

# General Terms and Conditions



## 1. Scope

1.1 These General Terms and Conditions apply to all deliveries of work, services, testing, goods and deliverables (the "Products") which are provided by ATT advanced thermal technologies GmbH (the "Supplier") to the customer (the "Customer"), together referred to as the "Parties". The Products are typically, but not necessarily, provided within the framework of projects (each of them a "Project"). In case of software licensing, deliveries and installations, specific Supplier Conditions for Software, Licenses and Installations are also applicable.

1.2 At the latest by issuing its declaration of agreement with the Supplier, the Customer irrevocably accepts these General Terms and Conditions.

1.3 Unless Supplier expressly agrees in writing, Supplier shall not be bound by any terms or conditions, whether written, oral or otherwise that are different, or vary from or are in addition to the General Terms and Conditions and any such terms or conditions shall be null and void and of no effect whatsoever.

## 2. Offers

2.1 Offers by Supplier are made without obligation, except if stated to the contrary in writing signed by the Parties.

2.2 Specifications and quotes in catalogues, brochures, etc., are only binding if expressly referred to in the offer or order confirmation.

2.3 The Project concept and content of the offer is Supplier's intellectual property. Therefore, the offer and/or Project documentation must neither be reproduced nor disclosed to third Parties without Supplier's written consent. The documentation remains Supplier's property and must be returned to Supplier upon its request.

2.4 Supplier will not disclose the content and existence of the offer to third Parties without Customer's consent.

## 3. Conclusion of Contract

3.1 Customer's orders not containing a deadline for acknowledgement shall bind the Customer for at least four weeks.

3.2 The contract is effective only upon the signature of the contract by both Parties, or Customer's receipt of Supplier's written confirmation of a purchase order issued by Customer ("Order Confirmation"), and, if agreed upon, Supplier's receipt of the down payment and/or notification of a (confirmed) letter of credit to Supplier.

3.3 Any deviations in the Order Confirmation, or the documents referred to in it, in relation to any prior declarations by the Parties shall be considered as accepted if the Customer does not contradict the deviation in question expressly and in writing, within a reasonable period of time, latest within seven days from the receipt of the Order Confirmation. The Customer shall have no right to object the applicability and validity of these General Terms and Conditions.

3.4 No contract may be cancelled or altered by Customer except on terms and conditions acceptable to Supplier, as evidenced by Supplier's written consent.

3.5 Any costs of a modification requested by Customer or caused by circumstances not known to Supplier at the time of the signing of the contract shall be priced separately and are Customer's responsibility.

## 4. Subject of Contract

4.1 The Products supplied subject of the contract shall be exclusively specified by the Supplier's respective offer. Any provisions or specifications of the Customer's purchase order other documents referred to in it will not become part of the contract unless referred to in the Order Confirmation.

4.2 The Product parameters specified in the Supplier's respective offer may not be changed after works commenced unless agreed among the Parties in writing.

4.3 If, on account of the production process involved, it is impossible to delimit in advance a certain output quantity for the contract works, the Supplier shall be entitled to make excess or short deliveries. Similarly, in the event of individual or special fabrications or small-scale series, the Buyer shall buy the actual output as contract works.

## **5. Prices**

5.1 All prices represent an estimation based on the Supplier's experience. In case if actual and/or forecasted Project efforts exceed the scope of work planned by the Supplier, the Supplier is obliged to inform the Customer about this fact in a timely manner. The Supplier reserves the right to charge the cost of these additional efforts to the Customer. If Customer does not agree to such additional charging, the Supplier has the right to trigger a premature termination of contract as described in Clause 14.

5.2 All prices are based on the information and/or specifications and the time schedule available as of the date of the offer or contract. Any changes requested by the Customer may result in an increase of costs. Prices are valid for the respective offer or contract and are not applicable for any other offer or contract.

5.3 Prices are quoted for delivery ex Supplier's works, plant, office or warehouse and excluding packaging, shipping and VAT. Any fees, taxes, duties and other expenses except only taxes computed on Supplier's income are Customer's responsibility.

5.4 The prices quoted are based on the assumption that:

- a) The Project work will commence at the date confirmed by Supplier and will be performed according to the time schedule set forth in Supplier's offer, and
- b) In case the start or execution of the entire Project or parts thereof is delayed for reasons outside Supplier's control prices will be adjusted according to any increases reflected in the latest Austrian Consumer Price Index published by the Central Office for Statistics in Vienna and/or the wage index of the applicable collective labor agreement, whichever is higher.

5.5 The prices quoted do not include, unless stated otherwise:

- a) License and/or engineering fees levied by component or system supplier(s).
- b) Materials and components supplied by component or system supplier(s).
- c) Unforeseen and unplanned charges due to delays or additional work caused by Customer and/or component or system supplier(s).
- d) Effect(s) of revisions of the Project requested by Customer and agreed to by Supplier.
- e) Travel, accommodation and subsistence costs for Customer's personnel participating in Project meetings and witnessing of results at Supplier's offices, and
- f) Travel, accommodation and subsistence costs for any Supplier personnel travelling beyond the scope of the Project.

5.6 All prices quoted are payable in EURO.

## **6. Payment**

6.1 Unless agreed otherwise, the contract price shall be paid as follows:

- a) A down payment of 25 % of the total price shall be made within 15 days after the effective date of the contract (as per 3.1) or, if agreed, against submission of a bank guarantee by Supplier's bank. Payments for the remaining 75 % are due in instalments over the duration of the Project and will be invoiced by the Supplier at his discretion at Project milestones or monthly / quarterly.

b) If requested by the Supplier, the payments for the amount of 75 % of the total contract price shall be secured by an irrevocable, confirmed letter of credit, to be issued by a prime bank within 30 days after the effective date of the contract or Customer's signing of the order, which shall provide for payment against Supplier's invoice, and shall be in form and substance satisfactory to Supplier.

6.2 All payments for Supplier's Products supplied pursuant to the contract are due within 30 (thirty) days net upon receipt of Supplier's invoice. Interest will be charged on overdue accounts at the Rate of 4 (four) % over the EURIBOR 12 Months in effect at the time a payment is due. In case of delayed payment Supplier is, in addition to the interest charged, entitled to postpone its own obligations until receipt of the payments due.

6.3 Invoices will be sent by e-mail in PDF format to Customer's respective e-mail address designated for incoming invoices and debit notes. If no such address is specified to the Customer, invoices will be sent to the person in charge of the Project on Customer's side with a request to forward the document to Customer's service in charge. Invoices will be considered as validly issued by Supplier and thus payable according to the payment conditions specified therein upon dispatch of the respective e-mail.

6.4 Customer shall not be entitled to withhold or reduce any payments due because of alleged claims against Supplier.

6.5 Until Customer has fulfilled all financial obligations, the Products supplied shall remain Supplier's property. Customer shall be obliged to meet all legal requirements in order to safeguard Supplier's property or security interest. In case of attachment or other kinds of seizure Customer shall evidence Supplier's title and notify the latter immediately. The retention of title shall not affect the passing of risk under 7.1.

## **7. Delivery, Passing of Risk**

7.1 Delivery of Products to a carrier by Supplier shall constitute delivery to Customer; all risk of loss or damage in transit shall be borne by Customer. This also applies if, after arrival at Customer's site, Supplier still has to perform installation work.

7.2 If delay in delivery is caused by any of the circumstances mentioned in Clause 13 or by an act or omission of Customer, including the failure to procure any required permits for delivery in Customer's country, the time for delivery shall be extended by a period which is reasonable considering all the circumstances.

7.3 If delivery of Products ready for shipping is not possible or not desired by Customer, the Products can be stored at Customer's cost and risk, and delivery shall then be considered as performed.

## **8. Intellectual Property Rights**

8.1 Any existing ideas, know-how and patents (and applications thereof) owned by Supplier, not resulting from work carried out under the contract, but introduced into the Project by Supplier, shall remain Supplier's exclusive property.

8.2 Any ideas, know-how and inventions made by Supplier's employees as a result of work carried out under the contract shall be Supplier's exclusive property.

8.3 Any drawings and technical documents relating to the Project in any manner submitted by one party to the other, prior or subsequent to the conclusion of the contract, shall remain the exclusive property of the submitting party and shall be treated as confidential information by the receiving party, and may be utilized only for work performed pursuant to the contract.

8.4 Notwithstanding the provisions of 8.1 through 8.3, upon fulfillment of its financial obligations under the contract, Customer acquires:

a) A non-exclusive license to use the ideas, know-how and inventions, whether patented or not, described in 8.1 and 8.2 for all purposes included in the subject matter of the Project, but for no other purposes, and

b) The right to use the results and documentation of the Project, it being understood that Customer is obligated to treat any Project documentation it receives from Supplier as confidential information.

## **9. Third Party Patents, Trademarks, Copyrights**

9.1 Unless otherwise agreed in writing, Supplier does not warrant that Products designed and developed pursuant to the contract will not infringe any intellectual property rights of third Parties.

9.2 In the event the normal intended use of a Product leads to a claim alleging infringement of a third party's intellectual property right, Customer shall give Supplier immediate notice in writing of any such suit. Supplier shall provide Customer with reasonable non-financial assistance in the defence of any such claims. If the use of a Product is permanently enjoined by reason of an infringement of a valid third party's intellectual property right, Supplier will use commercially reasonable efforts to:

- a) Modify or replace the Product to render it non infringing, or
- b) Obtain a license from the third party who is the owner of the intellectual property right. Supplier's obligation as set out above is conditional upon being notified of an infringement claim within the periods set forth in 10.6.

9.3 Notwithstanding the foregoing, Supplier shall not be responsible for any compromise or settlement made without its written consent, or for infringements of combination or process patents covering the use of the Products in combination with other goods or materials not furnished by Supplier. The foregoing 9.2 states the entire liability of Supplier for infringement, and in no event shall Supplier be liable for

- a) Any direct damages or consequential damages attributable to an infringement,
- b) Customer's cost of litigation and/or negotiation, or
- c) Compensation of any damages awarded to third Parties.

9.4 Supplier shall not be liable, and Customer shall indemnify and hold Supplier harmless against all losses and expenses incurred by Supplier as a result of any claim for infringement of any proprietary right of third Parties relating to any:

- a) Products furnished by Supplier to Customer, based on drawings, designs or specifications proposed or supplied by Customer, or
- b) Products, systems, components, parts, etc. which are specified by Supplier but furnished by third Parties, or
- c) Products, vehicles, systems, components, parts, etc. which are furnished by Customer to Supplier, or
- d) Claims of inducement of infringement or contributory infringement resulting from the implementation, use, development or modification of Supplier's Products by Customer or customers of Customer.

## **10. Warranty**

10.1 Supplier warrants that any technical targets set out in its offer will be achieved, provided that:

- a) Technical specifications of the Products suggested by Supplier within the limits of state of the art in Supplier's industry are accepted by Customer, and
- b) Any systems or components supplied by Customer or its designated component or system supplier meet and perform within their specifications.

10.2 Supplier warrants that he will execute the Project work in a professional and competent manner according to state of the art in Supplier's industry. The Products will be in compliance only with such laws, standards, and regulations which were specified in the Supplier's offer. Any laws, standards and regulations not specified in the Supplier's offer in the Customer's order will not become part of the contract. All documentation for work rendered pursuant to the contract will be according to the existing general practice in Supplier's industry and will be subject to Customer supervision and final validation.

10.3 Customer shall examine Products provided under the contract upon receipt and shall notify Supplier in writing of any defect within 10 (ten) working days. Unless this duty of examination and immediate written notification is adhered to, warranty claims are forfeited.

10.4 Customer shall arrange for the recording of all required operating conditions, characteristic data and results of analyses for the duration of the warranty period to be able to document any warranty claim under 10.1. In case of deficiencies of Products (including incomplete or incorrect documentation) Supplier will either repair such deficiencies (complete or correct documentation) or replace deficient goods (parts) with new ones. Any warranty claims shall be forfeited if a Product is modified or repaired without Supplier's prior written consent.

10.5 The warranty contained in this clause 10 is exclusive and in lieu of all other representations and warranties, express or implied. Specifically excluded are damages caused by non-observance of instructions for use and maintenance of Products, warning, safety and other regulations provided by Supplier, and improper handling of Products. Supplier shall not be liable for further (consequential) damages resulting from deficient Products, unless Supplier is held responsible for intentional misconduct or gross negligence. Further, Supplier disclaims any liability for damages or malfunction the cause of which does not lie within the scope of work to be performed by Supplier under the contract.

10.6 Unless provided otherwise, the duration of the warranty will be 12 (twelve) months after the signing of the acceptance protocol under Clause 11, if applicable, or delivery of the Products as provided in 7.1, whichever is earlier. Any warranty claims not received by Supplier within 7 (seven) working days after the expiration of such period are forfeited. The performance of a warranty obligation does not prolong the original warranty period.

## **11. Fulfillment of Contract**

11.1 The contract is fulfilled on one or both of the following events, depending on the scope of the Project:  
a) Supplier's delivery of the reports and documentation containing the results of the Project as well as any hardware that may be agreed upon between Customer and Supplier, subject to the terms of Clause 7.  
b) Performance of a formal acceptance test conducted at Supplier's plant.

11.2 Conditions for a formal acceptance test (if required) and warranted technical targets to be achieved shall be defined in the contract. Supplier shall notify Customer of the acceptance test in sufficient time to permit Customer to be represented at the test. A protocol stating the results of the acceptance test will be drawn up and signed by authorized representative(s) of Supplier and Customer. If Customer is not represented, the protocol will be sent to Customer and accepted as accurate. If the warranted technical targets are met, a particular phase of the contract or the entire contract, as the case may be, is fulfilled.

## **12 Liability**

12.1 Supplier shall be liable for damages only if Supplier is held responsible for intentional misconduct or gross negligence. Any liability for indirect and/or consequential damages, including loss of property or profit, costs of product recall, is specifically disclaimed.

12.2 Supplier shall not be subject to any obligations arising from product liability claims. Customer shall indemnify and hold harmless the Supplier against any and all losses, liabilities, damages and expenses that supplier may incur as a result of any product liability claim of a third party.

## **13. Force Majeure**

In the event Supplier or one of its component or system suppliers is subject to an event of force majeure or an event beyond the control of Supplier or its component or system suppliers, such as war, acts of terrorism, natural disasters, governmental interventions and bans, energy and raw-material shortages, strikes, civil unrest, transport damages or delay, Supplier shall be entitled to extend the time of delivery set forth in Supplier's offer, provided Supplier notifies Customer within 10 (ten) days in writing of such event.

## **14. Premature Termination of Contract**

14.1 Either party may immediately terminate the contract by giving written notice to the other party if any of the following occurs:

- a) A bankruptcy proceeding is instituted against either party's assets, or such proceeding is not instituted because of insufficient assets;
- b) Such other party materially breaches the contract and fails to remedy such breach within 60 days after written notice is given.

14.2 In addition to the circumstances set forth in 14.1 Supplier may immediately terminate the contract by giving written notice to Customer, if

- a) Delivery or performance becomes impossible for reasons attributable to Customer, or is delayed due to such reasons beyond a reasonable grace period established in writing;
- b) Customer's financial situation has worsened notably after signing the order and Customer is unable or unwilling to provide adequate security for payment of its financial obligations under the contract;
- c) Payments are not received when due from Customer despite Supplier's fulfillment of its obligations and Customer fails to pay within a reasonable grace period established in writing; or
- d) A change of Customer's ownership takes place which has a substantial impact on Supplier's interests;
- e) Supplier has reasonable cause to suspect that the delivery of Products by Supplier or any of its affiliates or any other performance of the contract infringe any sanctions, prohibitions or restrictions under resolutions of the United Nations or laws and regulations of the European Union, the Republic of Austria or any other state which are applicable to the Supplier and/or any of its affiliates;
- f) Supplier's Products become subject to the restrictions imposed by the EC-Dual-use-Regulation No. 428/2009 as amended after the contract has been concluded if the Supplier does not obtain an export license under the EC-Dual-use-Regulation;
- g) According to Supplier's current Project plan, actual and/or forecasted Project efforts exceed the scope of work planned by the Supplier in his offer and Customer refuses to bear the additional cost to be charged by Supplier to achieve fulfillment of contract.

14.3 In case of premature termination, all performances or parts thereof, which have already been fulfilled by Supplier, shall be settled and paid according to Supplier's calculation. This also applies to deliveries and performances not yet accepted by Customer as well as to any preparatory work undertaken by Supplier.

14.4 In case of premature termination Customer shall be obligated to pay to Supplier a penalty depending on the stage of Project completion (defined as working hours and material costs invested divided by working hours and material costs planned in Supplier's offer) according to the following schedule:

- a) Project completion 0-30%: 30% of total Project price;
- b) Project completion 31-60%: 60% of total Project price;
- c) Project completion above 60%: 100% of total Project price.

## **15. Miscellaneous**

15.1 In case if any provision of these General Terms and Conditions turns out to be ineffective, valid or not enforceable, this will not affect the effectiveness, validity or enforceability of the remaining provisions. In this case the respective provision shall be replaced by an effective, valid and enforceable provision that best matches the purpose of the original provision.

15.2 Any contracts concluded between Supplier and Customer according to Clause 3 are complementary to these General Terms and Conditions and do not render them inapplicable unless otherwise agreed in writing. In case of deviations or discrepancies between provisions of these General Terms and Conditions and the respective contract, the provisions of

the contract shall prevail, while all other provisions of these General Terms and Conditions shall remain in full force and effect.

#### **16. Applicable Law and Jurisdiction**

16.1 The contract shall be construed and interpreted according to Austrian law. It is mutually agreed that the United Nations Convention on Contracts for the International Sale of Goods (UNCITRAL) does not apply.

16.2 In case of controversies or disputes between Supplier and Customer the competent courts for Supplier's seat in Graz, Austria, shall have jurisdiction. Supplier shall, however, also have the right to bring a claim before another court which has jurisdiction for Customer's seat or domicile.

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