



General Terms and Conditions ISW Industriesoftware GmbH

A. GENERAL

1. Applicability

1.1 These General Terms and Conditions (GTC) shall apply on all current and future legal transactions between ISW Industriesoftware GmbH (ISW) and the Contractual Party (CP). CP are particularly Ordering Party's of ISW, employees of temporary employment agencies loaned by ISW, seminar participants as well as suppliers and principals of ISW. Determining is the ultimate version of these GTC at the time of the contract closing.

1.2 These GTC apply exclusively. Opposing terms of the CP which may vary from these GTC shall not be applicable, unless ISW would have agreed expressly their validity in written form.

2. Offers and Documents

2.1 All offers, price lists, estimates and descriptions of ISW are nonobligatory until the final order acceptance. Side agreements as well as all commitments made by agents shall in all cases require the written confirmation of ISW to be effective.

2.2 The contract with the CP concludes by an offer of ISW in combination with a concurrent order of the CP. If the order of the CP deviates from ISW's offer, the CP is obligated to notify ISW in written form; in that case a contract only concludes if ISW accepts the deviating order particularly. If the CP will not notify ISW in its order that the order deviates from ISW's offer, a contract with ISW only concludes subject to the express intent of the CP exclusively according to the content of ISW's offer.

2.3 ISW reserves the right to use, property right and copyrights of estimates, drawings and all other documents unconditionally without any restrictions. Those documents may only be passed on to third parties with the prior consent of ISW. All data and information contained in the documents do not constitute guarantee commitments; guarantee commitments are designated particularly such as in each and every case or require the explicit confirmation of ISW in written form.

3. Prices/Terms of Payment

3.1 All prices and emoluments for contractual deliveries and services of ISW and also the Terms of Payment are synchronized with the respective project and contained in the respective offer of ISW.

3.2 Prices/emoluments and/or Terms of Payments stated by the CP are only mandatory if ISW approves such prices/emoluments and/or Terms of Payments explicit in written form.

3.3 Will the scope of supply be amended by mutual agreement during order fulfillment, particularly if extended, ISW is entitled to claim a correlating addition of the agreed prices and emoluments, particularly whose enhancement, ISW is entitled to cease the order fulfillment preliminarily until achieving an agreement about the concurrent adaptation of prices and emoluments, if ISW has notified the CP preceding in written form. Hereby caused delays are not borne by ISW. A unilateral amendment of the scope of supply by the CP are inadmissible.

3.4 All prices and charges are to be understood ex works 4400 Steyr, insofar as no deviating agreement was made in individual case.

3.5 The CP is entitled to retention of payments only if and insofar its interest relies on the same contractual relationship. A retention right is restricted in amount of the (estimated) costs of an appropriate improvement. Compensation rights are only due to the CP in case they were determined without further legal recourse or legally recognized by ISW in written form.

4. Deadlines, Mutual Duties

4.1 ISW fulfills the deliveries and services subject to mutual agreed schedules as ones the offer's underlying or in course of service provisions mutually agreed. Provisional deadlines are only mandatory if explicit agreed. An unilateral amendment of deadlines by the CP are inadmissible. ISW will notify the CP immediately new service and delivery dates in case of untenable postponement outside the responsibility of ISW. Fixed date transactions are inadmissible.

4.2 The CP shall bind himself to establish all premises that the services and deliveries which have to be fulfilled by ISW can be initiated properly and fulfilled smoothly. If the CP would not fulfill its duties in time, particularly the punctual and proper submission of required documents, information and data, herefrom resulting delays are borne by the CP. Losses and claims arising from ISW from insult of duties by the CP shall be substituted by the CP.

4.3 The CP is liable to ISW that the provided documents and services are free from property rights, copyrights and other rights of third parties and the contractual exploitation by ISW is legitimate.

4.4 In case of force majeure the period of performance extends for the duration of the restraint and an appropriate ramp-up time. If the performance of service or implementation is impossible or unacceptable due to the aforementioned circumstances, ISW is exempted from the obligation to perform.

5. Liability/Compensation

5.1 ISW shall pay compensations exclusively according to the following principles:

5.2 ISW shall be liable to the CP for loss of profit only in case of intent and gross negligence. The burden of proof for intent and gross negligence shall be borne by the CP. In cases of slight negligence, ISW shall be liable to the CP only for the direct damage suffered by the CP.

5.3 ISW shall not be liable for faults, incidents or damages which are attributable to improper assembly, operation, or abnormal operating conditions at the CP or third parties attributable.

5.4 In principle, ISW is not obligated to examine the substance or instructions given by the CP or a third party for their suitability. Only in those cases where the unsuitability of the substance or instruction given is manifest, that means, the inadequacy of the substance or the instruction is recognizable without special examination and expert knowledge, or a test obligation of ISW has been agreed in written form, ISW is obliged to examine the substance and instruction as well as in case of the unfitness thereof to warn the CP.

5.5 ISW's liability to pay damages is limited to the amount of ISW's insured loss insurance per claim. In cases without insurance cover, the liability for damages shall be limited to the amount of ISW's network.

5.6 Furthermore, ISW's liability for damages is excluded - without regard for the legal nature of the claim asserted. ISW shall in particular not be liable for unforeseeable damages, consequential damages, other indirect damages and damages resulting from loss of production, etc. Furthermore, to the extent permitted by law, liability under the PHG is excluded; in particular, recourse claims against ISW within the sales chain are excluded.

5.7 Compensation claims of the CP, regardless of title, expire after 24 months.

6. Reservation of Title, Transfer of Risk

6.1 All deliveries and services of ISW shall remain the exclusive property of ISW until the payment agreed between ISW and the CP has been settled in full. As long as the aforementioned retention of title is upheld, a sale, pledge, transfer of risk, leasing, renting or otherwise transferring the supply or service components covered by the retention of title is prohibited without ISW's explicit consent in written form; in the event of an infringement, the CP is obliged to keep ISW harmless and free of charge for all of its financial losses.

6.2 In case that the CP sells the goods or service components subject to retention of title contrary to the prohibition of resale as set out in article 6.1 above, the CP irrevocably assigns all claims arising from such a resale to ISW and assumes this claim assignment now. In this case, the CP is obligated to record the transfer of claims in his books when the claims arise.

6.3 The risk of accidental loss passes to the CP by handing over the goods to the freight carrier, etc.; in particular also if the freight or the transport and other costs are charged to ISW.

6.4 If the CP refuses acceptance or claims deficiencies, the risk passes to the CP at the time of the first use of the delivered goods or service, irrespective of whether the CP has formally accepted the goods or services.

6.5 If the reserved goods are lost after the risk has been passed, the CP shall already assign to ISW in advance all insurance or other claims for damages arising from the destruction or damage to the reserved goods.

7. Rights of Use

7.1 ISW grants the CP a full, non-exclusive, temporarily unrestricted and transferable right of use to the CP of all the work and work results developed by ISW for the CP.

8. Secrecy

8.1 The CP and ISW are mutually obliged to treat all information concerning the business and operational matters of the other party strictly confidentially and to use them only in the context of the purpose of the respective given order. Within the scope of this purpose, ISW is entitled to pass on the information to third parties.

8.2 The CP and ISW bind themselves mutually to refrain the poaching of employees or attempts to poach employees of the other party.

9. Changes in Raw Material Prices

9.1 ISW is entitled to adjust the agreed prices (material price surcharge) for deliveries and services depending on the development of the raw material prices upwards/downwards. The material price surcharge valid at the time of delivery is always decisive for the actual price of a product, irrespective of the material price surcharge at the time of the offer or the order conclusion.

B. ENGINEERING

10. Special Conditions for Work Contracts

In the case of the conclusion of work contracts between the CP and ISW, the following special conditions shall apply additionally:

10.1 The order is always performed at the CP's side. This applies in particular if manufacturing documents cannot be consigned and / or if continuous technical discussions with the CP are required.

10.2 The managerial authority towards its vicarious agents and employees, in particular the instruction, guidance and supervisor, is the responsibility of ISW, even if the order is performed in the CP's workshop. This shall not affect the right of the CP to issue order-specific executive instructions relating to the work results in individual cases.

10.3 The performance progress is confirmed by the CP by signing the assembly reports submitted to him. In addition, the following provisions shall apply to the acceptance of the services:

10.3.1 The CP shall immediately declare the acceptance in written form after successful completion of the function test, but not later than three days after the order outcome has been handed over. The functional test is considered to be successful if the order outcome fulfills the contractual requirements in all essential aspects.

10.3.2 The CP is obliged to notify ISW without delay in written form if defects become apparent to him during the functional test. In the case of material defects of the scope of supply, ISW shall initially be given the opportunity to correct within a reasonable period, without prejudice to further claims.

10.3.3 If the CP does not immediately declare the acceptance despite the purchase obligation, ISW may submit a deadline of one week for submitting this declaration to ISW in written form. Insofar as ISW has declared in the written deadline, the scope of supply is considered as accepted if the CP does not specify in written form within a period of one further week the reasons for the refusal of acceptance. Furthermore the scope of supply is considered as accepted as soon as the CP starts to utilize the order outcome productively.

10.4 ISW shall provide warranty for potential faults of the order outcome by rectification or rebuilding the scope at ISW's own option. If the rectification / rebuilding fails despite at least 2 attempts of subsequent improvement, the CP may demand a reduction or rescission as well as compensation within the limitation of the liability pursuant to article 5. In the case of minor faults, the CP is not entitled to rescission. The warranty period for faults is 12 months from the date of acceptance according to article 11.3.3.

11. Special Conditions for Temporary Employment Contracts

In addition, the following conditions shall apply to the temporary employment contracts between the employer and ISW:

11.1 ISW advocates that the employed worker is generally appropriate for the agreed task and has been selected thoroughly and checked for the necessary qualification. There is no further examination obligation.

11.2 ISW shall not owe to the employer the work performance or a certain work results themselves. The temporary worker is neither the authorized representative nor the performance agent of ISW. The temporary worker is not entitled to collect or to make or receive legal declarations with effect for and against ISW.

11.3 The employer is obliged to introduce the temporary worker to the job and instruct and supervise him during the work. The employer shall also ensure that all legal, regulatory and other requirements are satisfied. The employer shall be responsible, in particular, for compliance with all provisions of the Working Conditions Act. If the provisions of the Working Conditions Act are not observed, the temporary workers are entitled to refuse the work without ISW losing the right to the contractual payment.

11.4 ISW shall not be liable for the kind, scope, performance or quality of the work performed by the temporary workers assigned to the employer. The employer indemnifies ISW in respect of any claims by third parties that may arise in the context of the performance of the work transferred to the employees or are asserted against ISW.

11.5 If the employer's enterprise is strikebound, ISW is not obliged to post workers.

11.6 The basis for the calculation and payment of the remuneration of ISW is ISW's offer.

11.7 Notice periods for foreclosure of temporary employment contracts are defined in ISW's offer. If nothing has been agreed particularly, 4 weeks are considered agreed.

C. MAINTENANCE

12.1 In case of conclusion of maintenance contracts and orders between the CP and ISW, the following special conditions shall apply:

12.2 In case of ordering telephonically maintenance contracts, these GTC shall apply without restriction.

12.3 For the documentation of the order and the service performance, the CP has to sign an assembly report of ISW with the date, time and confirmation of the order before and after the service.

D. DELIVERY PERFORMANCE

13. Special Conditions for Delivery Performance

13.1 In the case of conclusion of supply contracts for spare parts or other technical components between the CP and ISW, the following special conditions shall apply:

13.2 Original packaged products with original seal from ISW as well as packages with original seal from Siemens can also contain used products refurbished by Siemens from the spare part pool.

13.3 In the case of return of goods, an acceptance by ISW requires that the seal affixed by ISW or manufacturer / supplier to the goods as well as the goods themselves are undamaged. If the seal affixed to the goods has been opened, the goods shall be considered as used; in this case, ISW shall be entitled to refuse acceptance of the goods or to invoice the CP a lump sum fee of 50% of the goods value for the examination of the goods.

13.4 The warranty period for new goods is 12 months on delivery to the customer. ISW does not provide warranty for used items, unless otherwise agreed in written form in particular case.

13.5 In case of defectiveness of the deliveries or services provided by ISW, ISW shall, as far as possible, fulfill its obligation to provide warranty in the form of improvement, replacement or price reduction / concession; any further claims of the CP in connection with the delivery or performance of ISW shall be excluded.

14. Inspection Obligation and Notice of Deficiencies

14.1 The CP shall inspect the delivery performances provided by ISW immediately after the performance of service with regard to completeness and any deficiencies. Any deficiencies in delivery performance provided by ISW must be reprehended by the CP immediately after the date of service by registered letter or notation on the delivery note / cargo letter against ISW. The CP shall specify the specific deficiencies and describe as precisely as possible; an unsubstantiated claim of unspecified deficiencies does not satisfy the obligation to notify the deficiencies. The same also applies to subsequent deficiencies.

14.2 If the CP does not fulfill his obligation to inspect and report the deficiencies immediately, the services provided by ISW shall be considered to be free of deficiencies respectively accepted with any deficiencies. If no formal acceptance is performed by the CP, the services provided shall be considered as provided and accepted not later than one week after ISW has indicated the completion.

14.3 If it should emerge, after a notice of deficiency has been made, that the faults or deficiencies of the service, which are alleged against ISW, are not defects in the sense of the warranty right but result from a fault or improper use by the CP or other circumstances attributable to the sphere of the CP, ISW shall charge an appropriate fee (including any expenses incurred) to the CP for the inspection or examination of the deficiencies complained of.

E. FINAL PROVISIONS

15. Place of Performance/Place of Jurisdiction/Applicable Law/Data Protection/Miscellaneous

15.1 Place of performance for the order performances of ISW is the respective registered office of the branch or the place of the technical office of ISW, in which the order is performed. Place of performance for the CP's obligation to pay is the registered office of ISW in 4400 Steyr.

15.2 Jurisdiction is the registered office of ISW in 4400 Steyr. ISW shall, however, be entitled to assert any claims against the CP also at any other legal jurisdiction.

15.3 All contracts are subject to Austrian Law, the UN Convention on Contracts and the International Private Law shall not be applicable.

15.4 Data required for order processing and accounting, such as the CP's name, address, order and booking details, are stored in the IT system of ISW. The stored data are used by ISW exclusively within the limits of the legal provisions.

15.5 Unless otherwise specified in these GTC, the terms and conditions published by the Association of the Electrical and Electronic Industries (FEI) in the currently applicable version shall apply to deliveries and services associated with software.

15.6 In case that individual provisions of these GTC are or become void, this shall not affect the validity of the remaining provisions and the contracts concluded under their respective basis. The void provision is to be replaced by an effective provision, which comes closest to its meaning and economic purpose.