

General Conditions of Purchases of Trans Austria Gasleitung GmbH

Version as of May 2016

The following provisions shall be deemed to be an agreed-upon contract component of all orders made by Trans Austria Gasleitung GmbH (hereinafter referred to as the "Client") with contractors (hereinafter referred to as the "Contractor"), unless otherwise expressly agreed in writing (contract, record of the negotiations).

If there are any inconsistencies or discrepancies, the provisions in the contract and/or record of the negotiations shall always take precedence over the General Conditions of Purchase.

1. Inquiries and Contract Formation

1.1. Inquiries

Inquiries made by the Client are non-binding and do not obligate the Client to pay any monetary consideration or reimburse any expenses, on any legal ground whatsoever, related to the subsequent submission of a bid. On the contrary, inquiries made by the Client are merely invitations to interested parties (potential contractors) to submit bids to the Client.

1.2. Bids

The Contractor's bids must conform to the text of the inquiry and reference the inquiry numbers listed in the caption of the inquiry. Any alternative offers shall be submitted separately and make express reference to changes in the legal conditions of the offer and the language of the inquiry. Bids that do not include the Client's General Conditions of Purchase in their entirety or that make reference to the Contractor's Standard Terms of Business will not be accepted by the Client. Any statements made by the Client with respect to such bids by the Contractor shall not constitute an acceptance of the Contractor's Standard Terms of Business.

1.3. Completeness of the bid, duty to give notice with respect to the tender documents

By submitting its bid, the Contractor irrevocably declares that all the information contained in its bid is accurate and complete and that all the prerequisites for providing goods and/or services have been met (including those requested by the Client or prescribed by law). Contractor shall not be entitled to subsequently claim that the documents submitted to him by the Client are unclear or incorrect or that certain goods and/or services which are in the trade customarily deemed as being an integral part of proper performance or otherwise necessary for performance in conformity with the contract are not separately specified in the inquiry.

If the Contractor believes that the Client's tender documents are unclear or flawed, it shall promptly – but no later than one (1) week from receipt of the tender documents and prior to submitting its bid – inform the Client in writing about any deficiencies or concerns and offer proposed solutions. Subsequent advisements by the Contractor with respect to the tender documents/calls for bids cannot be taken into consideration.

Unless otherwise agreed in writing, the goods and/or services offered to the Client by the Contractor must include all materials, equipment, ancillary work, and any work commitments that are included within the scope of the assignment based on the technical documents and are necessary for full performance of the contract.

1.4. Acceptance of bids

Bids submitted by the Contractor that contain no express acceptance deadline shall be binding on the Contractor and can be accepted by the Client until the expiration of twelve (12) weeks from receipt. The acceptance of the bid shall take effect after the verified receipt of the Client's written notice of acceptance by the Contractor ("order"). The Client can also accept the bid by fax ("faxed order") or a scanned document by e-mail. The Contractor shall document receipt of the Client's notice of acceptance by promptly sending a confirmation to the Client. This confirmation is not a binding declaration, but merely serves as documentation. The Client shall be entitled to accept only parts of the offer without any further explanation.

2. Record of the Negotiations

The record of the negotiations signed by the authorized signatories for the contracting parties shall constitute an integral part of the contract.

3. Cancellation or Adjustment of the Contract due to Mistake (laesio enormis)

The Contractor may not cancel or adjust the contract due to mistake (including errors in calculation). Moreover, the Contractor waives its right to void the contract if the discrepancy between the values exchanged is more than two to one (laesio enormis).

4. Contract Amendments and Supplements

Any supplement or amendment to the contract must be in written form, and the writing summarizing of the change order must be expressly designated as such. This also applies to any waiver of written form. Notices sent by fax satisfy the written-form requirement, but notices sent by e-mail (without scanned copy) do not.

5. Time of Performance

The Contractor acknowledges and agrees that adherence to the agreed-upon deadlines by the Contractor is a main contract duty of the Contractor in the eyes of the Client. Attempts by the Contractor to deliver goods or provide services early shall require the express written consent of the Client. Otherwise the receipt of such goods or services by the Client does not constitute acceptance as performance (no performance of the contract).

If there are reasons for delay, the Contractor shall promptly inform the Client of them in writing with verifiable information about the foreseeable circumstances that may cause the delay. This notification shall release the Contractor from the obligation to pay damages only if the delay is demonstrably the fault of the Client or of force majeure (as defined below).

In the event of delay, the Client is entitled to claim a contractual penalty in the amount of 1 % of the delivery value for each working day of delayed delivery, up to a maximum, however, of 10 % of the delivery value. In such case, the Client is further entitled to any compensatory damage claim exceeding this limitation.

6. No Transfer to Third Parties by the Contractor

Without the written consent of the Client, the Contractor is not entitled to transfer the contract to third parties, in whole or in part, except when unavoidable to procure primary materials, standard and special parts.

To the extent transfer of the contract to third parties is permitted, the Contractor shall inform the Client of all the subcontractors it intends to use as soon as possible. The Client may decline at any time the commissioning of certain sub-contractors without giving reasons.

7. The Client's Right to Transfer the Contract (Right of Transfer)

The Client shall be entitled to transfer the entire contract to a company in which it holds an equity interest or to a company which holds an equity interest in the Client at any time. In this case, the Client shall remain liable for the Contractor's claims under the contract (particularly its claims for compensation) in addition to the new Client.

8. Termination of the Contract

8.1. Violation of a main contract obligation

The Client shall be entitled to terminate the contract, in whole or in part, effective immediately if a main contract obligation is violated.

Any such termination shall not affect the Client's claims for compensatory damages due to non-performance. The Client shall be free (i) to accept performance from the Contractor that does not conform to the contract (e.g. incomplete, late, or deficient performance) and then demand warranty work and/or compensatory damages, (ii) to demand the immediate replacement/improvement of goods or services that do not conform to the contract, or (iii) to rescind the contract and demand compensatory damages due to non-performance.

8.2. Further Grounds for Termination

The Client shall be entitled to terminate the contract in writing – in whole or in part – in the following cases:

- (a) Effective immediately, if the Contractor loses its authorization or qualifications to perform the contract or becomes insolvent, or bankruptcy proceedings or reorganization proceedings are opened against the Contractor's assets or a bankruptcy petition is dismissed for inability to cover costs (to the extent that termination due to insolvency is not subject to restrictions under mandatory national insolvency law); or any other important reasons, especially breaches of major contract obligations;
- (b) Under the circumstances described in Article 21 (Force Majeure).

8.3. Consequences of termination

The Client must pay compensation for the goods or services already provided by the Contractor prior to termination, as demonstrated by the evidence, if they have resulted in a clear, unambiguous, and continuing advantage to the Client. Compensation for this performance shall be made by pro-rating the compensation agreed upon with the Contractor in accordance with the agreed-upon compensation methods. Claims by the Contractor that go beyond this section – particularly claims for compensatory damages – are excluded if the contract is terminated in whole or in part in accordance with this section.

9. The Client's Right to Interrupt Performance

The Client shall be entitled to demand that the Contractor interrupt the provision of goods and/or services and reschedule contractually agreed-upon deadlines without giving reasons. The Contractor shall have a right to compensation for such an interruption and/or deadline rescheduling only if the full extent thereof exceeds three (3) business days. This right to compensation is limited to the amount of downtime costs actually proven by the Contractor.

10. Price and Delivery Terms

Unless otherwise expressly stated in the contract, the price given by the Contractor in the bid shall also include overtime, standard packaging, delivery to the intended destination at the Contractor's risk and expense, primary materials, individual components, any item or work needed to ensure the customary, safe, and full delivery of goods and/or services, and all taxes and levies on the Contractor, including import duties, but excluding VAT tax. If the Client must remit any taxes and/or other levies in connection with the Contractor's activities (with the exception of VAT), the agreed-upon price shall be reduced by this amount.

11. Standard Packaging

“Standard packaging” as defined in this Articles 11 means that the delivery item must be packaged so that the packaging is secure and suitable for the particular type of transport and in conformity with the applicable delivery rules at the place of performance. Packaging, wrapping, etc. shall become the property of the Client only at the latter’s request. Packing is to be done carefully, taking all transportation risks into account. Packing slips, inscriptions, hanging labels, and the like shall be used to ensure easy identification of the delivery items and ready determination of their quantities.

12. Returns

The Client shall be entitled to return the packaging and/or defective delivery items to the Contractor. The Contractor shall take them back and remove returned goods and/or packaging from the Client’s premises at its own risk and expense.

13. Determination of the Quantity and Inspection of Delivered Goods

The delivered quantity shall be ascertained on the basis of the Client's inspection on receipt of delivery. The Client shall be entitled to use any partial delivery or partial performance before full delivery or performance is made without in any way acknowledging that the contract has been performed in full.

The Client shall only be obliged to inspect the delivered goods for any damages due to visible transport defects. The Client’s obligation for further inspection of delivered goods and report of any defects is waived.

14. Shipping

14.1. Shipping only in accordance with the Client’s instructions – no transfer of risk or ownership

Shipping must be in accordance with the Client’s instructions. The Client shall be entitled to change the shipping address up until the date of shipping. Any ancillary costs resulting from this shall be borne by the Client. Shipments in accordance with the Client’s instructions within the meaning of Article 14.1 shall not result in the transfer of risk and ownership governed by Article 16.

14.2. Place of performance

Unless otherwise agreed-upon in writing, the place of performance with respect to the Contractor’s goods and/or services shall be the business address of the Client listed in the contract or the relevant order.

14.3. Notice of shipment

Upon shipment, the Contractor shall send the Client two (2) copies of a notice of shipment, including the precise order reference. An additional copy of the notice of shipment shall be sent to the shipping address in a timely manner so that the necessary preparations can be made to receive the delivery. If necessary, notice of shipment shall also be given by fax or e-mail as soon as the shipping date has been determined.

14.4. Shipping papers – order reference

All shipping papers must include the order reference, order date, the Contractor’s consignment, the quantity, technical designation, and all other necessary notices.

14.5. Shipping agents

If delivery is made via a third company or freight carrier, the latter shall also be required to provide the order reference. If the Contractor is not obliged to take back the packaging material, the shipping papers must note this. The Client’s right to return the items shipped shall not be affected by this.

14.6. Insurance

The Contractor shall maintain and carry insurance for shipping all ordered items against damages of any kind at its own expense. The Contractor has to disclose the insurance and assign the claims under this insurance to the Client in case of any insurance claims. Nothing contained in this Clause shall relieve the Contractor from any of its contractual or other legal liabilities. The insured amount cannot be considered nor construed as limitation of liability.

15. Warranty and Compensatory Damages

15.1 General Provisions

The Contractor warrants and guarantees under penalty of damages that its goods and/or services are of proper and rigorous quality and design and conform to the order, all applicable legal and import control provisions, the Client's applicable norms, the relevant standards, and the state of the art. The Contractor shall examine the norms, guidelines, and other provisions to be applied under the contract or an order for suitability and shall warn the Client, if necessary, of any obstacles to proper performance of the contract prior to rendering performance (duty to warn). The Contractor's warranty applies to all patent defects discovered within the warranty period and all hidden defects discovered within the warranty period for hidden defects provided for in Article 15.5.

15.2 The Contractor's Duty to Rectify or Replace or to Repeat its Performance

Irrespective of any additional rights of the Client or any warranty obligations of the Contractor, the Contractor shall have the obligation to promptly replace all parts that are partially or completely defective due to design, material, or other defects or to eliminate such defects at its own expense, including the costs of trouble-shooting, installation, testing, shipping, etc. In addition, the Contractor shall, at its own expense, repeat any performance that proves to be unsuitable for fulfilling the contract in terms of quality or quantity.

The Contractor shall hold the Client harmless and indemnify the Client against all losses and expenditures caused by the defects or their elimination (without limitation, including penalties imposed by government authorities and claims asserted against the Client by third parties).

15.3 Substitute performance

If the Contractor does not promptly fulfill its obligations under Article 15, the Client shall be entitled, after a reasonable period of time, to eliminate the defects or damage at the Contractor's expense. The Client shall be entitled to immediately eliminate defects or damage at the Contractor's expense without a grace period if such action seems urgent to the Client (particularly in connection with the services or deliveries of other contractors of the Client).

15.4 No priority with respect to warranty rights and rights to compensatory damages

Under its warranty rights, the Client shall be free to demand rectification, replacement, price reduction and/or rescission. However, the Client shall have no right to rescind the contract for minor defects. Under its rights to compensatory damages, the Client can elect to demand the monetary equivalent, rectification or replacement.

15.5 Warranty period

The warranty period shall commence with complete delivery of the goods to the Client or performance of the services for the Client, which must fully conform to the applicable contract provisions. Partial deliveries of goods and partial performance of services and the placement of partial deliveries into operation or the use of partial services by the Client do not trigger the warranty period. The warranty period for the improved part or improved service shall commence with the complete delivery of the improved part or the complete performance of the improved service.

If hidden defects with respect to qualities that have been expressly warranted are discovered after full delivery of goods or services or improvements, the warranty period shall commence when these hidden defects become discernible.

Unless otherwise expressly agreed upon by the Client and the Contractor or required by mandatory statutory provisions, the warranty period shall be:

(a) two (2) years for movable property; and

(b) three (3) years for immovable property or work/installations on immovable property.

If defects are complained of during the warranty period, it shall be presumed that they were in existence at the time the delivery or service was completed.

So that the warranty claim is not time-barred, the Client must notify the Contractor of any defects during the applicable warranty period in writing. Moreover, the Client is not required to seek judicial relief for defects within this period; however it has the right to do so within two (2) years after the expiration of the warranty period. The Client's right to cite defects as a defense for an unlimited period of time remains unaffected.

15.6 The Client has no obligation to investigate and make complaints

The Client shall have no obligation of any kind to investigate and make complaints about the agreed-upon service/delivery. In particular, the obligation to investigate and make complaints under §§ 377 et seq. of the Austrian Commercial Code [UGB] is hereby excluded.

15.7 Limitation of Client's Liability

In no event shall the Client be liable under any theory of liability, for indirect, incidental, consequential or punitive damages, which includes without limitation damages for lost profits or revenues, lost business opportunities, loss of image or lost data, even if the Client has been advised of the possibility of such damages and in no event shall the Client be liable to the Contractor, its successors or assignees for damages in excess of the amount due to the Contractor for complete performance under the agreement, reduced by any amounts already paid to the Contractor by the Client.

16. Transfer of Risk and Ownership – Retention of Title

The risk and ownership rights in the goods delivered and services provided by the Contractor shall pass to the Client at the place of performance when said goods and services have been provided to the Client in full. Partial deliveries of goods and partial performance of services – even if contractually agreed-upon – and the placement of partial deliveries into operation or the use of partial services by the Client do not transfer risk. The Client expressly rejects any retention of title by the Contractor. Acceptance by the Client of deliveries of goods or performance of services made by the Contractor under retention of title does not constitute consent to the retention of title.

17. Ownership and Right to Use Items Provided by the Client

All norms, specifications, drawings, calculations, instructions, and the like, as well as models and tools provided to the Contractor by the Client shall remain the property of the Client and shall be returned to the Client promptly after performance of the contract. They may not be copied or stored or otherwise remain with the Contractor in any form, nor may the Contractor provide them or make them available to third parties or use them for purposes other than fulfilling its statutory and contractual obligations toward the Client. The Contractor shall have no right of withholding of any kind.

18. Employer's Liability Insurance

The Contractor shall obtain reasonable employer's liability insurance in proportion to the contract volume and the risks associated with providing the aforementioned goods and services and shall prove this to the Client, upon request, before it starts performing the contract. Otherwise, the Contractor shall be in default and the Client shall be entitled to prohibit the Contractor from providing goods and services until confirmation of insurance is submitted. The Client alone shall be entitled to decide whether the confirmation of insurance that is submitted provides reasonable coverage for the subject matter of the contract and the risks associated with providing the aforementioned goods and services.

19. Confidentiality

The Contractor and the Client enter into a separate confidentiality agreement, which forms an integral part of the Contract.

20. Intellectual Property Rights

The agreed-upon price to be paid to the Contractor by the Client shall cover the acquisition of intellectual property rights (e.g. patent, design, trademark, utility model, and copyright rights) by the Client to the extent necessary to freely use the delivery items and/or the works created. In this connection, the Client shall be granted a copyright or (to the extent applicable) a simple, free license for all products or services provided by the Contractor, including all plans and similar documents, drafts, drawings, constructs, technical revisions, and basic designs. These provisions shall primarily apply to all copyrights, patents, rights of use, trademarks, know-how, and other industrial or intellectual property rights the Contractor needs to provide goods and services or to use its work products/services. The Contractor shall be liable for ensuring that third-party intellectual property rights are not infringed and shall hold the Client harmless in this regard, including any legal costs and attorney's fees.

21. Force Majeure

Neither the Client nor the Contractor shall be responsible for a failure to meet its obligations attributable to an instance of force majeure (under the following definition). The affected contracting party shall be released from any performance that is prevented by a force majeure event for the duration of this event and to the extent of the hindrance.

Immediately after the onset of the force majeure event, the affected contracting party shall inform the other party of all the relevant details. Thereafter, the contracting parties shall jointly consider suitable measures to settle the situation. Irrespective of this, the affected contracting party must promptly take all technically and economically reasonable measures to keep losses as small as possible and to reestablish the prerequisites for fulfilling its contractual obligations.

Unless otherwise agreed-upon, each contracting party shall bear the costs, expenses, losses, and damage incurred and suffered in the course of an instance of force majeure and shall be liable for them. "Force majeure" shall mean events or circumstances whose effects make it impossible or unlawful for the affected party to meet its obligations, in whole or in part, provided that the events or circumstances (i) are outside the control of the contracting party, (ii) are not attributable to the contracting party, and (iii) could not have been foreseen, avoided, overcome, or eliminated, in whole or in part, by the contracting party that is claiming force majeure through use of the requisite care.

If all the criteria of this definition are met, the following events or circumstances, *inter alia*, shall be treated as instances of force majeure: (a) natural catastrophes, expropriation or seizure of equipment, subversive acts, war, civil war, revolution, rebellion, civil commotion, sabotage, riots, civil unrest, terrorism, and every credible threat thereof; (b) fire, explosions, hurricanes, tornados, earthquakes, volcanoes, unusual weather conditions that have no history of regular occurrence, or other natural occurrences; (c) plague, epidemics, pandemics, embargos, sanctions or other restrictions on the export of goods, services, or technologies, quarantines, act or omissions by the competent authorities; and (d) an event or circumstance or combination thereof that is the equivalent of the above listed situations.

Instances of force majeure shall not include (a) strikes, lockouts, or other forms of labor dispute or industrial conflict relating to a company or operation of the affected contracting party or its contractors or subcontractors; (b) late delivery of operating equipment or materials; (c) insufficient financial resources; (d) a breakdown of operating equipment or machines; or (e) extreme weather conditions *per se*.

If and to the extent that an instance of force majeure continues for four (4) weeks without interruption, either contracting party shall have the right to terminate the contract, effective immediately.

22. Invoices and Payments

22.1 Invoices

Unless otherwise agreed-upon, invoices shall be paid in Euro. All invoices shall be sent to the Client's registered office for payment purposes. The order number, contract number, and order designation (if available) shall be listed on the invoice. When deliveries are made abroad, two (2) copies shall also be attached to the shipping papers. The Client reserves the right to reject invoices that do not contain this information.

22.2 Payment Period and Place of Payment

The Client shall pay the invoices for contract-conforming goods and/or services forty five (45) days net after receipt of an (auditable) invoice. For contract-conforming services, the Client shall – in case of agreement on partial payments - pay progress payment invoices sixty (60) days net after receipt of an (auditable) invoice and final or partial final invoices ninety (90) days net after receipt of an (auditable) invoice. Payments shall be deemed to have been made in a timely manner if they are dispatched by the Client no later than the last day of the payment period or if the payment instruction is given by the Client on the last day of the payment period. The place of performance for payments is the Client's registered office. The same due dates shall apply if the Client makes use of its right of setoff.

22.3 How Payments Should Be Interpreted

All payments made by the Client to the Contractor are under reservation of rights and do not signify that the merits or amount of a claim has been acknowledged.

22.4 Effect of Payment

If the Contractor fails to make a written and substantiated objection within six (6) weeks of sending or transferring the Client's final payment, all the Contractor's claims against the Client from the particular business transaction shall be deemed to have been satisfied.

22.5 Setoff

If, prior to payment, counterclaims against the Contractor arise at a company in which the Client holds an equity interest, the Client shall be entitled (but not required) to set off its liability up to the amount of this counterclaim. The Client shall also have this right against any assignee or other party entitled to assert claims against the Client, even if the Client consented to the transfer.

No setoff may be made by the Contractor, its assignee, or other beneficiary of claims against the Client of whatever kind. The Client reserves the right to set off any claims under a Contract against any amounts owed to the Contractor.

23. Code of Ethics

The Contractor is aware that the Client has adopted a Code of Ethics and that the Contractor is bound by the values expressed therein. Any breach of this Code of Ethics constitute an important reason for the immediate termination of contract.

24. Invalidity of Contract Provisions; Applicable Version

If individual provisions of these Conditions of Purchase are or become legally invalid, this shall not affect the validity of the remaining provisions. In such a case, the Contractor and the Client shall agree upon a provision that is properly aligned from a legal and economic perspective without unreasonable delay. These General Conditions of Purchase exist in the German and English languages. If there are divergences or inconsistencies, the German version shall take precedence.

25. Choice of Law

All contracts entered into on the basis of these Conditions of Purchase, including all aspects of their formation, validity, and enforcement shall be subject to Austrian substantive law with the exception of its conflict-of-law standards. In addition, application of the UN Convention on Contracts on the International Sale of Goods is expressly excluded.

26. Agreement on Jurisdiction

It is agreed that the competent courts with subject matter jurisdiction over commercial matters in Vienna, Inner City, shall have exclusive jurisdiction over all disputes arising under these Conditions of Purchase and the contracts based on them, including pre-contractual obligations or other legal relationships between the Client and the Contractor, particularly with respect to disputes in connection with the formation, termination, dissolution, invalidity and reversal of the contract – unless otherwise agreed.