

## GENERAL TERMS AND CONDITIONS

### A. GENERAL

#### 1. Scope of Application

1.1 As an enterprise always seeking to establish an excellent link between clients, projects, candidates and teams, Excellence AG is providing suitable experts to the engineering sector. These comprehensive engineering and project services range from the processing of individual project phases all the way to assuming the overall project management responsibility.

These General Terms and Conditions (GTC) shall be deemed applicable for the duration of the business relationship between Excellence AG (contractor) and the client for all services to be rendered by the contractor, in particular, services under service or work contracts and services as part of an agreement to hire out temporary employees. They shall also apply for all future transactions with the client.

1.2 These GTC shall apply exclusively; contradictory or deviating terms and conditions of the client shall not be acknowledged, unless the contractor explicitly consents to the application thereof in writing.

#### 2. Offers and documents

2.1 Offers from the contractor shall be subject to change without notice, until the order is finally confirmed.

2.2 The order by the client shall be deemed a binding contract award. Acceptance of the offer must be effected within 2 weeks.

2.3 The contractor shall reserve the unrestricted right to ownership and copyright exploitation rights to cost estimates, drawings and any other documents. These documents may only be made accessible to third parties given the prior written approval of the contractor. The data and information included in the documentation does not constitute any promises of guarantee; guarantees shall at any rate be subject to the explicit written confirmation by the contractor.

#### 3. Prices/Terms of payment

3.1 If upon mutual agreement, any changes, especially additions, are made to the service scope ordered while the order is being processed, the contractor may ask for adjustment and/or increase of the agreed prices and remunerations. The contractor shall be entitled to temporarily stop the execution of the services ordered until reaching an agreement on the relevant adjustment of the prices and remunerations in the event that contractor has notified the client accordingly in writing first. The contractor shall not be held accountable for delays occurring as a result thereof. Unilateral change of the contractual service by the client shall be excluded.

3.2 The contractor shall be entitled to issue partial invoices for services already provided and/or partial invoices depending on the contract progress.

3.3 All invoices from the contractor shall be payable immediately upon receipt and without any deduction.

3.4 The client shall only be entitled to offsetting rights if his counterclaims are declared legally valid, are undisputed or have been recognised by contractor. The client shall only be entitled to exercise a right of retention if his counterclaim is based on the same contractual

relationship, and if the client has announced the intention to exercise the right at least 2 weeks in advance.

#### **4. Deadlines/Obligation to cooperate**

- 4.1** If no fixed deadlines have been agreed yet, then the contractor shall determine these in coordination with the client.
- 4.2** If the client does not comply with the obligations to cooperate in a timely manner, in particular with regard to the submission of required documents and the provision and transmission of information and data, any related delays shall be at his expense.
- 4.3** The client shall warrant that the services provided by him and documents, information, data and objects submitted within the framework of the cooperation obligation are free of any third party property rights that would exclude or hinder a contractual use by the contractor.
- 4.4** In the event of force majeure, the performance period shall be extended by the duration of the hindrance and a reasonable start-up period. If the service fulfilment or execution is made impossible or unreasonable by the circumstances mentioned, the contractor shall be exempt from the performance obligation.

#### **5. Confidentiality**

The client and contractor shall be mutually obligated to treat any and all information relating to the business and operating affairs of the other party in strict confidence and to utilise such information solely within the framework of the intended purpose of the service contracted in the specific instance. The contractor shall be entitled to pass on the information to third parties within the framework of this intended purpose.

#### **6. Labour piracy**

- 6.1** The client and contractor shall mutually undertake to refrain from recruiting or attempting to recruit employees of the respective other party. A transfer within the first 24 months of the contractual period shall be excluded.
- 6.2** If the client concludes an employment, service or work agreement (freelance) with an employee deployed for a project during the duration of the project or within the time frame of less than 6 months after the completion of the project based on the skills and work described for the project in the contract, this shall be deemed staff recruitment. The client shall therefore owe a commission to the contractor that shall be determined at the contractor's discretion.
- 6.3** It is anticipated that the recruitment commission shall total 35% of the gross annual salary agreed between the client and the project member plus value-added tax
- 6.4** The commission shall be payable at the time of the establishment of a contractual relationship (conclusion of the employment, service or work agreement).
- 6.5** Aforementioned regulations shall also apply accordingly to affiliated companies (in accordance with section 15 of the German Stock Corporation Act (AktG)) of the contractual parties. The contractual parties shall be liable for any infringements and accounts payable of an affiliated company as well as for their own infringements and/or own accounts payable.

#### **7. Contractual limitation of liability/statue of limitation**

- 7.1** The contractor shall pay damages, irrespective of their legal grounds, exclusively in accordance with the following principles.
- 7.2** The contractor shall be liable in accordance with the statutory provisions for
  - a) damages arising from fatal injury, injury to limb and damage to health,

- b) other damage that is based on a deliberate or grossly negligent breach of duty by the contractor or by a legal representative or a vicarious agent of the contractor.
- c) For property damages and financial losses caused by gross negligence, the contractor and his vicarious agents and legal representatives shall only be liable if a fundamental contractual obligation has been violated, however, the liability of the client shall be limited in amount to the damages foreseeable at the time of the conclusion of the contract and typical for the contract.
- d) Any additional claims for damages shall be excluded.

**7.3** Damage claims, consequential damage claims and claims for compensation of the client against the contractor shall become time-barred within 12 months from the start of the statutory period of limitations. Exempt from this rule are claims for damages arising from fatal injury, injury to limb and damage to health, and/or claims for damages based on intentional or grossly negligent damages by the client, his legal representatives or vicarious agents. In such cases, the statutory limitation periods shall apply.

**7.4** Insofar as CAD systems of the contractor are used within the framework of an order or are rented out to the client, the client shall be liable for all direct and indirect damages occurring due to improper handling of the CAD systems, as well as for their loss or destruction and for any and all damage to the CAD systems used within the framework of the order.

## **8. Rights of use**

**8.1** For all work and work results developed by the contractor on behalf of the client, the contractor shall grant the client, upon full payment, the exclusive and permanent right to use them to the extent described in the respective order.

**8.2** If employees or service providers of the contractor develop an invention or suggestion for improvement in the course of carrying out individual orders, the contractor shall undertake - at the client's request - to lay claim to the invention, with or without limitation, and transfer the rights resulting therefrom to the client concurrently against indemnification against any and all financial obligations which result, in relation to the contractor's employees or service providers, from an employee invention. The German Employees Invention Act shall apply accordingly.

## **B. TEMPORARY EMPLOYMENT AGREEMENTS**

### **9. Special provisions for temporary employment agreements**

In addition, the following conditions shall apply for temporary employment agreements between the client and the contractor:

**9.1** The contractor shall guarantee that the employees deployed for the project are generally adequately skilled for the designated job, carefully selected and have been checked for the required qualification. There is no further obligation for additional review.

It is at the discretion of the contractor to replace an employee deployed for the project with another employee to be deployed for the project with comparable qualification.

**9.2** The contractor himself does not owe the client any work performance or any particular work success. Employees deployed for the project shall neither be authorised representatives nor assistants or vicarious agents of the contractor. Employees deployed for the project shall neither be entitled to collection nor to give or take any legal business declarations with effect for and against the contractor.

**9.3** The client shall undertake to train the employees deployed for the project accordingly, and to instruct and supervise them while they are doing their jobs. Furthermore, the client shall

be responsible for the compliance with all statutory, regulatory and other regulations. The client shall be responsible in particular for the adherence to obligations arising from section 618 of the German Civil Code (BGB) and section 11 paragraph 6 of the Temporary Employment Act (AÜG) (Labour Protection Law). If the provisions of the labour protection law are not being complied with, the employees deployed for the project shall be entitled to refuse the work, but the contractor shall not lose his claim for contractual compensation.

- 9.4** The contractor shall be liable only for exercising due diligence in choosing the employees to be deployed for the project with regard to the work agreed. The contractor shall not be liable for the execution of the work by the employee deployed for the project or any damage resulting from the execution of the work. The client shall undertake to exempt the contractor from all claims asserted by third parties in connection with the implementation and performance of the tasks assigned to the employee deployed for the project.
- 9.5** If there is a strike at the client's factory, no project team members shall be deployed.
- 9.6** The calculation of the contractor's compensation is based on the hourly or daily rate agreed by contract plus the agreed surcharges and relevant VAT. For work to be carried out under radiation-controlled conditions the standard hourly rate shall increase by 5%. Standard hours shall be deemed to be those covered by the factory working time defined by the client; furthermore normal hours apply insofar as they are within the limits fixed as negotiated. Unless any other individual agreement has been made, a weekly working time of 40 hours shall be deemed agreed. Expenses for business travels initiated by the client shall be charged separately. Travelling times on business trips shall be considered as regular working hours.
- 9.7** Notwithstanding the right to termination without notice, both contractual parties shall have the right to terminate the agreements with a notice period of four weeks to the end of the month.

## C. WORK AGREEMENTS

### 10. Special provisions for work agreements

Upon conclusion of work and labour agreements between the client and the contractor, the following special conditions shall apply in addition:

- 10.1** In principle, the order shall be carried out at the engineering offices of the contractor. A full or partial execution of the work at the premises of the client may be arranged, if work documents cannot be handed over and/or ongoing technical meetings and coordination is required.
- 10.2** The contractor shall have the exclusive right to give instructions towards vicarious agents and employees, in particular training, instruction and supervision, even if the order is executed at the client's premises. The client's right to give performance instructions regarding the order and the work result shall remain unaffected in individual cases.
- 10.3** The service progress shall be confirmed and accepted by the client after signing the project progress reports submitted to him at least on a monthly basis. Otherwise, the following provisions shall be applicable to service acceptance:
- a)** Upon successful performance of the functional test, however at the latest 2 weeks after handing over the order result, the client shall immediately confirm acceptance in writing. The functional test shall be deemed to be performed successfully if the order result meets the requirements specified by contract in all essential parts.
  - b)** The client shall be obliged to inform the contractor immediately in writing when getting aware of any deficiencies during the functional test. If significant deficiencies in performance have been identified, the contractor shall have the opportunity, with the

exclusion of any further claims on his part, to rectify these first within an appropriate period of time.

- c) If the client does not declare acceptance immediately despite his obligation to accept, the contractor shall be entitled to fix a deadline of 2 weeks for submission of this declaration. If this was indicated by the contractor in his written fixation of deadline, the acceptance shall be deemed to have been effected, unless the client sends a written notification on the reasons for refusal of acceptance within a 1-week period. Furthermore, acceptance shall be deemed to have been effected if the work is used by the client without any formal acceptance.

- 10.4 The contractor grants warranty for any defect of the order results first upon his own choice by means of rectification or remanufacture. In case rectification/remanufacture fails in spite of at least two attempts of rectification, the client may ask for reduction of the purchase price or rescission as well as compensation within the scope of liability limitation in accordance with Section 6. In case of minor defects, the client shall have no right to claim rescission. The warranty period for defects not caused by intent shall be 12 months from commencement of the respective statutory limitation period.

## D. SERVICE AGREEMENTS

### 11. Special provisions for service agreements

In addition, the following special conditions shall apply for service agreements between the client and the contractor: Notwithstanding the right to termination without notice, both contractual parties shall have the right to terminate the service agreements with a notice period of four weeks to the end of the month.

## E. FINAL PROVISIONS

### 12. Place of fulfilment/place of jurisdiction/applicable law

- 12.1 Place of implementation of the contractual services by the contractor shall be the registered office of the respective branch or the engineering office of the contractor where the contractual services shall be implemented. Place of fulfilment for payment obligations of the client shall be the registered office of the contractor.
- 12.2 Place of jurisdiction shall be Düsseldorf, the contractor's head office. However, the contractor shall be entitled to also bring action against the client at any other statutory place of jurisdiction.
- 12.3 These General Terms of Business and all parts of the contract have been compiled in the German language. The English translation is provided for information purposes only. In the event that the English translation deviates from the German original the German version shall prevail.