Breakdowns and defects caused by inadequate and/or unreliable preparatory services, particularly involving power sources, networks, etc., shall be completely excluded from warranty claims and/or damage claims. Warranty coverage shall lapse as soon as the object of the agreement is altered or tampered with in an unauthorised fashion.
- 5.i The Contractor shall perform services such as the operation of servers as well as computer and web-related services with the highest standard of care, reliability, and availability. However, the Contractor shall not assume any guarantee (other than what the law prescribes) for any of the following: uninterrupted availability of these services; the ability to establish the desired connections at all times; the preservation of stored data under all circumstances. Specifically, the Client shall not derive any claims whatever as a result of periods of interruption or disruption in the wake of breakdowns, maintenance/installation work, or wiring problems.
- 5.j Deadline for complaints: The Client must promptly report in writing any uncorrected defects that become immediately evident, but no later than 7 days after either the start-up date of the purchased items, or their date of acceptance (or denial thereof, as the case may be). The Client must also report any latent defects within seven days following their appearance. Such a report must be professional and in writing, and must describe the specific defect at issue. If the Client fails to do so, all his warranty claims, as well as any other rights based thereon, shall lapse.
- 5.k Liability: No matter what the legal basis for a given claim, the Contractor's total liability for damages for which he is responsible shall be limited to the net purchase price of the purchased items, but in no case to exceed 100,000 EUR. Any liability other than the one explicitly provided for shall be excluded. Except for direct property damage and personal injury, the Contractor shall have no liability for any other types of damages, particularly those arising from the following: consulting activities; assistance with preparatory work; recovery of data; consequential or pecuniary losses; lost profits or savings; third-Party claims. Also excluded in all cases shall be liability for damages suffered by the Client in connection with an enhancement. Damage claims against the Contractor involving simple and/or gross negligence shall be explicitly and

completely excluded. The Contractor shall assume no guarantee for the functionality of the software programs with regard to the specific needs or purposes of the Client. Specifically, the Contractor cannot guarantee that every one of the combinations desired by the Client will be implemented, or that they will satisfy his requirements.

### 6 Payment

- 6.a Prices and payment schedules shall be found in the corresponding order confirmation. All prices shall be deemed to be net prices "ex works", without taxes or customs duties. At his discretion, the Contractor may require a bank guarantee as security for payment.
- 6.b Insofar as the purchase agreement/order confirmation does not provide otherwise, the payment schedule shall be as follows: 30% of the order value at the time of order placement; 60% of the order value when the corresponding delivery is ready; 10% of the order value 30 days after delivery.
- 6.c Our invoices shall be due and payable within 10 days of the billing date, free of charges and without deduction. Payment instructions, cheques and bills of exchange shall be accepted only by separate agreement and only in lieu of payment. Any additional costs associated with these forms of payment shall be billed to the Client. Any warranty claims or non-performance claims on the part of the Client, whether merely alleged or validated, shall not entitle the client to withhold payment.
- 6.d Payment default: If the Client should fail to make an agreed prepayment within 30 days after the date of agreement ratification (or some other, separately agreed payment date), the Contractor shall be entitled to rescind the agreement with immediate effect. Any resulting damage claims on the part of the Client shall be explicitly excluded. The Contractor, on the other hand, shall be entitled to demand a contract penalty of 10% of the gross order value agreed. Said contract penalty shall not be contingent on proving culpability on the part of the Client, and shall not be subject to judicial mitigation.
- 6.e In case of payment default, or in cases where a suspension of payment has been agreed or subsequently granted, the Client shall owe penalty interest of 10% per annum as well as dunning fees of 15 EUR for each reminder. The Client shall have no rights of retention or offset, nor may he assert the defence of insecurity.
- 6.f If the Client falls more than 4 weeks behind with a payment, the Contractor shall be released from any remaining service and/or delivery obligations for the duration of the payment delay.
- 6.g **Retention of title: The Contractor shall retain the right of ownership to the items he delivers until such time as all outstanding claims against the Client have been fulfilled. In case payment is not made in a timely manner despite being due, the Client hereby irrevocably grants the Contractor the right, to dis-install and repossess the installed assembly (even if it has been affixed permanently to the floor or incorporated into a building), without having to rescind the agreement. The Contractor shall not be obligated to return the assembly until such time as the Client has fully paid the Contractor all outstanding claims, in addition to the costs of de-installation, storage, plus the expected costs of the re-installation.**

### 7 Final provisions

- 7.a These General Business Terms and Conditions shall apply insofar as the corresponding purchase agreement does not provide otherwise. As a rule, any outside arrangements, expansions or amendments must be in writing to be valid. This in turn shall apply to any waiver of the requirement for the written form. No oral agreements have been made, shall have no applicability, and shall be deemed superseded once a written agreement is ratified.
- 7.b The general business terms and conditions of the Client shall have no applicability. The Contractor's failure to object to any such deviating general business terms and conditions shall not constitute implicit consent.
- 7.c Mandatory legal stipulations shall supersede these General Business Terms and Conditions. The legal invalidity of any given provision of an agreement shall not affect the validity of its remaining provisions. An invalid provision shall be replaced by a newly negotiated provision that comes as close as possible to the commercial intent of the original provision.
- 7.d When transferring or selling the object of the agreement or parts thereof to third parties (insofar as such a sale or transfer is permissible), the Client must ensure that all legal export-related restrictions and/or prohibitions are considered and complied with.
- 7.e The Contracting Parties hereby agree to maintain confidentiality with regard to all trade and business secrets. There shall be no time limit on this confidentiality obligation. If the Client and/or one of his employees or agents breaches confidentiality, the Client shall pay the Contractor a contract penalty in the amount of 20% of the gross order value. Said contract penalty shall not be contingent on proving culpability on the part of the Client, and shall not be subject to judicial mitigation.
- 7.f The Contracting Parties hereby agree to act in a mutually loyal fashion. Thus, each Party shall desist from hiring away (even through a middleman) employees of the other Contracting Party who participated in realising an order. This prohibition shall last for the duration of the agreement and 12 months thereafter. If one of the Contracting Parties breaches this obligation, he shall pay the other Party a one-off indemnification in the amount of one annual salary for the employee in question.
- 7.g The rights and obligations under this agreement shall pass down to the Parties' legal successors, and/or the Contracting Parties hereby agree to legally assign said rights and obligations to their legal successors.
- 7.h The contractual relationship between Client and Contractor shall be exclusively subject to Austrian law. No references to international private law shall be permitted. The UN Convention on Contracts for the International Sale of Goods shall also be specifically excluded.
- 7.i Any and all disputes arising from, or in connection with, this agreement shall be adjudicated by the court of corresponding jurisdiction in Salzburg (Austria).