



General Terms and Conditions of Purchase of RAG, December 2010

PREAMBLE

The present General Terms and Conditions of Purchase establish the general contract terms for any procurement – hence for deliveries and/or work performances and supply of services provided to RAG by the Contractor.

DEFINITIONS

In this contract mean:

Client:

RAG Austria AG (RAG), Schwarzenbergplatz 16, 1015 Vienna, in the following referred to as RAG.

Contractor:

The RAG's contracting partner for the present contract

Performance Subject to Procurement (Procurement Performance)

Is the performance that has to be rendered by the Contractor, in accordance with specifications (for example in the form of a technical procurement file), within the scope of the contract terms.

Procurement File:

The request for quote, the present (General Terms and Conditions of Purchase), the technical specifications or technical procurement file as well as, if available, the award criteria including rules of procedure together with all respective annexes.

Third Party Companies:

Companies commissioned by RAG to perform deliveries or supply of services for the Entire Installation – excluding the Contractor.

Place of Performance:

Place of Performance for the Procurement Performance is the place defined in the contract. For payments, the Place of Performance is Vienna.

Entire Installation:

Means the unit that is functionally and objectively connected to the Procurement Performance to be performed by the Contractor.

Sub-Contractors:

Contractors additionally consulted by the Contractor or by Third Party Companies to fulfill their contractual obligations to RAG – without creating a contractual relationship with RAG.

Additional associated documents:

Safety regulations third party contractors A437006, as amended from time to time provided on the RAG-Homepage using the following link:

<http://www.rag-austria.at/lieferanten/ausschreibungen.html>

1. OBJECT OF THE CONTRACT

The Object of the Contract is to regulate the rights and duties of the Contractor and the RAG in connection with the provision of the Procurement Performance. The contract for the Procurement Performance includes the following documents (including their annexes), valid according to the following order:

1. The RAG's written order
2. The jointly paraphed technical and/or commercial protocol, if available.
3. The offer (references to General Terms and Conditions of the Contractor are invalid).
4. All legal and technical norms, guidelines and onther regulations, as far as they apply to the Entire Installation or the Procurement Performance or are state of the art, especially the respective Austrian Norms (ÖNORMEN), the building code, the Mining Act (MinroG), the Austrian Gas Management Act etc. that are (i) valid at the time of the conclusion of the contract, (ii) are published during the conclusion of the contract but will become effective within the performance period but only after a transition period or (iii) that become effective within the performance period and are binding immediately. regulations that result from paragraph 4 amend the content of the contract only from a technical point of view. Commercial regulations – especially resulting from Austrian Norms (ÖNORMEN) – shall not become content of this contract, even if paragraphs 1 to 4 do not provide for regulations in this context.

General terms and conditions of the Contractor are not subject matter of the contract. If the Contractor, when billing or in case of future acknowledgement of order connected with this commission (quantity increases, change orders, additions, etc.) refers to his own general terms and conditions, they are hereby expressly contradicted. No further contradiction in individual case is required. The RAG's behavior must under no circumstances be considered an acceptance of such conditions.



2. CONTRACTOR'S SERVICES

Contractor's scope of delivery and service results from the object of agreement as defined in article 1.

Any service not shown separately in the Procurement Files are – as far as they belong to the complete, proper and approvable installation, the start-up, the fully functional practical operation or the state of the art of the Procurement Performance's functional unit of the Entire Installation – also part of the Contractor's scope of delivery and are considered to be included in the quoted price. In particular, all special specifications of the oil and gas industry have to be considered. Excluded from the Contractor's scope of delivery are only the services on the RAG's own account, which are explicitly described in the Procurement File.

Contractor has to gather information about the extend and manner of his duties, as well as about the circumstances that might influence the planning and later implementation of the Procurement Performance, especially the local conditions and the condition of the construction site (including an inspection of the construction site). In case of any possible ambiguity, contractor has to ask the RAG in advance for information or inform the RAG about the ambiguity, since otherwise, in case of contract award, such ambiguities go to the expense of the Contractor, and RAG is not obliged to refund any additional cost arising thereof.

Contractor has to provide all machines, devices, scaffoldings, hoisting gear, construction container (incl. commencement, maintenance, clearing as well as the operating costs of the construction site, telecommunication, copier, etc.) necessary for the completion of the ordered performance at his own expense and his own risk. These expenses have to be accounted for in the quotation price. In case of decrease or increase of the order, only the right for aliquot compensation shall apply, without an increase of the unit prices or the overhead business expenses.

Within the scope of the provision of the Procurement Performance, Contractor obligates himself to observe all legal regulations and official orders for the Entire Installation and for the construction site. Contractor obligates himself to see to it that all legal, official and operational industrial safety regulations as well as all individual instructions by the authorities and orders of the responsible persons are carefully attended to by his vicarious agent and his assigned Sub-Contractors.

Additionally, Contractor obligates himself to meet the stipulated schedules. If any time-limits, that have been specified in writing, are exceeded, neither the increases in wage-prices nor in material prices will be refunded for operations executed after this point in time. If the deadline shifts are caused by RAG, the schedule continues to apply until a new schedule is mutually agreed upon.

The service has to be performed in a manner that the erection, start-up or the operation of the Entire Installation is not disturbed and no time lag or additional expenditure occurs. In particular, this obligation applies to the relationship with other Contractors of the RAG.

Contractor shall ensure that personnel deployed on the construction site by him or by his Sub-Contractors have the competences, reliabilities, technical qualifications and physical abilities necessary to perform their work. If sub-suppliers and/or Sub-Contractors are deployed, Contractor shall state them when submitting the offer and shall have them approved by the RAG prior to their assignment. Sub-contractors may be refused by Customer. The assignment of sub-suppliers and/or Sub-Contractors does not release Contractor from his responsibilities or liability. Contractor is liable for sub-suppliers or Sub-Contractors as if it were his own actions. By RAG's acceptance, no legal relation is established between the Client and the sub-supplier and/or the Sub-Contractor.

As far as the Procurement Performance covers construction work and mounting work, Contractor has to additionally observe the following regulations:

- Working hours are 40 hours per week. Daily working hours have to be agreed upon separately.
- Overtime, night-hours, Sunday-hours and holiday-hours are only compensated for if they have been ordered by the RAG prior to the execution of the works and are not performed to make up for time lost due to self-inflicted delays. For all-inclusive work or on-site measurement work only the additional charge for overtime is compensated.
- Holidays that are not legally acknowledged are considered working days. If required, Contractor is obliged to obtain the authorization of the competent supervisory authority for the performance of overtime, night-hours, Sunday-hours or holiday-hours.
- Work under aggravated circumstances are considered to be only those which are determined in the applicable collective treatment for blue-and white-collar-workers in Austria. Percentage rates mentioned there are refunded at the utmost.
- If no unit prices have been agreed upon, the following regulations apply for invoicing:
- The RAG only accepts travel hours required for the travel from the site of the respective company to the mounting site, considering a favorable flight- train- or road-connection.
- For mounting personnel, the traveling costs are refunded according to the documented effective costs (bills, ticket etc.), without additional charges.
- For the compensation of travel expenses, regulations in the applicable collective treatment for blue- and white-collar-workers in Austria apply. If travel by car has been agreed upon, the official kilometer allowance will be refunded.
- If not already agreed upon in the contract, the mounting start shall be agreed between the responsible operating management of the Client and of the Contractor.
- Prior to start-up of works, Contractor has to inform the RAG in writing about the RAG's prospective representative. The representative has to be constantly reachable during working hours.
- Contractor shall arrange for an as much as possible consistent allocation of key-personnel. Key-personnel are considered to be the project manager, the construction site manager and all other persons that are additionally specified as key-personnel. In case of reasonable request, Contractor shall replace key-personnel.

3. HSE

Health, safety and environment (HSE) represent a direct responsibility of the Contractor, in his main organization as well as for his vicarious agents and Sub-Contractors. Contractor's management as well as the main organization's superiors or project managers of the Contractor therefore enhance, by their own positive behavior as well as by information, instruction and motivation, their employee's HSE-awareness.



By their behavior, Contractor's employees support the HSE-measures. The Contractor accepts the "Safety Regulations for Sub-Contractors" without any reservation and obligates himself to irrevocably comply with them. Contractor shall assure that his employees, including sub-contractors, comply with the regulations and the Contractor shall control this compliance.

Any safety- and environmental-relevant occurrences on the construction site shall be reported to the RAG without delay, and the further course of action shall be coordinated with the RAG. Accidents of Contractor's personnel on the construction site shall also be reported without delay. A copy of the notice of accident shall be delivered to the RAG. For security reasons, Contractor's personnel has to undergo the compulsory entry- and exit-controls. Prior to start-up of works, the Contractor has to contact the construction site management for a briefing about working safety precautions.

In case of noncompliance with the HSE-regulations, the RAG has the right to immediately stop the work. The Contractor can not assert any rights thereof. Any delay caused thereby does not cause any deadline-shift.

4. REGULATIONS FOR PACKAGING AND SHIPPING

Deliveries are handled on DDP basis (INCOTERMS 2000) place of delivery, not unloaded.

Generally, only the delivery of the total quantity is considered to be a delivery on schedule. Partial deliveries, if tolerable and agreed upon, have to be marked as such.

If the manner of packaging is not determined by RAG, Contractor shall make sure that the packaging can ensure the intactness of the goods until they are delivered to the construction site – taking multiple handling of the goods and a short-term storage into consideration.

Deliveries shall only be packed by the Contractor after they have been inspected and approved by the RAG – unless the RAG waives the inspection and approval. Readiness for inspection has to be announced to the RAG in writing.

Deliveries have to be marked as follows:

- Project:
- Project-Nr.:
- Pos-Nr.
- Weight (gross) kg
- Dimensions (LxWxH) cm

The individual parts in the packages have to be marked according to the specifications in the contract. (part-number, tag-number, position-number, etc.)

For each delivery, a delivery note has to be directed to the RAG not later than 14 days prior to the delivery. The order number has to be indicated on all documents, items of delivery and on the invoice. If a company different from the Contractor delivers the goods, this company shall be induced to specify the order number as well. To guarantee correct allocation on the construction site, Contractor and any possible Third Party Company have to be declared on the delivery documents.

Contractor has to inform, without delay, about any expectable delay of delivery.

5. QUALITY ASSURANCE

On RAG's demand, Contractor has to prove that he has established a system of quality assurance. For individual deliveries and/or performances, Contractor has to assure that the quality requirements described by the RAG in the Procurement File are met. It shall be checked and assured that sub-suppliers also comply with the requirements. The inspection reports shall be submitted to the RAG.

Quality requirements, which result from relevant legal provisions of the country where the installation of the facility takes place and from accepted codes of practice, have to be fulfilled even if they are not explicitly mentioned in the ordering files.

RAG shall be informed if corrective actions, which might influence the desired quality requirements, become necessary during production and these actions shall be described. Such actions shall only be carried out with RAG's consent.

If objections arise during the production supervision by the RAG, Contactor has to eliminate them without delay at his own expenses. Delays caused thereby do not cause a shift of the deadlines.

Supervision costs that arise to the RAG and/or assigned third parties due to repetitions that the Contractor is accountable for, shall be at the Contractor's expense.

As far as it is necessary for production supervision, Contractor assures the constant right of access to his and his sub-suppliers construction site without additional cost for the RAG.



Supervision of inspections by the RAG and/or assigned third parties shall not be considered an acceptance in the legal sense and does not relieve the Contractor of his obligation to comply, his guarantee obligation and his warranty obligation. Additionally, no possibly necessary rejection is excluded thereby and the supervision must not be considered proof of Contractor's efficient quality control.

To meet possibly agreed reporting and stopping points, Contractor shall, no later than 10 working days prior to such a date, report the readiness for supervision to the RAG in writing.

If, in the course of the supervision by the RAG on site a notice of completion is issued by the RAG's agent, this does not entitle the Contractor to pack and/or ship the delivery. The clearance for packing and/or shipment shall only be stated by the RAG's responsible department and/or his agent.

Additional to the conditions mentioned above it is deemed to be agreed that, prior to the RAG's supervision of the production, deliveries have been checked in advance by Contractor (Contractor's inspection certificates marked red in the production documents – actual size protocol, submission of documentation).

RAG is entitled to supervise Contractor's compliance with the agreed production and manufacturing processes as well as the application of the necessary measuring and inspection methods. In particular, RAG shall be entitled to inspect any commission-related production-, control- and inspection-documents.

For the execution of the inspections and controls by the RAG, Contractor, without charge, grants any necessary support, as for example the allocation of necessary appliances and measuring devices as well as, if necessary, the allocation of qualified personnel.

6. RAG'S RIGHT FOR INFORMATION AND INSPECTION

Contractor has to provide his performances in consultation with the RAG. Contractor shall inform the RAG about the status of the works and about any incidents on a periodical basis and has to jointly agree decisions with the Client.

RAG or an assigned third party shall at any time be entitled to catch up on all Contractor's works as well as their status and progress or check the works or have them checked by third parties. If third parties are consulted, they shall sign a confidentiality agreement presented by the Contractor. Shareholders of the RAG are not considered third parties. Yet they are subject to the same confidentiality agreements as the RAG. Contractor has to stipulate the RAG's right for information and inspection by contractual provisions with any possible Sub-Contractors or sub-suppliers

If the Procurement Performance covers any construction or mounting activity, any circumstances and incidents relevant for the performance of the task have to be noted in a construction diary. The respective entries have to be signed by both parties. On RAG's demand a separate written analysis report has to be presented without delay. Additionally, a weekly progress journal has to be provided by the Contractor. Entries into the construction diary are only considered a written notification; signing thereof shall not be deemed to be an acceptance but merely an information. Acceptance requires a respective written correspondence.

Contractor shall submit files (drawings, inspection reports, etc.) in such a timely manner, that enough time remains for the RAG to observe his right for inspection, but that on the other hand enough time remains to enable modifications desired by the RAG within the stipulated schedule.

Exercise of RAG's right for information and inspection does in no way affect Contractor's responsibility.

7. INSTRUCTION RIGHT OF RAG

RAG is at any time authorized to issue an instruction to the Contractor. If, in more urgent cases, instructions are issued verbally, Contractor shall immediately, or at least on the same working day, reconfirm these instructions in writing or the instructions shall be included in a mutually signed minutes of meeting.

In particular, instructions of the RAG's safety engineer or safety delegate shall be followed. In case of non-compliance with the instructions, RAG is entitled to demand total or partial cessation of work without the Contractor's right to derive any claim thereof. For damages caused in connection with the non-compliance with such a proper instruction, Contractor is liable without restrictions.

Client's instruction does not influence the Contractor's responsibility for fulfilling his contractual duties, except for the following provisions:

- If the Contractor is apprehensive about the RAG's instructions, especially considering the quality of performance provided by him, warranty, time schedules and compensation, RAG shall immediately inform about this in writing and shall confirm verbal information in writing, describing in detail the predictable effects, especially considering schedule and costs.
- In these cases, Contractor shall postpone the execution of the instruction until the RAG has replied. Only if the RAG confirms his instructions in writing, despite the Contractor's issued apprehensiveness, the instructions have to be executed.



8. SUBSEQUENT MODIFICATIONS OF THE ORDER

RAG shall have the right to demand modifications of the Procurement Performance even after the contract has been concluded. Contractor is obliged to inform about consequences regarding time schedules, costs, Third Party Companies etc. Contractor shall calculate the consequences in a comprehensible way and shall disclose them. Supplementary offers have to be based on the original calculation of the main order – therefore according to the original unit prices or, if they are not applicable, according to the original hourly rates. Disclosure about the calculation of the revised offer has to take place especially if flat fees have originally been agreed upon. If possible, the main order shall be the criterion also in this case. Execution of operations must not be started until an assignment of the purchase department of the RAG has been issued. The same applies for the execution of additional operations desired by the RAG, which have not been included in the original order.

If the RAG desires adjustments of service provisions which are deemed not to be the responsibility of the Contractor, new binding time schedules shall be amicably arranged, otherwise the originally arranged time schedules shall be adhered.

RAG reserves the right for non-utilization of services and groups of services, positions etc. This does not justify modifications of unit prices or charging of total business costs ("Geschäftsgemeinkosten").

A separate offer for the recommended spare and wear parts (for 2-year operation), which has to include prices as well as detailed specifications of each individual part, shall be prepared in the form of an option. The spare part offer shall be based on delivery DDT (INCOTERMS 2000) Place of Performance and shall include maintenance of price until the Entire Installation is put into operation. The latest possible time to call the option – if not determined in the specifications or the TBU - has to be declared in the offer. The actual delivery of the spare parts shall take place in agreement with the RAG, at the latest at start-up of the Procurement Performance. Start-up spare parts are part of the scope of delivery, have to be specifically mentioned in the offer and have to be included in the price.

If, within the following 5 years, RAG decides to re-order the Procurement Performance in the same or similar manner, Contractor warrants that the new order is compatible with the Procurement Performance and informs the RAG about a type change on time to give the RAG the opportunity to make use of the agreement. In particular, for purchasing of the same or respective type, the present contract shall be used as basis for the procurement.

9. CONTRACTOR'S FEE – TERMS OF PAYMENT

For the Procurement Performance, RAG pays to the Contractor a contractual fee according to the specification. The prices are fixed prices and unalterable until full fulfillment of the order.

Any changes of the calculation bases whatsoever have no influence on the offered price. Any opportunity of contestation due to an error is hereby explicitly excluded.

Prices mentioned in the order are net prices, statutory value-added tax ("VAT") has to be added. The tax has to be shown separately in the invoices, if the invoice exceeds an amount (currently Euro 150,- each) mentioned in the respective law (statutory order).

If no other agreement has expressly been made in writing, stipulated prices always include delivery according to article 4 "Regulations for Packaging and Shipping".

In general, all travels of Contractor's personnel including traveling expenses and additional expenses, necessary within the scope of the fulfillment of the contract, have to be included in the order's quoted price. In particular this covers:

- travels for securing the provision of the Procurement Performance in compliance with the contract;
- travels to ensure deadlines;
- travels to ensure quality (e.g. to the production plant);
- travels to and from the construction site;
- travels to and from the RAG or assigned third parties for any meetings.

Bearing of costs in case of unforeseeable amendments of laws has to be regulated amicably, whereby the Contractor has to provide evidence for additional costs.

Payment deadlines are mutually agreed upon by the contract partners.

Monthly partial invoices may be presented for construction and mounting work, independent of the agreed payment deadlines. These partial invoices have to be in accordance with the construction progress and on-site measurement as well as acknowledgement by the local construction management less a 10% covering retention.

The final account can be presented only after the Procurement Performance is completed and has been accepted. All executed down-payments have to be considered when presenting the final account. Additionally, the declaration shall be included, which has to be signed on behalf of the company, that after payment of the final invoice no further receivables can be asserted based on this contract (including supplementary claims). The final account shall include a statement that explicitly expresses renunciation of reservations.



If not otherwise agreed differently, payments shall be made within 30 days after receipt of an invoice that is verifiable, proper (due-date assumed) and in conformity with the law.

Payments do not pose an acknowledgement of the correctness of the invoice and/or an acceptance of the delivery or the performance but are subject to a later verification. In particular, all RAG's rights arising from the contract towards the Contractor shall retain their full force and content.

RAG reserves the right to retain 10 % of the total order value (including all supplements) for the period of warranty plus 3 months as an interest-free financial retention. By application it is possible to provide a free, irrevocable and unconditional bank guarantee of a big bank in the EU area for the same amount and duration. The amount of the financial retention remains unchanged for the duration of its existence. If the period of warranty is extended due to warranty cases, the period of validity shall be adjusted accordingly. The bank guarantee shall be returned on written demand after the period of warranty has expired.

The Contractor is not entitled to set off RAG's claims against his own claims unless the claims, with respect to reason and amount, have been expressly acknowledged in writing or legally.

10. ACCEPTANCE

RAG accepts the Procurement Performance in the form of a proof of delivery or an acceptance protocol. If, reasons which are the fault of the contractor (e.g. defects), the Procurement Performance can not be taken over or accepted by the RAG formally, the interim use of the Procurement Performance does in no case whatsoever mean an acceptance in the legal sense.

11. TRANSFER OF OWNERSHIP AND RISK OF LOSS

After acceptance and payment of the total price – excluding the possibly agreed financial retention – the ownership of the Procurement Performance is transferred to the RAG without restrictions. Reservation of title is excluded. Contractor grants the RAG that no third parties reserve any rights. If nevertheless the RAG is claimed against due to such third party's rights, the financial retention can be called for.

Until final transfer of ownership, Contractor bears the risk of accidental loss of the Procurement Performance.

12. DEADLINES AND CONTRACT PENALTY

If penalized deadlines have been specified, the following regulations shall apply:

Timeliness of delivery is determined by the receipt of the complete delivery at the Place of Performance. Penalties apply for mere partial performances also.

Deadline penalty/milestones:

If agreed deadlines are exceeded, Contractor defaults without further reminder and, regardless of fault, the Contractor is obliged to pay for each beginning week and for each milestone that has been marked as subject to penalty (deadlines marked with "p" in the time schedule) a contract penalty of 1% of the total order value, but with a maximum total amount of no more than 10% of the total order value (deadline penalty).

Documentation penalty:

If for documents the Contractor is obliged to deliver agreed deadlines are exceeded, Contractor defaults without further reminder and, regardless of fault, the contractor is obliged to pay for each beginning week and for each milestone that has been marked as subject to penalty (deadlines marked with "p" in the time schedule) a contract penalty of 0.5% of the total order value, but with a maximum total amount of no more than 5% of the total order value (documentation penalty).

If deadlines have been shifted with the RAG's consent, the new deadlines are accordingly considered to be new penalty deadlines.

Cap:

The total amount of contract penalties is limited to 15% of the total contract value (including all supplements). Contract penalties are not considered to be liquidated damages. RAG expressly reserves the right to claim further losses or damages (according to article 14), if the loss or damage exceeds the (regardless of fault) contract penalty.

Acceptance of a delayed delivery does not exclude possible compensation claims. If a delivery occurs ahead of time, RAG has the right to charge any incurred expenses (e.g. expenses for storage) to the Contractor.



13. WARRANTY

Contractor warrants that all Procurement Performances comply with the commonly assumed as well as the special contractually defined properties – and comply with state of the art technology.

In case of warranty, Contractor has to provide any performances necessary for finding and remedy of defects especially engineer work and monitoring work. Additionally, Contractor has to provide any material, personnel, structure, steel constructions, devices, machines, etc. at his own expenses. RAG only bears the costs arising thereof up to the amount that would have incurred for Contractor's performances fulfilling the contract. Beyond that, RAG is entitled to demand damages from the Contractor.

The period of warranty for the Contractor's performance is 24 months from start-up of the Entire Installation, but no more than 36 months from delivery. If, due to remediation of defects (rework, etc.) the Procurement Performance can not be used as agreed upon in the contract, the period of warranty extends for a respective time equivalent to the duration of the interruptions.

A notification of defects by the RAG has to take place within a reasonable period after the defect has been noticed, but this notification is not bound by any period. In particular, the use or processing of the Procurement Performance shall not be considered an approval or acceptance thereof or a waiver of any claims.

Verbal notification of defects complies with adherence to the time limit. A written complaint about defects and a request for improvement after acceptance delays the period of warranty until the objected defects are resolved.

The defect has to be resolved within the shortest possible time. If the way to resolve the defect is not clear, Contractor shall, within three working days, make a proposal for curing the defect and shall consult with the RAG about the proposal. If the Contractor denies the faultiness of his performance, he shall inform the RAG about this without delay. If within 14 days the Contractor does not prove by expert opinion that his performance is faultless he has to arrange for a defect analysis and elimination at his own expense.

RAG has the right to demand improvement until all defects have finally been resolved.

With the remedy of the defects, the warranty period for the remedied parts of the delivery starts anew. This applies also for parts that are connected in function with the remedied parts and to which harmful influences due to this remedy can not be ruled out.

If the same defect occurs again, Contractor shall prove that no planning error and no fault in construction is the reason for this. If he does not succeed in proving this, Contractor shall, at his own expenses, conduct or arrange all measures and works necessary for a functioning and state-of-the-art installation.

Even if the RAG claims warranty, further entitlements, especially form product liability, damages, tortious act and agency of necessity ("Geschäftsführung ohne Auftrag") remain unaffected.

14. LIABILITY

Both parties are liable only for damages due to willful misconduct or gross negligence. Liability covers both the damage already suffered (damnum emergens – "positiver Schaden") and loss of profit.

Indirect damages are justifiable if their possible occurrence has been adverted previously or if they can be reasonably foreseen by oneself.

If, in relation with the Procurement Performance, RAG is claimed against by a third party, due to liability irrespective of fault, Contractor shall indemnify and hold RAG harmless.

15. PUBLIC LIABILITY ("Haftpflicht")

Contractor is liable, according to law, for all damages that he or his vicarious agents or his personell, respectively, caused, during the or connected with the execution of the RAG's Procurement Performance, unless the Contractor is able to prove – if necessary – that he or his vicarious agents are not at fault.

Contractor shall hold RAG harmless against any indemnity claims caused by him or his vicarious agents.

16. INSURANCES

When submitting an offer, Contractor shall present a certificate to proof that, for the duration of the service provision, he is in possession of a public liability insurance. This certificate shall include the given limit of liability for damage to persons and property per incident. If the performance is carried out within a project of the RAG for which a CAR-insurance ("Carry All Risk" construction and mounting insurance) exists, RAG shall inform the Contractor about this so that it can be taken into consideration for the insurance coverage.



17. OWNERSHIP OF DOCUMENTS – RIGHTS OF USE

Property of any documents, papers, drawings etc. that the Contractor has established or obtained (“documents”) to fulfil the commission or this contract belongs to the RAG.

Contractor obliges himself to hand the originals of all documents related to the commission, especially technical documents, over to the RAG and to provide the RAG with these documents also in an editable electronic form.

RAG receives the right of use (right to use work), which shall be exclusive and transferable to third parties, of all documents and any other other copyrighted rights in the widest possible legal sense.

18. PATENTS - INVENTIONS

Contractor shall inform RAG without delay about inventions that are made during the activity for the RAG, and, on RAG’s demand, has to initiate all procedures necessary for patent application in favor of the RAG. For this purpose RAG shall support Contractor.

Contractor shall provide his performance in a way that they are free of third party's rights, especially free of patent rights or industrial property rights. If, due to such rights, RAG is claimed against by third parties, Contractor shall indemnify and hold the RAG harmless against such claims.

Contractor obliges himself to transfer all industrial property rights necessary for the fulfillment of the terms of the contract to the RAG, if the RAG is not already in possession thereof.

19. CONFIDENTIALITY - PUBLICATIONS

Contractor explicitly obligates himself to treat any information confidentially, which has been received by him as well as his representatives, advisors or other authorized agents during negotiations and discussions in connection with the conclusion and execution of the contract, to use such information exclusively for the purpose of business relationship between RAG and Contractor, and to prevent any circulation of this information to third parties in any form whatsoever.

Confidential information shall be in particular:

- any information transferred in writing (e.g. offer, annexes, blueprints, technical descriptions) as well as the content thereof;
- any information not transferred in writing but communicated to the Contractor in negotiations or discussions.

Confidential information made available in such form include for example commercial, financial, operational and technical matters, know-how, especially in connection with software and hardware, technical applications or information services and any sales, marketing and commercial strategies as well as customer strategies and activities.

Contractor explicitly obligates himself to ensure that confidential information is only communicated - as far as absolutely necessary - to persons who have to obey confidentiality due to a professional duty and/or have explicitly been bound in writing to obey a respective clause of confidentiality.

This clause shall remain applicable for 5 years after this contract has expired.

Contractor shall make or allow for publications of any kind (radio broadcasting, TV, press, professional journals, lectures or such) about the Total Installation only with RAG’s prior written consent. The same applies to the creation of fotos, drawings or any other presentation intended for publication. Contractor has to ensure that Third Party Companies shall, in the cases mentioned above, also obtain Client’s consent.

Contractor obliges himself to hand over any documents (originals and copies) in his possession to the RAG, without delay and without any request to do so, after the completion of the Entire Installation or after early termination of the contract, respectively.

RAG does not consider Contractor’s performances in connection with the Entire Installation as confidential. RAG will treat any further knowledge and information, which the RAG obtains during the execution of his right for information and right of inspection (article 7) as confidential.

20. FORCE MAJEURE

Force majeure means an unforeseeable and unavoidable event affecting the obligations from outside that the respective contract partner was not able to anticipate when the contract was concluded. Force majeure shall also include for example terror attacks, black-outs, strikes, lock-outs, civil war-like states, official or court orders and such.

If one of the contract partners intends not to fulfil his contractual obligations due to force majeure, this contract partner shall inform the other contract partner about this without delay, specifying the anticipated duration.



The other contract partner shall have no right to assert any claims based on non-compliance with the contract for the duration of the legitimate instance of force majeure. Rather, the mutual rights and obligations shall be suspended for the duration of the non-fulfillment of the contract due to force majeure to the degree that they are affected by force majeure. Any already incurred payment obligations shall remain unaffected and shall be fulfilled without delay.

In case of force majeure all contract partners shall endeavor to keep the resulting disadvantages to a minimum. Especially the affected contract partner shall take any technically and commercially reasonable measures to remove the cause or the results of the force majeure.

If it is foreseeable that the force majeure situation and/or its effects will last for more than 4 weeks the contract partners shall enter into negotiations to find a solution acceptable for both parties.

If the expected duration of the force majeure and/or its effects is longer than 8 weeks, the contract partner that is not affected by force majeure shall have the right of extraordinary termination, without being bound to cancellation periods or cancellation dates.

21. CANCELLATION OR INTERRUPTION

Contractor shall not be entitled to cancel this contract. RAG shall have the right to interrupt the contract at any time or to terminate the contract observing a 2-week cancellation period.

In case of a cancellation or an interruption as well, Contractor shall receive the share of the stipulated payment that corresponds to the sum of the partial values of the partial performance provided up to that point in time. Contractor has to prove the scope of his provided performance (e.g. based on monthly progress reports). If the scope of the proved performance corresponds to a partial performance that is described separately in the price sheet, Contractor shall receive the corresponding partial value of the total order value. No further financial rights exist, especially no increase of unit prizes or of total business costs.

If RAG has informed Contractor about a mere interruption of the contract, Contractor shall commence the provision of the unsettled contractual performance within 14 days after Client's written notification to commence the works. Contractor shall be entitled to deny his provision of performance, if the interruption lasted for more than 6 months.

In case of cancellation or long-term interruption, Contractor is obliged to hand over all documents to RAG in an orderly and useable manner.

22. RIGHT OF WITHDRAWAL

RAG reserves the right of withdrawal, if the utilization of the scope of delivery or supply is unacceptable for the RAG, i.e. RAG is deprived of the benefit of the Procurement Performance. Unacceptability is the case especially when guaranteed performance values are not reached or other stipulated performance features are significantly not met. Significant is defined by a shortfall of 5 percent.

23. LEGAL SUCCESSION

RAG shall have the right to assign the rights and duties from the contract to legal successors or affiliated companies; Contractor may only contradict such an assignment to legal successors if the legal successor can not guarantee the fulfillment of RAG's obligations resulting from this contract and from the order.

Contractor may assign his rights and duties arising from the order only with the RAG's prior written consent. Furthermore, without the RAG's prior written consent, Contractor does not have the right to assign his claims or authorize third parties to execute his claims. Otherwise, this assignment is invalid (absolute effect of prohibition of assignment). Nevertheless, in this case, RAG is entitled, at his own choice and with liberating effect, to perform towards both the Contractor or to third party.

24. SEVERABILITY CLAUSE

If a provision of this contract is or will be invalid or void that shall not affect the legal validity of other provisions. Rather, the contract partners oblige themselves to replace the invalid or void provision by an effective provision that is as similar as possible in its commercial intention.

25. MISCELLANEOUS

The written contract including all annexes regulates any relationship between the contract partners in connection with the subject matter of the contract. Amendments and/or additions of the contract including annexes must be in writing to be valid, the same applies to the abandonment of the written form. No verbal agreements have been or shall be made.

Any former understanding or agreement connected with the subject matter of the contract is considered to be nullified with the conclusion of this written contract.



In case of contradictions between the annexes and the text of the contract, the text of the contract is binding in case of doubt. Headlines only serve for better orientation and not for interpretation of the contract.

26. APPLICABLE LAW – PLACE OF JURISDICTION

Any discrepancy that might arise in connection with the contract, its validity, its interpretation and execution, should be resolved consensually by negotiations between the contract parties.

If such an agreement can not be achieved or if one party declares that no agreement can be reached, all disputes resulting from this contract or the violation, the annulment or voidness of the contract, according to the rules of arbitration and the conciliation act of the International Arbitral Court of the Austrian Economic Chamber in Vienna (Vienna Rules) shall be conclusively decided by 3 judges that have been assigned according to these rules. The application of the provision of reinforcement according to the Austrian civil process order (Zivilprozessordnung, ZPO) is waived.

Arbitral court is in Vienna. For reaching a verdict, the arbitral court shall primarily take the content of the contract into consideration. The language for hearings at the arbitral court is German.

Applicable law is the substantive law of the Federal Republic of Austria to the exclusion of conflict of law principles ("Internationales Privatrechts-Gesetz-IPRG") rules and the United Nations Commission on International Trade Law (UNCITRAL).

In case of a collision between the English version and the German version of this General Terms and Conditions of Purchase of RAG ("Allgemeine Einkaufsbedingungen der RAG") the German version will be binding.