

**GENERAL TERMS AND CONDITIONS OF  
THE UNIVERSITY OF VIENNA OFFICE  
FOR “FACILITIES AND RESOURCES  
MANAGEMENT”**

**valid as of 23 July 2018**

**In general**

The following General Terms and Conditions apply in respect of deliveries and services supplied to the University of Vienna office for Facilities and Resources Management and its departments, (hereinafter jointly referred to as Client) as well as in respect of deliveries and services that are ordered by the office for Facilities and Resources Management or its departments, insofar as reference is had thereto when the contract was awarded or order placed or in another manner. The General Terms and Conditions of the Contractor shall not constitute part of the contract.

The General Terms and Conditions can be downloaded from the homepage of the office for Facilities and Resources Management (<http://rrm.univie.ac.at/>) and can be inspected in the Client's premises (Universitätsring g 1, 1010 Vienna, House 7, mezzanine).

These General Terms and Conditions are supplemented by the House Rules of the University of Vienna (available for download at <http://satzung.univie.ac.at/hausordnung/>), the fire safety regulations of the University of Vienna ([http://rrm.univie.ac.at/fileadmin/user\\_upload/d\\_rrm/Downloads/2015\\_2016\\_Brandschutzordnung.pdf](http://rrm.univie.ac.at/fileadmin/user_upload/d_rrm/Downloads/2015_2016_Brandschutzordnung.pdf)) and the General Laboratory and Workshop Regulations of the University of Vienna ([http://rrm.univie.ac.at/fileadmin/user\\_upload/d\\_rrm/Downloads/Laborordnung\\_Mitteilungsblatt.pdf](http://rrm.univie.ac.at/fileadmin/user_upload/d_rrm/Downloads/Laborordnung_Mitteilungsblatt.pdf)). The Contractor undertakes to familiarise itself with the provisions of the House Rules, the Fire Safety Regulations and the Laboratory Regulations prior to executing the Contract. The Contractor shall be responsible for compliance with the provisions of the House Rules, Laboratory Regulations and Fire Safety Regulations and shall hold the Client completely free and harmless in case of any and all breaches thereof.

Any ancillary agreements or amendments to these General Terms and Conditions shall have legal effect only subject to written declaration of consent by the Client. Oral ancillary agreements shall have no legal effect. Nonetheless, any diverging written provisions of the award of contract or in the order placed shall take precedence over the following General Terms and Conditions.

**I. Contracts / contractual basis**

Contracts must be in writing to have legal effect. Equally, amendments to the original contracts must be in writing and signed by both parties to the contract.

In respect of the definition of terms and any differences in interpretation, the following fixed order of prevalence shall apply: mandatory laws, order or contract, GTC of the Client, pertinent legal provisions, official standards, state of the art.

The Contractor shall comply with both the legal rules and standards applicable in Austria and any other decrees by official authorities as well as the generally accepted technical rules and standards when carrying out the delivery/service under the terms of the contract.

In particular the labour and employment law regulations applicable in Austria shall be observed in the course of the execution of the contract. Compliance with the provisions of the Aliens Employment Act (*Ausländerbeschäftigungsgesetz*) Federal Law Gazette BGBl. 218/1975, in particular, shall be mandatorily agreed upon.

The Contractor shall be responsible to the Client for compliance with the legal provisions and decrees by official authorities in the field of landscape, environmental and nature conservation as well as laws on waste and water applicable to the performance of its work.

The Contractor shall be responsible to implement appropriate technical and organisational measures with regard to Regulation (EUR) 2016/679 (GDPR), especially Article 28 and 32, in addition to corresponding national laws, when processing personal data. Additionally, the Contractor shall be responsible to enable an audit of these technical and organisational measures for the Contractor when necessary once a calendar year without additional cost and – if necessary – to support this audit actively.

**II Offer / Acceptance**

The Contractor shall confirm the acceptance of an order within 3 working days in writing with a legally binding signature, otherwise the Client shall not be bound to the order.

The Contractor shall accept offers and/or counter-offers by the Client within 7 working days in writing with a legally binding signature, otherwise the Client is no longer bound by such.

The Contractor shall not be remunerated separately for offers or any necessary preliminary work in this respect

**III. Duty to warn**

If the Contractor has any concerns regarding orders, instructions or provisions (e.g. material, plans, etc.) of the Client or regarding services provided by other contractual partners of the Client, it shall communicate these concerns in writing to the Client without delay and in good time and at the same time submit suggestions for improvement. The execution of these suggestions

for improvement may only be commenced after the written agreement of the Client. If the Contractor does not discharge its duty to warn, it shall be liable for the consequences of its omission.

The duty to inspect and warn shall apply throughout the entire duration of the performance of the contract until Takeover by the Client.

#### **IV. Contract documents**

Any and all documents that belong to the Client and are attached to the order or to inquiries (e.g. plans, drawings, patterns, models, etc.) shall remain the property of the Client and may on no account be made available to uninvolved third parties. After performance of the respective order or rejection of an order, these documents shall be returned without delay to the Client. If the Contractor fails to comply with this obligation it shall be liable to the Client independent of fault for any and all disadvantages and damage that the Client sustains as a result of the unauthorised distribution or omission to return the documents.

All documentation developed by the Contractor (such as plans, sketches, calculations and descriptions) shall become the property of the Client upon Handover to the Client.

#### **V. Subcontractors**

The Contractor shall provide notice without delay of any parts of the services it intends to subcontract and shall name the subcontractor that comes into question in each case. Subcontracting is only admissible subject to the prior written consent of the Client.

The Contractor shall guarantee the respective subcontractor's compliance with all duties arising from the contract concluded with the Client if any of the work is subcontracted. It shall hold the Client completely free and harmless in respect of any and all breaches of such.

The Contractor shall be liable jointly and severally with the respective subcontractor for any damage caused by any of its subcontractors.

The Contractor expressly acknowledges that payments made by the Client to a subcontractor shall have the effect of discharging debts in relation to it, insofar as the Contractor is in default on its payments to a subcontractor.

Any and all retentions of title by subcontractors shall not be recognised.

#### **VI. Departures from the contract**

Deliveries and services that are carried out by the Contractor in the absence of a contract or in a manner departing from the contract shall only be compensated in the event of a subsequent written approval by the Client. In the absence of such subsequent approval, the Contractor shall be

obligated to remove the respective delivery/service again at its own expense; failing this the Client shall be entitled to have the removal carried out by a third party at the expense of the Contractor. In this respect the Contractor shall hold the Client completely free and harmless.

The Client shall be entitled to alter the type and scope of the agreed delivery/service or the circumstances of the performance or to require additional services/deliveries that are not included in the ordered scope of delivery/service but which are necessary to the due and proper rendering of the service or making of the delivery. Any rights to payment on the part of the Contractor in relation thereto must be agreed in writing and shall be calculated on the basis of the main offer.

In the absence of any specific agreement, altered or additional services/deliveries shall generally not constitute any grounds for changing the deadlines for delivery or service.

#### **VII. Training**

The Contractor is obligated to train core users of the University of Vienna on site (in the respective facilities of the University of Vienna) on how to use the object of the contract (insofar as this is necessary and usual in respect of the specific service/delivery), so that such know how to use all functions and can train further users in this respect.

The expense of such training on site (including any travel expenses) shall not be remunerated or compensated separately.

The Contractor is further obligated to hand over complete documentation (e.g. German language directions for use, full technical documentation/plans, hazard warnings, briefing/training, etc.) at the latest upon Handover. This shall be added to on a continual basis in the case of any changes in relation to the object of the contract. As part of the contract, the documentation shall not be remunerated separately.

The agreed contractual fee falls due for payment only after handover of the documentation.

#### **VIII. Deadlines**

The Contractor guarantees to comply with the agreed dates and deadlines.

Deviations from the agreed dates and deadlines by the Contractor always necessitate the written consent of the Client. Equally, early commencement of the service provision/delivery also requires the written consent of the Client.

If the Contractor is hindered from carrying out or performing the contracted service/delivery duly and properly, it shall inform the Client of this in writing without delay. If the Contractor fails to give said notification, it shall hold the Client free and

harmless from all resulting damage and disadvantages that the Client incurs.

The Client is entitled to have the outstanding service carried out by another company of its choice at the Contractor's expense if the Contractor does not comply with agreed dates and deadlines and subject to the fruitless expiry of a reasonable grace period that was notified in writing; the claims of the Client arising from warranties, guarantees and claims for compensation against the Contractor shall remain unaffected thereby.

## **IX. Risk and Liability**

Until the formal Takeover of the entire service/delivery (see section XI.) by the Client, the Contractor bears the risk in all cases for its service/delivery. This includes in particular destruction (ruin), damage, theft and other loss. This also applies to material provided or other objects that the Contractor accepted from the Client or from other contractors and the risk of transport in the case of movable property.

The Contractor shall be liable for all damage of any kind and any other disadvantages, which result to the Client from the execution of the contract.

The Client does not accept any liability for damage or other disadvantages that are incurred by other persons in the course of the execution of the contract. The Contractor undertakes to hold the Client free and harmless from such claims.

The Contractor shall be liable to the full extent of the equivalent value for the correction or adaptation of objects handed over by the Client.

## **X. Trial run**

The Client shall be entitled to conduct a trial run before Takeover of a service/delivery. It is a condition for the trial run that the documents necessary for the trial run be submitted in advance, in particular the instructions for use and operation. The outcome of the trial run shall be recorded in writing. If the Client exercises its right to conduct a trial run, it shall give the Contractor 5 working days notice thereof. In this case, a legally effective Takeover in accordance with section XI. shall only be possible subsequent to the completion of the trial run.

## **XI. Takeover**

A formal Takeover shall be deemed to have been agreed upon. The Contractor shall call upon the Client to take over the service/delivery. A date for the Takeover shall be mutually agreed between the parties to the contract. A written record of the Takeover shall be drawn up in respect of the legally effective Takeover. The Record of Takeover shall include in particular any defects complained of and deadlines for the remedy thereof, the compliance or non-compliance with contractually agreed deadlines and whether contractual penalties fall due.

The service/delivery shall be deemed to have been rendered upon the formal Takeover of the service/delivery. There is no legally effective Takeover and thus neither do the legal consequences associated therewith ensue if the above-described formal requirements are not satisfied. The mere acceptance of the object of the contract and/or the use and putting into operation thereof in the absence of a formal Takeover or drawing up of the Record of Takeover shall not be deemed to be a legally effective Takeover.

If the Client has duties to cooperate in relation to the conditions to be created on site for the performance of the service/delivery, then the Contractor is obligated to inform the Client in writing both of this and of the exact point in time at least six weeks previously.

Agreed part performance can be taken over separately in agreement with the Client. In this case too, a written record of the Takeover must be drawn up for legal effectiveness.

If there are substantial defects, the Client shall be entitled to refuse Takeover. In this case, the Contractor is obligated to remedy the defects without delay and to call upon the Client for Takeover anew after remedying the defects. This shall not interrupt the period allowed for timely completion.

## **XII. Prices / fee**

The prices communicated by the Contractor are fixed prices and shall include delivery to place of installation (or place of introduction or place of use), are duty paid and include all ancillary costs and packaging. VAT must be indicated separately. In the case of deliveries, the given price includes unloading, unpacking and transport to the intended place (room), assembly and making ready for operation. All unneeded materials, appliances and waste, etc shall be removed from the place of installation at the expense of the Contractor in compliance with the Waste Management Act (*Abfallwirtschaftsgesetz*) 2002, Federal Law Gazette BGBl.No. 102/2002 as amended and the ordinances issued on the basis thereof. Evidence of due and proper disposal in accordance with the laws and ordinances shall be furnished upon request.

Payments shall be exclusively in Euros.

## **XIII. Securities**

### **a) Deposit**

A deposit in the amount of 10% of the total value of the contract (gross) may be agreed as security for certain contractual obligations. It must be paid within 14 days after the contract is awarded in cash or by means of a bank guarantee issued by a well-known Austrian bank. The deposit shall be returned 4 weeks after the complete, defect-free performance of the contract.

### **b) Performance guarantee**

A performance guarantee in the amount of 15% of the total value of the contract (gross) may be agreed. It must be paid prior to the award of contract in cash or by means of a bank guarantee issued by a well-known Austrian bank. The term of the bank guarantee must extend 3 months beyond the planned end of the contract. The performance guarantee shall be returned 4 weeks after complete performance of the contract.

**c) Retainage on invoices  
(Deckungsrücklass)**

10% retainage shall be deducted from each respective invoice for part performance. The retainage on invoices shall be settled with the closing invoice.

**d) Retainage guarantee  
(Haftsrücklass)**

A retainage guarantee in the amount of 5% of the amount invoiced (gross) may be retained by the Client and shall be paid in the form of a bank guarantee. The Client shall have the option of deducting the equivalent value from the closing invoice. The retainage guarantee shall apply for the duration of the warranty plus 2 months and – insofar as it is not availed of pursuant to the provisions hereof – shall be returned 4 weeks after the expiry of the warranty period.

#### **XIV. Default**

There is default when a service/delivery is not performed at the right time, in the right place or in the stipulated manner.

If the Contractor is in default, the Client can either insist on the performance of the contract in accordance with the terms and conditions or declare its withdrawal from the contract subject to the expiry of a one-off, reasonable grace period notified in writing if the contract is not performed in accordance with the terms and conditions of the contract within such grace period.

If the Client insists on performance of the contract in the case of default, it does not in any way lose its right to impose the contractual penalty.

If it is expressly stipulated that the contract be performed at a particular time or within a certain period of time (performance by a fixed date), the Client is not obligated to accept the service/delivery after the agreed time. The requirement that a grace period for the performance and for withdrawal from the contract be set shall not apply. The Contractor, on the other hand, shall be obligated subsequently to render the service/delivery if the Client expressly requires this within two weeks after expiry of the deadline. The right to impose the contractual penalty shall remain unaffected by this.

#### **XV. Contractual penalty**

The contractual penalty is the agreed monetary payment in the event of non-performance or non-satisfactory performance of contractual obligations on the part of the Contractor. It is not subject to reduction by court of law. Warranty and compensation claims of the Client shall not be affected thereby. The contractual penalty may be

sought in addition to performance and does not depend on damage being incurred.

If the contractually agreed deadlines and dates are not complied with, the Contractor shall pay the Client a contractual penalty. The interim deadlines fixed in the contract are subject in the same manner as the final deadline without restriction to the above provisions regarding the contractual penalty in the event of default. Unless otherwise stipulated in the contract (order or letter of engagement), the contractual penalty shall be 0.5 % of the total value of the contract (gross) per calendar day for the service/delivery rendered late, at most however 10% of the total value of the contract (gross). Fault on the part of the Contractor is not required.

The contractual penalty is to be considered the minimum compensation.

#### **XVI. Withdrawal from the contract**

The Client may declare its withdrawal from the contract at any time until the full completion of the service or until the delivery has been rendered, in particular in the following cases:

- (1) if there is default pursuant to section XIV. after setting a one-off reasonable grace period for performance to be rendered;
- (2) if an insolvency proceeding is pending against the Contractor or will be opened or if the opening of such has been refused due to lack of assets to cover costs;
- (3) if circumstances exist that manifestly make the due and proper fulfilment of the contract impossible, insofar as the Contractor is responsible for such;
- (4) if the Contractor or one of its representatives directly or indirectly offers, promises or grants persons that are involved with the conclusion or execution of the contract on the side of the Client any kind of personal advantages;
- (5) if the Contractor has taken any actions to harm the Client with fraudulent intent, in particular if it has made arrangements with other companies that are disadvantageous for the Client or contra bonos mores or offend against the principles of competition;
- (6) if the Contractor itself or any person it uses to perform the contract violates confidentiality obligations;
- (7) if the Contractor dies or loses its legal capacity;
- (8) if the Contractor breaches material provisions of the contract or statutory provisions;
- (9) if it is unreasonable to require the Client to maintain the contractual relationship due to other behaviour of the Contractor or any person for which the Contractor is accountable.

In the event that the Client withdraws from the contract, the Contractor shall only be entitled to remuneration for the services/deliveries already

rendered, insofar as these are useful to and usable by the Client.

If there is fault on the part of the Contractor in respect of the manifestation of the ground for withdrawal, the Contractor shall compensate the Client for any additional costs that are occasioned by passing the contract on to a third party.

## **XVII. Defects**

The Contractor warrants that its services/deliveries will have the features that are expressly stipulated in the contract and customarily required as well as that they will comply with any description, trial or model as well as with the accepted scientific, technical and craftsman's rules and standards. The Contractor further warrants that its services/deliveries can be used in accordance with the nature of the business or the arrangements made.

In the case of service/performance according to model, description or trial, the features of the model, description or trial are deemed in any case to be guaranteed. This shall also apply in respect of models, trials or descriptions that are produced by the Contractor only after the conclusion of the contract and approved by the Client.

Unsatisfactory training under section VII. shall constitute a material defect.

## **XVIII. Warranty**

Unless other warranty periods are stipulated in the contract, the warranty period for immovable items shall be 3 years and for movable items 2 years. The warranty period shall in principle begin on the day of the due and proper formal Takeover (in accordance with section IX.); in the case of latent defects, guaranteed features or defects of title, however, only on the day on which the defect became discernible to the Client. The contractual duties of the Contractor shall be deemed to have been fulfilled upon the expiry of the warranty period. Any rights to compensation shall not be affected by this.

Upon being discovered, defects covered by the warranty shall be notified in writing to the Contractor. The obligation to give notice of the defect under §§ 377ff of the Commercial Code (*Unternehmensgesetzbuch*, UGB) is not applicable. Acknowledgement of defects by the Contractor (for example, by written promise to remedy such) shall interrupt the warranty period for these defects.

If notice is given of defects within the warranty period, these must be remedied by the Contractor within 14 days or within a reasonable grace period.

If remedy or replacement is not possible or is unreasonable, the Client's right to reduction of price or, insofar as the defect at issue is not only minor, its right to rescind the contract, shall remain unaffected. The same shall apply if the Contractor refuses to repair or replace or does not carry out such within a reasonable period, if such redress would be associated with considerable

inconvenience for the Client or if such would be unreasonable for the Client for compelling reasons represented by the person of the Contractor.

If notice is given of defects within the warranty period, it is assumed that such already existed at the time of the due and proper Handover. The Contractor shall bear responsibility for all defects arising during the warranty period.

When material defects are remedied, the original warranty period commences anew for the entire object of the contract; when non-material defects are remedied, the original warranty period begins anew for this part of the object of the contract.

The Contractor shall be obliged to remedy all defects at its own expense. If the Contractor does not comply with the request to remedy defects within the reasonable period set by the Client, the Client may remedy the defects or have such remedied at the expense of the Contractor without having to obtain price quotations. The warranty, guarantee or compensation claims remain unaffected thereby.

The place of installation shall always be considered to be the place of performance for the remedying of defects. Any necessary transportation shall be at the expense of the Contractor.

## **XIX. Damages**

If the Contractor or a person acting for it (such as a subcontractor or a supplier) culpably inflicts damage upon the Client, the Client shall be entitled to damages as follows:

- 1) in the case of intent or gross negligence to compensation of the actual damage and the loss of profit (full satisfaction);
- 2) in the case of slight negligence to compensation of the actual damage;
- 3) in every case also compensation of consequential damage.

The Contractor has the burden of proof that it is not at fault in relation to the breach of any contractual or statutory obligation.

## **XX. Invoices**

Invoices must be sent at the latest two months after full performance of the contract and must be sent separately according to order. A late or defective invoice shall delay the payment to the same extent.

The minimum criteria that must be included in the invoice are defined as follows:

- a) Statement of the total amount due under the contract (main contract + any directions, addenda, additional services, etc.)
- b) Clear breakdown of the services/deliveries rendered, which must clearly refer to the relevant parts of the order/contract.
- c) All documents, proofs and enclosures (performance reports, time records in the case of additional services, etc.) necessary to check the invoice, compiled in a clear manner;

- d) Submission of the invoice in duplicate;
- e) Separate indication of VAT.
- f) All payments already received must be clearly deducted
- g) All securities, reductions, discounts for prompt payment, etc., must be deducted.

Further documents necessary to check the invoice, such as delivery slips, time records, etc. must be enclosed or subsequently provided upon request. In the case of work according to standard flat rates or according to actual material and time expenses, lists of quantities (time, place and description of performance, amounts of material used) or work descriptions (work sheet) must always be attached to the invoice and other proofs of performance. Such must be previously confirmed in writing by the responsible employee of the Client.

The order number of the Client must be cited on every invoice. The same applies in respect of reminders.

## **XXI. Payment**

The periods allowed for payment and for discounts for prompt payment begin on the date the invoice is duly received by the Client subsequent to full completion of the contract by the Contractor. In the case of defective invoices, the periods at issue do not start to run until a new, correct invoice has been submitted.

The period allowed for payment is 30 working days after receipt of the invoice.

Payments to the Contractor have the effect of discharging the Client of its duty to pay and establishing its rights of ownership also in respect of the former's (sub-contractors) suppliers. This shall be guaranteed by the Contractor by means of corresponding agreements with its (sub-contractors) suppliers.

Insofar as the Client is culpably in default on payments, default interest of 5% p.a. is agreed upon.

## **XXII. Confidentiality**

The Contractor undertakes to keep confidential all data and information related to a contract or an order, in which the Client has a confidentiality interest.

## **XXIII. Additional provisions for deliveries**

- Place and time of delivery must be agreed bindingly with the Client in advance. The Contractor shall guarantee that the object of the contract can be delivered directly to the employee of the Client authorised to take delivery, who must be present at the time of delivery in the place of delivery. Any early delivery requires the prior written consent of the Client.
- The Contractor must inform itself in advance about the suitability of the place of installation (doors, corridor width, lifts, etc.) and must communicate any problems to the Client in

writing in good time (duty to inspect and warn).

- The transport of the object of the contract shall be at the expense and risk of the Contractor.
- Each delivery must have attached a delivery slip or comparable document (invoice, packing slip etc.) with the Client's order number as well as the name of the unit that ordered it (organisational unit or sub-unit, etc.).
- The Contractor shall deliver products corresponding to the latest state of the art in technological terms on the respective delivery date. The Contractor undertakes to give written notice in good time of any changes in models between the placing of the order and delivery. If this duty to give notice is not fulfilled, the Client reserves the right to withdraw from the contract or to amend the contract as necessary due to the change in model.
- The Contractor guarantees that it can deliver all spare parts for the object of the contract throughout the duration of its average useful life.
- Prices stated at the time the contract was concluded may not be exceeded until the end of the contract. Price reductions between the date of the offer and the date of the delivery shall be passed onto the Client.

## **XXIV. Additional provisions for building contracts**

### 1) Additional technical and legal principles / in general

These include

- the ÖNORMs (Austrian Standards) existing at the time the contract is concluded; if such do not exist then the European norms recommended by the Austrian Standards Committee (*Österreichischer Normenausschuss*) for application in Austria, as well as the guidelines issued by the ÖVE (*Österreichische Vorschriften für Elektrotechnik*) and ÖVGW (*Österreichische Vereinigung für das Gas- und Wasserfach*) and TRVB (*Technischen Richtlinien Vorbeugender Brandschutz*) as well as the generally accepted technical rules and standards
- all plans, documents (e.g. health and safety plan) and official permits

The Client requires knowledge of the guidelines plus all other legal provisions connected with the awarding of the relevant contract as a condition therefor.

Prior to being awarded the contract, the Contractor shall inform itself thoroughly of the local conditions on the building site. This shall be confirmed by legally binding signature of the offer by the Contractor. During the works, regard shall always be had to the existing university operations. Subsequent claims relying on mistake, lack of

knowledge or other assumptions shall not be taken into consideration.

The Contractor shall notify the Client in writing and prior to commencing the works of its responsible manager (construction manager, assembly manager) who shall represent the Contractor in a legally binding fashion in dealings with the Client. The responsible manager shall always be available during working time. If he cannot be available, he must make a competent substitute available. Any change of the responsible manager shall only be admissible subject to the prior written consent of the Client.

## 2) Prices/fee

- The agreed prices include all costs and ancillary costs for the necessary deliveries and services, including all costs for wages, overtime compensation, difficulties (including weather-related difficulties such as rain, frost and snow, etc.), transportation and ancillary works that are necessary for the punctual production of the works in compliance with the contract, free from defects and in compliance with all official provisions and requirements, the relevant standards and the accepted technical rules and standards, even if necessary details were not mentioned in the description of work but are technically necessary due to the circumstances or foreseeable or usual. The above-mentioned ancillary services also include the security measures necessary for the operations of the university, the meetings necessitated prior to and during the execution of the works and clarifications including the procurement of all necessary certificates, permits to be procured by the Contractor and final acceptances of construction, all without separate remuneration insofar as such is not already foreseen.
- Costs that the Contractor incurs in procuring official approvals or due to official decrees are also settled with the agreed prices and shall not be remunerated separately.
- The Contractor shall reach the performance target under consideration of the normal weekly working time. Working time going beyond the normal weekly working time as well as night work, work on Saturdays, Sundays or public holidays requires the consent of the Client. This consent shall under no circumstances replace other necessary approvals, for example under labour law or employee protection law provisions.
- The Contractor shall point out any foreseeable deviations from the original overall offering price without delay. A separate authorisation by the Client is necessary for any prices exceeding the original overall offering price, otherwise the underlying work shall not be remunerated.
- Work charged according to material and time actually expended shall only be remunerated separately if the Contractor was specially

commissioned to carry it out prior to its execution. The Contractor shall keep separate records of all personnel and material costs related to this and such must be submitted to the Client at least once a week for confirmation.

- Difficulties caused by winter and bad weather conditions shall not be remunerated separately and shall not have any effect upon agreed deadlines and dates.
- The rule on compensating disadvantage to the Contractor under ÖNORM B 2110 is expressly excluded. The Contractor shall not be paid any compensation of whatsoever kind by the Client in the case of works being omitted.
- Disputes regarding invoices shall not under any circumstances entitle the Contractor to interrupt the works and/or to suspend them.
- As needed and in the case of uniform prices being agreed, a joint determination of scope shall be undertaken with the Contractor prior to invoices being issued.
- The payment of the final invoice by the Client settles any and all receivables arising out of the contract for services. No subsequent claims may be raised thereafter by the Contractor.

## 3) Performance

- In the event that materials, personnel or objects are made available by the Client, the Contractor shall be obliged to notify the Client in good time of the demand and other requirements.

The Contractor must duly and properly accept materials made available by the Client and examine them as to their suitability. Unsuitable materials must be rejected immediately. If the Contractor omits to do so or if it is not present when such materials are delivered, the materials made available shall be deemed duly and properly accepted as to type, quantity and their properties.

- The Contractor is liable for the accuracy of the sizes of the orders for material and for all additional costs and value reductions that result from manipulation of material made available but not used. Materials made available by the Client may only be passed on or removed from the building site subject to the written consent of the Client.
- The place of work shall be cleaned on an ongoing basis. Waste, debris and any building materials, machines or the like not needed shall be removed from the building site. If this obligation is not observed, the Client shall be entitled after setting a grace period of 3 days to deduct or subsequently to offset the costs of substitute performance (e.g. cleaning,

- disposal). The contract fee shall not fall due until the agreed end state has been produced.
- The Contractor shall be responsible for the protection and securing of its work area as well as the work surroundings. If this obligation is not observed, the Client shall be entitled after setting a grace period of 3 days to deduct or subsequently to offset the costs of substitute performance (e.g. cleaning, disposal).
- Any and all packaging delivered to the Client and other waste from the building operations shall be disposed of in its entirety by the Contractor. The relevant proofs of proper disposal required by legislation and ordinances shall be provided upon request.
- Available lifts may only be used for people and material subject to the prior consent of the Client and corresponding precautionary measures on the part of the Contractor. The Contractor shall pay for any damage, any additional maintenance costs arising from the joint use and cleaning costs for the cab and shaft.

#### 4) Responsibility/liability

- The Contractor undertakes to ensure sufficient insurance coverage for the risk associated with the works that are the subject of the contract.
- If building damage occurs in the course of the construction, the Contractor shall notify the Client immediately thereof regardless of who caused it. The party that caused the damage shall bear the costs of remedying it. This party shall be liable to the full extent (direct building damage). If it is not possible to determine who caused the damage (general building damage), the costs shall be divided among all the companies working on the building site in proportion to their respective invoice totals.

The Client reserves the right provisionally to retain 1% of the amount of payment falling due in respect of all payments to the Contractors until the calculation of the general building damage. This amount can be retained regardless of time of work at the place of performance as well as to cover the costs of cleaning the building site insofar as it is not possible to determine who made a clean-up necessary. Liability for building damage that can be attributed to specific parties shall not be affected by this.

- The Contractor shall be obliged to keep daily construction reports. All entries must be confirmed in writing by the contractual partner in order to be valid.
- Any and all transport measures shall be adapted to the (possibly limited) space available and shall be coordinated with the on-site building inspection and the Client.

- The Contractor shall ensure that safety measures to avoid damage and contamination of own and third-party (also adjacent) building components are set up and removed – without separate remuneration. Adjacent buildings and building components must be secured. Any damage to facades, piping components or other building components shall be borne by the Contractor.
- The Contractor shall be responsible and liable for proper scaffolding.
- The best possible protection against noise and dust must be provided for in respect of all the works. The Contractor shall be obliged to clarify noise and dust protection measures for the specific work area with the on-site building inspection.
- The Contractor shall be liable for its suppliers as well as for auxiliaries in the sense of § 1313a of the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, ABGB).

#### 5) Invoicing / determination of quantities

- The Contractor shall provide proof of the quantities together with the on-site building inspection. The Contractor shall keep continuous records in a book of quantities of the scope of the works executed. The accuracy of the quantities determined shall be accepted by virtue of the signature of both parties. The Contractor shall prepare all invoicing documentation. If it turns out during the performance of the works that there will be a major change in the value of the contract, the Contractor shall be obliged to notify the Client of this in writing without delay.

The determinations of quantities that must be attached to invoices for part performance must be organised so that the breakdown of completed works or parts thereof can be used for the final invoice.

#### 6) Warranty, guarantee

The guarantee and liability period shall generally be 3 years, except for:

Insulation in general	10 years
Sealing in general	10 years
Drying out of walls	5 years
Synthetic windows inc. fittings	5 years

The Client shall be entitled to indemnify itself in respect of all claims, in particular warranty, compensation and recourse claims, arising out of the construction project at issue from the retainage guarantee or to hold back the retainage guarantee until any legal dispute has been decided.

If a defect arises and its cause possibly lies within the sphere of responsibility of several Contractors and no consensus can be reached among the Contractors in relation to the responsibility, then



these Contractors shall be jointly and severally liable to the Client for the remedying of the defect.

Any warranty (liability period) taken on by the Contractor that exceeds the legal requirements in terms of length shall be stipulated in the respective engagement letter.

#### **XXV. Miscellaneous / closing provisions**

The Contractor guarantees that its services/deliveries are free of third-party rights (in particular rights of ownership and other rights of use including intellectual property rights). The Contractor shall hold the Client entirely free and harmless from all damage and disadvantages that such suffers due to such infringement of third-party rights. The Contractor transfers to the Client without separate remuneration all rights of use in relation to the performance rendered; in the case of a premature termination of contract as of this point in time and in this respect in particular the right to complete, alter or extend the works itself or have the works completed, altered or extended by third parties without the consent of the Contractor. The legal venue shall be the court competent for the first district of Vienna. Exclusively Austrian law shall apply with the exception of the rules on conflict. This also applies to the legal venue clause. The United Nations Convention on Contracts for the International Sale of Goods is not applicable.

The assignment of contractual rights and claims by the Contractor requires the consent of the Client.

The Client and Contractor are obliged to transfer any and all rights and duties arising out of contracts to their respective legal successors with full binding effect.

If individual provisions of these general terms and conditions are or become null and void or ineffective, this shall not affect the effectiveness of the remaining provisions. Any ineffective provision shall be replaced by such valid provision as comes closest to achieving the object of the original provision.