

General Terms of Sale (GTS)

of JCT Analysentechnik GmbH for commercial purposes



1. Scope of application

1.1. These terms of business apply between us (**JCT** Analysentechnik GmbH, Werner Heisenberg-Strasse 4, 2700 Wiener Neustadt, Austria) and natural and legal persons (in the following: customers) for the current business-related legal transaction as well as for all future business, even if in the individual case, particularly in the case of **future supplementary or follow-up orders**, they are not explicitly referred to.

1.2. The version of our GTS, valid at the time the contract is concluded shall be applied. The terms can be downloaded from our **homepage** (www.ict.at/en/gts).

1.3. We conclude contracts **exclusively** based on our GTS.

1.4. **Terms of business of the customer** or amendments or supplements to our GTS require our express written consent.

1.5. The customer's "terms of business" or "conditions of purchase" are not accepted even if we do not expressly **reject** them after having received them.

2. Offers, conclusion of contracts

2.1. Our offers are **not binding, unless explicitly stated within our offer**.

2.2. **Promises**, assurances and guarantees on our part, or agreements diverging from these GTS in connection with the conclusion of the contract become binding only on our written confirmation.

2.3. The customer must notify us of any **information** about our products and services that is provided in catalogues, price lists, brochures, advertisements on trade fair stands, circulars, advertising mailings or other media (information material) which is not attributable to us, insofar as the customer takes this as the basis for his decision to place an order. In such a case, we can comment on its accuracy. If the customer does not meet this obligation, such information is not binding, unless it is expressly declared to form part of the contract.

3. Prices

3.1. Prices stated shall **not** to be understood as **lump sum prices**.

3.2. For products and services that are ordered by the customer and which are **not covered in the original order**, in the absence of a fee agreement there is a claim to appropriate remuneration.

3.3. Prices stated are to be understood ex works (JCT, Wiener Neustadt, Austria) excluding applicable value added tax, any local fees, customs and / or taxes occurring. Such taxes and fees, costs of packaging, transport, loading and dispatch, as well as customs duty and insurance, are to be borne by the customer. We are obliged to take back packaging only if this is explicitly agreed.

3.4. The customer is responsible for arranging the proper and environmentally appropriate disposal of **scrap material**. If we are separately entrusted with this, in the absence of a remuneration agreement this must be additionally compensated appropriately to the extent agreed for this.

3.5. We are entitled, and also obliged at the customer's request, to **adapt** the contractually agreed remuneration if changes have occurred to the extent of at least 3% in respect of (a) wage costs through law, directive, wage agreement, company agreements or (b) other cost factors that are necessary for performance, such as procurement costs of the materials to be used, on the basis of recommendations of joint committees or of amendments to national or world market prices for raw materials, exchange rates etc. since the contract was concluded. The adaptation shall be made to the extent to which the actual manufacturing costs at the time the contract was concluded change in relation to those at the time of the actual performance, unless we are in delay.

3.6. The remuneration in the case of continuing obligations is agreed to be **index-adjusted** according to the 2010 consumer price index and remuneration is thereby adjusted accordingly. The month in which the contract was concluded is taken as the starting basis.

4. Costs for **travel expenses, daily allowances and overnight allowances** are charged separately. Travel time is deemed to be work time.

Payment

4.1. If not agreed differently, 100 % of the contract value shall be paid as prepayment 10 days upon issuance of invoice.

4.2. Entitlement to **deduct a discount** requires express written agreement.

4.3. **Payment references** stated by the customer on the bank transfer documentation are not binding for us.

4.4. If, in the context of other existing contractual relationships with us, the customer is in default of payment, we are entitled to **suspend** fulfilment of our obligations from this contract until the customer has met his obligations.

4.5. We are also entitled to **make payable** all claims for products and services from the ongoing business relationship with the customer that have already been provided.

4.6. Where a **payment deadline is exceeded**, even if this is only in respect of an individual part of the performance, any price reductions granted (discounts, allowances etc.) are forfeited and shall be added to the invoice.

4.7. In the event of a delay in payment, the customer undertakes to reimburse us for the necessary and appropriate costs of **collecting payment** (reminder costs, collection charges, lawyers' fees etc.).

4.8. In accordance with section 456 of the Austrian Commercial Code (UGB), in the case of culpable **delay in payment**, we are entitled to charge **9.2 %** points above the base interest rate.

4.9. We reserve the right to claim further damages for delay.

4.10. The customer is **entitled to offset** only insofar as counter-claims have been established by the courts or acknowledged by us.

4.11. For the appropriate reminders that are necessary for payment collection, the customer undertakes, in the event of culpable delay in payment, to pay reminder fees of € 150, - per reminder, insofar as this is in an appropriate proportion to the claim that is being asserted.

5. Credit rating check

5.1. The customer declares his express agreement that his data may be communicated exclusively for the purpose of protection of creditors to the officially privileged **creditor protection associations** Alpenländischer Kreditorenverband (AKV), Österreichischer Verband Creditreform (ÖVC), Insolvenzschutzverband für Arbeitnehmer oder Arbeitnehmerinnen (ISA) and Kreditschutzverband von 1870 (KSV) as well as international services like Dun & Bradstreet.

6. Customer's duty of cooperation

6.1. Our duty to **render performance begins**, at the earliest, as soon as all technical details have been clarified, the customer has created the technical and legal prerequisites (which we shall be pleased to communicate on request), we have received the agreed down-payments or securities, and the customer has fulfilled his contractual obligations of preliminary work and cooperation, in particular also those specified in the points below.

6.2. In the case of assembly work to be carried out by us, the customer is obliged to ensure that work can begin immediately after the **arrival of our assembly team**.

6.3. The customer must secure the required **permits** from third parties including end user certificates as well as the notifications and approvals by authorities at his expense. Details of these can be requested from us.

6.4. Customer is obliged to support Supplier in any documents needed to achieve approval delivering equipment to customers destination (export control documents etc.)

6.5. The quantities of **energy** and water required for the rendering of performance including trial operation are to be provided by the customer at his expense.

6.6. For the time of rendering the performance, the customer must make available to us, free of charge, **lockable rooms**, which are not accessible to third parties, for use by the workers as well as for storing tools and materials.

6.7. The customer is liable for ensuring that the necessary **constructional, technical and legal preconditions** for the work to be completed or the object of purchase are in place which were described in the contract or in information provided to the customer before the contract was concluded or which the customer must have known based on relevant specialist knowledge or experience.

6.8. The customer is also liable for ensuring that the technical installations, such as supply lines, cabling, networks and the like are in a technically perfect and operational condition and are compatible with the objects of purchase or work to be affected by us.

6.9. We are entitled but not obliged to **check these installations** in return for separate remuneration.

6.10. In particular, before the start of assembly work, the customer must provide the necessary information on the location of **concealed supply lines for electricity, gas and water** or similar installations, escape routes, other obstructions of a structural nature, possible sources of danger, as well as the necessary static-related information, without being asked to do so.

6.11. Details of the necessary information relating to the order can be obtained from us.

6.12. The customer is not entitled to **assign** claims and rights from the contractual relationship without our written consent.

7. Execution of work

7.1. We are obliged to take account of subsequent **modification and extension wishes** of the customer only if they are necessary for technical reasons to achieve the purpose of the contract.

7.2. **Minor amendments** to our performance that are **objectively justified** and are reasonable for the customer are deemed to be approved in advance.

7.3. If, after the contract has been awarded, there is an **amendment** of or supplement to the order for whatever reason, then the delivery / performance deadline is extended by an appropriate period.

7.4. If, after the contract has been concluded, the customer desires performance within a **shorter period**, this represents a change to the contract. This may necessitate overtime and/or extra costs may arise due to acceleration of material procurement, and the remuneration is increased accordingly in proportion to the necessary expenditure.

7.5. OBJECTIVELY JUSTIFIED (E.G. SIZE OF INSTALLATION, CONSTRUCTION PROGRESS ETC.) PART-DELIVERIES AND PART-PERFORMANCE ARE PERMITTED, AND CAN BE INVOICED SEPARATELY.

7.6. If delivery **on call** is agreed, the object of performance / object of purchase is deemed to have been called six months after ordering at the latest.

8. Deadlines for supply and performance

8.1. Deadlines and dates for supply / performance are **binding** for us only if they have been established in writing. Any divergence from this requirement of the written form must likewise be in writing.

8.2. Deadlines and dates are **postponed** in the event of force majeure, strike, unforeseeable delay by our ancillary suppliers that is not caused by us, or other comparable occurrences that lie beyond our sphere of influence, in that period during which the corresponding occurrence lasts. The customer's right to withdraw from the contract in the event of delays that render a commitment to the contract unreasonable remains unaffected by this.

8.3. If the start of performance or the performance are **delayed** or interrupted by circumstances that are attributable to the customer, in particular because of infringement of the duty of cooperation pursuant to point 7, performance deadlines are extended accordingly, and completion dates are postponed accordingly.

8.4. For the **storage** of materials and equipment and the like in our company that is necessitated by this, we are entitled to charge 1% of the invoice amount for each month or part-month of delay in performance, with the customer's obligations of payment and acceptance remaining unaffected by this.

8.5. In the event of a withdrawal from the contract because of delay, the customer must grant a **grace period** by means of registered letter whilst simultaneously threatening withdrawal.

9. Risk assumption

9.1. THE RISK PASSES TO THE customer based on INCOTERMS stated in the offer. In case no Incoterms are stated the ones herein apply. In such case risk passes at the moment Supplier announces readiness for delivery.

9.2. THE CUSTOMER SHALL TAKE OUT APPROPRIATE INSURANCE AGAINST THIS RISK. WE UNDERTAKE TO TAKE OUT TRANSPORTATION INSURANCE AT THE WRITTEN REQUEST OF THE customer AND AT HIS EXPENSE. The customer APPROVES ANY CUSTOMARY METHOD OF DESPATCH.

10. Delay in acceptance

10.1. If the customer delays acceptance and/or is not picking up goods (although readiness of delivery was announced) for longer than 6 weeks (refusal of acceptance, delay in preliminary work or otherwise, no call made within an appropriate time in the case of delivery on call), and if in spite of an appropriate **grace period** having been set, the customer has not ensured the elimination of the circumstances attributable to him which delay or prevent the performance being rendered, we are entitled in the case of a valid contract to **deploy otherwise** the equipment and materials that have been specified for the performance of the work, insofar as in the event that the performance of the work is continued, we procure these again within a time appropriate to the respective circumstances.

10.2. In the case of delay in acceptance and/or is not picking up goods (although readiness of delivery was announced on the part of the customer, we are likewise entitled, in the case of insistence on fulfillment of the contract, to store the goods at our premises, for which we are due a **storage fee** pursuant to point 9.4.

10.3. In the case of a justified withdrawal from the contract, we are permitted to demand from the customer flat-rate **damages** of the level of 15 % of the gross order value without proof of the actual damage.

10.4. Claiming higher damages is permitted.

11. Reservation of title

11.1. The goods that we supply, assemble or otherwise hand over remain our property until payment has been made in full.

11.2. **Reselling** before payment is permitted only if that has been notified to us in appropriate time beforehand, stating the name and exact address of the buyer and we agree to the reselling. In case we agree, the claim for the purchase price is deemed to be assigned to us here and now.

11.3. Until full payment of the remuneration or purchase price has been made, the customer must indicate this **assignment** in his books and on his invoices and must **inform** his debtors accordingly. On request, he must make available to us all documents and information such as are necessary to assert the assigned receivables and claims.

11.4. If the customer falls into arrears in payment, we are entitled, whilst setting an appropriate grace period, to demand surrender of the goods that are subject to retention of title.

11.5. The customer must notify us immediately before the opening of bankruptcy proceedings in relation to his assets or the attachment of our goods that are subject to retention of title.

11.6. The customer declares his explicit understanding that in order to assert our claim to reservation of ownership, we are permitted to enter the **location** of the goods that are subject to retention of title.

11.7. The customer shall bear any **costs** that are necessary and appropriate for pursuing expedient legal remedies.

11.8. In the assertion of reservation of ownership, a **withdrawal from the contract** exists only if this is explicitly declared.

11.9. We are permitted to **dispose** of the goods subject to retention of title that have been reclaimed as we see fit and to our best advantage.

11.10. Until all our claims have been paid in full, the object of performance / object of purchase must not be pledged, assigned or otherwise burdened with the **rights of third parties**. In the case of seizure or other availing, the customer is obliged to point out our right of ownership and to notify us immediately.

12. Industrial property rights of third parties

12.1. For deliverables that we produce **according to customer documentation** (design specifications, drawings, models or other specifications etc.), warranty that the production of these deliverables does not infringe the industrial property rights of third parties is assumed exclusively by the customer.

12.2. If the industrial property rights of third parties are nonetheless claimed, we are entitled to **suspend production** of the deliverables at the customer's risk until the rights of third parties have been clarified, unless it is obvious that the claims are unjustified.

12.3. The customer shall **indemnify us for any loss or damage** in this regard.

12.4. We are entitled to demand from customers appropriate **advances on costs** for any legal costs.

12.5. Likewise, we can claim from the customer the refunding of necessary and expedient **costs** that we have incurred.

12.6. We are entitled to demand appropriate **advances on costs** for any legal costs.

13. Our intellectual property

13.1. Deliverables and related production specifications, **plans**, sketches, estimates of costs and other documents as well as software that have been provided by us or which have arisen through our contribution shall remain our intellectual property.

13.2. Use thereof, in particular distributing, copying, publishing and making them available, even including the copying only of extracts, as well as imitation, processing or exploitation, requires our explicit **consent**.

13.3. The customer furthermore undertakes to maintain **confidentiality** in relation to third parties of the knowledge he has acquired from the business relationship.

14. Warranty

14.1. The **warranty period** for our products is 12 months upon risk assumption (as defined in 9.).

14.2. The **remedying** of a defect that has been claimed by the customer does not represent acknowledgement of a defect.

14.3. The customer must always **prove** that the defect existed at the time of handover.

14.4. **Notices of defects** and complaints of all kinds must be notified immediately (at the latest after 5 working days) to the domicile of our company, **in writing**, with as accurate a **description of the defect** as possible and stating the possible causes, otherwise the warranty claims are forfeited. The goods or work that are the subject of complaint must be handed over by the customer. Place of fulfillment of remedying warranty claims is our domicile (Werner Heisenberg-Strasse 4, 2700 Wiener Neustadt, Austria). Customer shall use the Return Material Authorization (RMA) form provided at www.ict.at/en/rma to inform us about the claim and request an RMA number which is required to identify any material that is sent back to us.

14.5. If the **defects alleged** by the customer are **unjustified**, he is obliged to compensate us for expenses incurred for establishing freedom from defects or remedying defects.

14.6. Any **utilization or processing** of the defective deliverable that carries the risk of further damage or makes elimination of the cause more difficult or prevents it, must be stopped by the customer without delay, unless this is unreasonable.

14.7. We are entitled to carry out or have carried out any **examination** that we regard as necessary, even if this renders the goods or work pieces unusable. If this examination shows that we are not responsible for any defect, the customer must bear the costs for this examination against appropriate remuneration.

14.8. Transportation and travel costs arising in connection with the rectification of defects are to be borne by the customer. On request by us, the customer must provide, free of charge, the necessary workers, energy and premises, and must cooperate in accordance with point 7.

14.9. The customer must grant us at least **two attempts** to rectify the defect.

14.10. We can avert a **request for rescission** through improvement or an appropriate price reduction, insofar as this does not relate to a significant and unrectifiable defect.

14.11. If the deliverables are produced based on **details**, drawings, plans, models or other specifications of the **customer**, we provide warranty only for the execution according to specifications.

14.12. The fact that the work is not fully suitable for the agreed use does not constitute a defect if this is based exclusively on actual circumstances that **differ** from the **information** that was available at the time of performance because the customer does not fulfil his obligations to cooperate in accordance with point 7.

14.13. Likewise, it is not a defect if the customer's **technical installations**, such as supply lines, cabling, networks etc. are not in a technically perfect and operational condition or are not compatible with the items supplied.

15. Liability

15.1. In the case of **pecuniary loss** because of the infringement of contractual or pre-contractual obligations, in particular because of impossibility of performance, delay etc., we shall be liable only in cases of premeditation or gross negligence because of technical circumstances.

15.2. If any liability insurance has been taken out by us, liability is **limited** to the maximum liability amount thereof.

15.3. This limitation also applies in respect of damage to items that we have **accepted for processing**.

15.4. Claims for damages must be filed before the courts within two years or are **otherwise forfeited**.

15.5. The restrictions or exclusions of liability also include claims against our **employees**, representatives and contractors for damage which they cause to customers without reference to a contract on their part with the customer.

15.6. Our liability is excluded for damage due to **improper handling** or storage, overuse, failure to follow operating instructions and installation instructions, defective assembly, commissioning, servicing, maintenance by the customer or third parties not authorized by us, or natural wear and tear, insofar as this caused the damage. Liability is also excluded for failure to carry out necessary servicing.

15.7. If and insofar as the customer can claim **insurance payments** for damage for which we are liable, through an indemnity insurance that he has taken out himself or that has been taken out for his benefit (e.g. liability insurance, fully comprehensive cover, transport, fire, interruption of operation and others), the customer undertakes to claim the insurance payment and our liability to the customer is limited to this extent to the disadvantages that the customer suffers by claiming on this insurance (e.g. through higher insurance premiums).

15.8. Those product characteristics are owed which, in respect of the licensing regulations, operating instructions and other product-related guidelines and information (in particular also monitoring and servicing), can be expected of us, third-party manufacturers or importers by the customer, taking into account his knowledge and experience. The customer as reseller must take out adequate insurance for **product liability claims** and must indemnify us for any loss or damage with regard to claims for recourse.

16. Data Protection

16.1. Customer agrees that personal data of customer's employees may be stored, processed and transferred to companies affiliated with us to the extent it becomes necessary for the performance of the respective contract

17. Severability clause

17.1. In the event that individual parts of these GTS are invalid, the validity of the other parts shall not be affected by this.

17.2. The parties here and now undertake to agree a **substitute provision** – from the perspective of responsible contracting parties – which comes as close as possible to the invalid provision in terms of the economic end, considering what is usual in the industry.

18. General

18.1. AUSTRIAN LAW APPLIES.

18.2. THE UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS EXCLUDED.

18.3. THE PLACE OF PERFORMANCE IS THE DOMICILE OF THE COMPANY (Wiener Neustadt, Austria).

18.4. The **place of jurisdiction** for all disputes arising from the contractual relationship or future contracts between us and the customer is the court having jurisdiction for our domicile.

The customer must inform us immediately in writing of any **changes** to his name, company name, address, legal form or other **relevant information**.