

General Conditions of Purchase for the Procurement of Plant, Plant Components and Services, 06/2010 Edition

1. Scope

1.1 These conditions of purchase shall apply solely for the principal's orders (in this instance, Cemtec). Confirmation or fulfilment of the order shall be deemed to be acknowledgement of these conditions of purchase. This shall also apply if the contractor indicates that he only wants to supply on his own terms. Other terms and conditions and exemptions from these conditions of purchase require the principal's approval in writing in order to be effective.

1.2 These conditions shall apply exclusively. The general terms and conditions of our suppliers and contractors are excluded herewith. Any acknowledgement of conditions for previous contracts concluded that are different shall have no significance for this order.

1.3 The following conditions in respect of the purchase of goods shall also apply accordingly for claiming (work) services. They shall apply equally to main and ancillary services.

2. Offer/Orders

2.1 Offers and estimates of costs are binding and shall be issued free of charge.

2.2 Only orders raised by principal in writing are legally binding. Verbal or telephone orders require confirmation by the principal in writing in order to be effective.

2.3 If the contractor has submitted an offer, he shall be bound to the principle in respect of the declarations made therein for 60 days.

2.4 The order can ensue by indicating the principal's order number. This shall be quoted by the contractor in all correspondence relating to the order.

2.5 If deadlines are stated on the order, the date that appears on the written order shall apply if in doubt.

3. Order Confirmation/Conclusion of Contract

3.1 The contractual relationship shall come into force either by the principal's order based on a binding offer from the contractor or by principal's order and acceptance of the order by the contractor with confirmation of order in writing.

3.2 In the event that the written confirmation of order has not been received within 10 working days, the principal reserves the right to retract the order.

3.3 Subsequent changes and addenda to the contract require written confirmation from the principal in order to be valid. The contractor's delivery conditions shall be binding on the principal only if they have subsequently been acknowledged separately in writing by the principal.

3.4 The principal is entitled, if it is reasonable for the contractor after the contract has been concluded, to demand changes to the subject of the contract in respect of design and volume, insofar as specific operational reasons require this and the change is a standard one. The impact on delivery dates and any reductions in cost or surcharges shall be controlled in an appropriate and amicable manner. Price increases and extensions of delivery times shall only be acknowledged, however, if not just small additional charges or extensions of delivery times are actually and demonstrably not just linked to

the change and if the contractor has advised the principal of this in writing immediately after the order has been amended.

4. Prices

4.1 Order prices are net fixed DDP prices (Incoterms 2010) including transport, insurance, packaging, removal and, if appropriate, assembly. If charges, taxes, duties or other fees are raised in connection with delivery, the contractor shall bear these insofar as statutory provisions allow this.

4.2 Subsequent price increases shall not be acknowledged; price increases according to points 3.4 and 7.2 shall not be affected.

5. Delivery

5.1 The agreed delivery date shall be binding. It shall be deemed to have been met if the supply or service is provided in full on the agreed date at the agreed place of delivery (acc. to delivery status).

5.2 If no calendar day is specified as the delivery date, but a delivery period is agreed, the delivery operation shall begin when the contract is signed according to Point 3.1 and/or 3.2.

5.3 If the contractor anticipates difficulties over delivering on time, he shall inform the principal immediately in writing, indicating the possible delivery date. In the event that the principle agrees to this new delivery date, which is otherwise only effective if given in writing, compensation claims due to late delivery and claims arising from a contractual penalty agreed for the event of delay shall not be affected.

5.4 Disputes do not entitle the contractor to withhold or discontinue any deliveries and/or services due.

5.5 The principal is entitled to withdraw from the entire contract, if the contractor defaults on a delivery irrespective of the reason except cases of force majeure according to Point 6, and for part delivery in the event of agreed part deliveries alone, by setting an appropriate deadline.

5.6 Deleted without replacement.

5.7 In the event of late delivery, a contractual penalty clause shall be agreed. The contractor shall pay the principal, unless otherwise agreed in the main order, an amount of 1%, but rising to a maximum of 10% of the total order price, for every week that has started.

5.8 The principal is not obliged to accept deliveries and services ahead of schedule without express approval beforehand. If accepted, the principal reserves the right to claim any associated costs. Deliveries ahead of schedule shall not affect payment dates in any way.

6. Force Majeure

6.1 None of the contracting parties shall be responsible for non-fulfilment of their contractual obligations if non-fulfilment is due to force majeure such as war, natural disasters, fire, flooding, explosions, earthquakes, unrest, strike action and official measures. If circumstances of this kind prevent the contractor from adhering to the agreed delivery period, the latter shall be extended for the length of time these circumstances persist.

6.2 The contractor can then cite force majeure if he has indicated the precise case of force majeure immediately to the principal, but in any case 24 hours at the latest prior to the agreed delivery time, in writing and individually evidenced by fax or e-mail. Unless notified by the time referred to in the 1st sentence hereto, the contractor shall be able to plead force majeure only if a case of force majeure has occurred within the 24-hour period and can be demonstrated as having caused the delay in delivery.

7. Dispatch, Transfer of Risk and Place of

Fulfilment

7.1 Items are dispatched at the contractor's risk and expense, unless otherwise agreed. The principal shall only bear transport insurance costs if this has been expressly agreed.

7.2 The principal shall be notified beforehand in writing under separate cover and in good time that each delivery has been dispatched, unless otherwise firmly agreed, in order that the principal shall have sufficient time, but in any case at least 5 working days, to prepare for acceptance. The invoice shall not be regarded as an indication of dispatch. If the principal notifies the contractor prior to goods being dispatched that release for shipment still cannot be issued, the contractor shall be obliged to store the product appropriately for up to 8 weeks and to dispatch it immediately only on call by the principal, insofar as is reasonable for him in an individual case.

7.3 The dispatch documents shall be supplied with the transaction references of the order issued by the principal. The dispatch note shall be sent to the principal in duplicate immediately after dispatch and shall include the exact name, quantity, weight (gross and net), type and packaging of the goods or item. If the dispatch documents required for a delivery are not issued in time or the above details are missing on the dispatch documents and transaction references, the product shall therefore be stored at the contractor's risk and expense until the dispatch documents and/or full details arrive.

7.4 The contractor shall ensure that the delivery is correctly packaged for the transport method used. The contractor shall bear any costs incurred by damage suffered on the part of the principal due to relevant instructions not being followed. Loading tackle shall pass into the principal's ownership, unless otherwise agreed.

7.5 Prior to delivery, the contractor shall carry out all the necessary inspections and tests to check that the delivery complies with the terms of the contract. The goods are accepted (approved) and completeness and any visible defects checked in reasonable time and at the appropriate place after the goods have been received.

7.6 The procedure for receiving goods and the acceptance test shall be as agreed separately in writing. Unless separate arrangements are made in writing, the following shall apply: goods accepted on working days only, from Monday to Thursday between 08.00 and 16.00 hrs and on Fridays between 08.00 and 12.00 hrs. Further details can be found on the logistics specification.

7.7 Use and risk shall be transferred with approval of delivery according to Point 8, failing agreement of official approval with acceptance of delivery at the reception centre indicated by the principal for this purpose.

7.8 The principal's registered office shall be deemed to be the place of fulfilment for delivery and payment. If goods are to be handed over at a different place, as agreed, this shall be deemed to be the place of fulfilment for delivery.

7.9 Fulfilment ahead of schedule: deliveries prior to their due date shall only be allowed on the principal's approval in writing and shall not be deemed to be a preferential claim for payment.

8. Acceptance Testing

8.1 If the principal wants an acceptance test to be carried out, this shall be expressly agreed in writing with the contractor at the time the contract is concluded. If no other arrangements have been made, acceptance testing shall be carried out at the principal's or at a place defined by the principal and during normal working hours.

8.2 Defects detected during the acceptance test shall be rectified immediately by the contractor. Until all the defects are rectified in full, the principal shall not be able to refuse acceptance and demand that testing be repeated.

8.3 If the delivery is not accepted due to circumstances beyond the contractor's control, in particular due to defects not being rectified on time within a reasonable period after delivery, the principal shall have the option of either demanding a price reduction or shall be entitled, in the event of not insignificant defects being found, to withdraw from the contract while maintaining any claims for compensation and without setting a reasonable extension period.

9. Payment

9.1 Invoices shall be sent out in duplicate for delivery and performance in due form in compliance with the formal provisions of the relevant turnover tax legislation valid at the time. Payment shall be made by the principal, unless different payment terms have been agreed, within 14 days with -3% discount, or within 60 days net, calculated at the time according to receipt of invoice or approval and/or acceptance of delivery/service, whichever is the latest.

9.2 If the principal makes a payment prior to handover of the goods or service, the contractor is obliged to provide surety at the amount of the payment. Any deposit and intermediate payments shall not signify acknowledgement of the contractual legality of the service performed.

9.3 The principal reserves the right, in the event of warranty claims or other demands enforced, to withhold or offset payments. The contractor is not in this event entitled to withhold outstanding payments or deliveries or to offset these.

10. Retention of Title

10.1 If the contractor has retained title to the items delivered, this retention shall only then apply until payment is made for these items, insofar as the principal has not already become the owner of these items by conversion, incorporation or amalgamation.

10.2 Retentions on an open-item basis and corporate retentions of title shall not be recognised.

10.3 Claims arising from the resale of goods under retention of title, if allowed by law, shall not be assigned to the contractor to cover his purchase price claim. The principal is not obliged to protect the contractor's rights arising from retentions of ownership of any kind in respect of third parties.

11. Warranty

11.1 Without prejudice to the principal's legitimate claims, the contractor is obliged to provide a warranty for any defect pursuant to the regulations below. A defect shall be deemed to be any deviation of the goods supplied from national standards, e.g. ÖNORMEN (Austrian Industry Standards) or DIN (German Industry Standards) and/or relevant international standards and directives in force (such as European Standards, for instance), as well as details in catalogues, brochures, advertising leaflets and other official publications. Statements made therein shall be deemed to be contractually committed attributes, regardless of whether the contracting parties have referred to them during negotiations, or whether the attribute concerned can be generally assumed.

11.2 The contractor shall in particular guarantee that third party protection rights shall not be infringed in any way through use of the items purchased and that if machinery or similar plant is involved, this shall be designed in such a way that it complies

with the Austrian and European Safety Regulations in force at the time.

11.3 The legal warranty periods shall apply, unless specific warranty periods are otherwise agreed for individual items of delivery. The warranty period shall start at the point in time when risk is transferred in accordance with Point 7.8 in the event of defects not formally recognised at this point in time, which do not emerge until the machining or processing stage.

11.4 If a part delivered cannot be used according to the contract due to a defect in accordance with Point 11.1 or 11.2, the warranty period for this part shall be extended by the length of time its use is interrupted. For parts exchanged and improved, the warranty period shall run anew.

11.5 The principal shall notify the contractor of defects that have occurred within a reasonable period. In the first six months after delivery, any defect shall be handled as if it had already existed at the time of delivery, insofar as the contractor does not provide evidence to the contrary. If a defect exists that is obligated under the warranty according to Point 11.1 or 11.2, the contractor shall, without prejudice to the legitimate claim to alterations, as the principal shall so choose:

- a) rectify the defective goods in situ;
- b) have the defective goods or defective parts collected, re-delivered and, if necessary, assembled for the purposes of rectification;
- c) exchange the defective parts;
- d) exchange the defective goods;
- e) reduce the price appropriately.

The warranty vehicles shall meet any regulations where no derogation from statutory provisions is possible at the contractor's expense.

11.6 Rectification and exchange shall be carried out within a reasonable period. In the event a necessary rectification is delayed, the principal is entitled to carry out the latter himself at the contractor's expense, or have it carried out by a third party (execution by substitution).

11.7 All costs in connection with rectification or exchange, particularly dispatch, labour and materials costs, customs duties, dismantling and assembly costs, shall be charged to the contractor.

12. Withdrawal from the Contract

12.1 Regardless of his other rights, the principal is entitled to withdraw from the entire contract, without setting an extension period,

- a) if bankruptcy, insolvency or preliminary proceedings or a reorganisation are introduced over the contractor's assets, or insolvency proceedings are disallowed due to insufficient assets, or
- b) if essential changes are made, e.g. changes under company law, at the contractor's enterprise.

12.2 Cancellation: the principal is entitled to withdraw from the contract, entirely or in part, without the contractor being at fault. In a case such as this, the principal is obliged to pay the contractor the contractual price pro rata to the deliveries already handed over and services provided and in addition to refund proven direct operating costs involved in the deliveries and services and/or cancellation of sub-contracts. The contractor is obliged to make every effort upon declaration of withdrawal to keep the costs to be refunded by the principal as low as possible.

12.3 Suspension: the principal is entitled to demand that the contractor cease further work on the order at any time. The contractor shall in this case point out in detail to the principal the resulting consequences and offer the principal the best

possible alternative, in economic terms, to the scheduled date in the context of the project.

13. Compensation

13.1 The contractor shall be liable for all losses and damage caused by him, his assistants and his subsidiaries, and these shall always be satisfied in full. In particular the contractor shall be liable for all losses and damage suffered by the principal from third party claims on whatever legal basis and due to whatever contractual infringement by the contractor.

13.2 Exclusions from liability of whatever kind shall not be recognised.

13.3 In lieu of claims from the warranty, compensation can also be enforced due to non-fulfilment

13.4 If contractual penalties are agreed for the contractor's dereliction of duty, additional claims from the respective title shall not be excluded, unless they comply with the clause of liability of the mentioned conditions of the order (see Pt. 13.5.).

13.5 Basically the clause of liability mentioned in the order conditions of the order is as the former valid.

14. Industrial Property Rights and Copyright

14.1 The contractor shall guarantee that patents, industrial designs, trade marks, trade names, copyright or other industrial property rights of third parties in Austria or in a country into which deliveries shall be made as acknowledged by the contractor, shall not be infringed by his own deliveries and services. Should a claim be made on the principal due to infringement of these rights by third parties, the contractor shall indemnify the principal to the full for all claims and shall hold him free and harmless without evidence of blame.

14.2 Plans, sketches, drawings, construction documents and other technical documentation from the principal, as well as samples, catalogues, brochures, illustrations and similar shall always remain the intellectual property of the principal and shall not be either reproduced or made accessible to third parties without the principal's approval in writing. They shall be used by the contractor without the principal's approval in writing only for the purpose of the execution of the contract. Otherwise, the relevant statutory provisions shall apply with regard to reproduction, forgery, competition, etc. Use of the order for advertising purposes is not allowed.

15. Confidentiality

The contractor shall take upon himself, his employees and assistants the obligation to maintain confidentiality in respect of business transactions, data and other facts from the principal's area of business, of which he becomes aware every now and then or during collaboration, and also to maintain confidentiality throughout the period of the business connection, unless the principal expressly releases him from this obligation. This shall also cover secrecy in respect of the client-supplier relationship (references etc.). The contractor is also accordingly obliged to commit his employees and assistants to secrecy.

16. Completeness/Documentation

16.1 It is agreed that the contractor shall have all the necessary documents, data and details required to build the corresponding system and integrate new and existing equipment.

16.2 The delivery of the testing and inspection documentation is an integral part of the service provided and/or order fulfilled and to that effect is relevant for compensation (see Point 5.7.).

Compliance with all the specifications mentioned is strictly implied and shall apply to the processing of the order in accordance with the contract between the two contracting parties, and is therefore deemed to be a binding integral part of the order and of the legal transaction on which it is based.

17. Supplements Clause

17.1 Any different, verbal or telephone agreements must be in written form.

18. Special Notes

18.1 The contractor is entitled to transfer fulfilment of his contractual obligations in full or in part to sub-contractors only with the principal's approval in writing.

18.2 Samples, models and all documents issued to the contractor in connection with the order or execution of the contract, such as drawings, plans, charts etc. shall remain the principal's property and shall be returned unasked as soon as they are no longer required, but on delivery at the latest. The contractor shall not be entitled to a right of lien.

18.3 If individual clauses of the contract or of these provisions were to be ineffective, the effectiveness of the other provisions shall not be affected. The ineffective provision shall be replaced by a valid provision that is as close as possible to the objective pursued.

18.4 In the event of conflict between the integral parts of the contract concluded between AN and AG, the following priority shall apply:

- the order (letter format or fax)
- the appendices referred to in the order
- in particular the record of negotiations
- these Conditions of Purchase

If clarity is not the result of the sequence of priorities, the principle of best possible fitness for purpose of the deliveries and services in respect of questions regarding the scope of supply and services shall apply.

18.5 Without prejudice to the regulations in these Conditions of Purchase, any further legitimate claims by the principal shall not be affected.

18.6 Insofar as the existing conditions do not allow for any adjustment, the statutory provisions alone shall apply.

19. Applicable Law, Jurisdiction

19.1 The contract is subject to Austrian substantive law, excluding the UN Convention on Contracts for the International Sale of Goods.

19.2 The Austrian High Court in Linz shall have jurisdiction.