



**GENERAL COMMERCIAL TERMS AND CONDITIONS
for the purchase of
Engineering Services**

Edition July 2017

("GCC-E 07/2017")

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EXTERNAL DOCUMENT

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1. DEFINITIONS

The following definitions shall apply in these GCC 07/2017:

PC	= Purchaser (Company name and address, see Annex 1):
CO	= Contractor, the legal entity bearing a duty to furnish the services and supplies to order.
FC	= Final Customer for overall system or plant (the Purchaser of the PC).
Overall System or Plant	= The works to be produced for the FC, which should be regarded as a single unit in technical or contractual respects, a portion of which constitute the Supplies/Services to be rendered by the CO
Final Customer Contract	= Contract between the PC and the FC for the supply of the Overall System or Plant
Order	= Contract between the PC and the CO for the Supplies and Services to be furnished by the CO
Supplies/Services	= All supplies and services to be furnished to order by the CO, noting that the term 'Services' when used on its own should likewise be construed with this meaning.

2. GENERAL MATTERS

2.1 *Meaning of Supplies and Services of CO:*

The Services of the CO shall form a part of a complex Overall System or Plant to be produced. Thus, defaults or disruptions due to failures in respect of individual Supplies and Services will as a rule give rise to problems in the overall organisation of the project, entailing corresponding additional costs, e.g. in connection with postponements of deadlines, third-party claims, disruptions in respect of logistics, delays in formal acceptance by the FC, downtimes etc. The consequences in terms of costs are particularly serious in the case of Overall Systems or Plants to be constructed abroad.

For this reason, the CO hereby undertakes to exercise particular care in performing its duties, taking account of the circumstances, and is aware of the consequences which delays and/or deficiencies in rendering the Services may entail. In connection with this, the CO hereby expressly undertakes to transmit forward-looking and authoritative engineering progress reports (to be completed in the 'component status' document) to the PC either at regular intervals or upon demand by the PC.

2.2 *Quality assurance:*

The CO hereby undertakes, on its own behalf and on behalf of its sub-contractors, in furnishing its Supplies and Services to apply the principles of quality assurance pursuant to the relevant ISO 9001:2008 and ISO 14001 and VDA 6.4 norms.

The PC and the FC shall have the right to audit the quality assurance system, quality assurance rules and quality assurance plan of the CO and its sub-contractors at any time. The CO shall strive to achieve certification for the ISO 9001:2008, ISO 14001 and VDA 6.4 QM systems.

2.3 Validity of general terms and conditions:

Agreements between the PC and the CO shall be exclusively governed by these GCC 07/2017, unless otherwise agreed in writing. The PC hereby expressly objects to any terms and conditions of the CO which conflict with these GCC 07/2017 or any other terms and conditions of the CO (e.g. terms and conditions of offer or sale). They shall not apply, even to the extent that individual terms thereof should not be contained in these GCC 07/2017. Any of the CO's terms and conditions shall only apply if they are expressly acknowledged in writing by the PC. Where the GCC 07/2017 form the agreement between the parties, any terms and conditions of procurement printed on the reverse of the order form shall be deemed void and of no effect.

Where reference is made in the PC's Order to bid or offer documents of the CO, this shall not be deemed to constitute any acknowledgment of the CO's general commercial terms and conditions.

No later than at such time as the PC places its Order, the CO is deemed to acknowledge these GCC 07/2017. However, in any event at such time as the CO commences to execute the Order, it shall be deemed to have acknowledged these GCC 07/2017.

The PC may at any time amend or alter the provisions of these GCC 07/2017 without any need to indicate reasons for this; such amendments may be communicated by forwarding the text of the contract to such e-mail address as the CO has communicated. Where the CO does not object in writing by e-mail to the amendments within 10 business days from the date of the receipt of the above-referenced notification, the amendments shall be deemed to have been accepted. In the event of timely objections of any CO, the contractual relationship between that CO and the PC shall continue in line with the PC's general commercial terms and conditions, as in effect prior to the communicated amendment.

2.4 Legally binding nature of declarations:

Declarations of the PC with respect to the conclusion of or amendments to orders or addenda to orders shall only be binding on the PC where they were furnished by the competent procurement department of the PC in writing, by facsimile or telex. The CO may only rely on declarations by other persons where it notifies the PC's competent procurement department thereof without delay and the written confirmation of that department has been received.

2.5 Integral elements of contract:

- Engineering specifications
- Customer specifications
- TMS standard tools (e.g.: Checklists, component lists, ...)

2.6 Resolution of conflicts

In the event of conflicts between the components of the contract concluded between the CO and the PC, the following priority shall apply:

- The Order letter (e-mail, facsimile or letter)
- The annexes and attachments referenced in the Order letter
- These GCC 07/2017, including the annexes to these GCC 07/2017

2.7 Statutory claims:

Notwithstanding the provisions of these GCC 07/2017, any statutory claims of the PC going beyond these shall remain unaffected hereby.

2.8 Agency powers:

Persons giving declarations to the PC on behalf of the CO shall be deemed to have unlimited agency authorisation for this purpose.

2.9 Assignment:

Any assignment of rights of the CO to third parties shall only be permitted with the PC's written consent.

2.10 Modifications to Services:

Where, based on the special expertise the CO is reasonably expected to possess and in the exercise of due care, the CO has concerns regarding the envisaged manner of executing the Order or if the CO is aware of options for improving the subject-matter of contract, the CO shall be obliged to notify and document this in a timely manner to the PC prior to executing the Order in question and, at the same time, to submit proposals for remediation or improvement.

Modifications or supplementations to orders may only be executed on the basis of a written addendum.

2.11 Reorganisation:

The CO shall inform the PC without delay regarding the commencement, setting aside or discontinuation of any reorganisation proceedings and/or any proceedings to the same effect under the Austrian Reorganisation of Corporate Entities Act and shall, during the period of reorganisation, furnish monthly reports to the PC regarding the status of the reorganisation.

3. GENERAL STIPULATIONS REGARDING THE SCOPE OF SUPPLIES AND SERVICES

3.1 Technical specifications

The Services to be furnished by the CO are detailed, in particular, in the technical specifications, which shall constitute an integral part of the Order.

If and to the extent the PC notifies the CO of technical specifications and/or project documents of the FC or where the CO is aware of such independently, such technical specifications and/or project documents shall comprise an integral part of the Order.

The CO's scope of Services shall also include ongoing consultation and coordination with the representatives of the PC and attendance at project meetings upon request of the PC.

3.2 Meaning of documentation

'Documentation' denotes all of the documents in written, graphical or other form which accompany the CO's Supplies and Services and the purpose of which is to enable the CO and the PC to discharge their obligations to their counterparties and the governmental bodies to which the transaction in question relates in a timely manner and in the most cost-effective fashion.

The documentation shall constitute a material element of the CO's scope of Services.

The PC shall be deemed to acquire an unlimited right to use the work contained in the documentation and shall, *inter alia*, be entitled to deliver and/or to transfer the document received from the CO or its sub-contractors to its other counterparties and the FC.

3.3 *Change orders and additional work*

The PC shall only pay compensation for additional work where a written agreement is made thereon in advance. The execution of services for which no contract has been made shall be deemed for the account and at the risk of the CO.

De minimis changes to the scope of the CO's Services requested by the PC shall be carried out by the CO at no additional cost to the PC.

No compensation shall be owed for additional services arising as a result of *de minimis* changes, up to a threshold of 5% of the overall contract price. In the event that the 5% threshold is exceeded, full compensation shall be paid for the additional work (provided such work is instructed and properly performed in line with these GCC 07/2017).

A determination on what additional work is deemed *de minimis* shall be made by the CO jointly with the relevant department of the PC.

The *de minimis* threshold is exceeded, for example, where the statics base system is modified or where a workshop drawing must be completely re-done.

The CO shall keep ongoing records of additional expenditures, which it shall agree at regular intervals with the PC.

All corrections, additions and modifications arising in the course of consultations with the PC and supplier companies shall be taken into account immediately both as to cost calculations and as to structural matters and shall be incorporated accordingly into the project. The same shall apply to modifications arising from the customer approval procedures.

The CO hereby confirms that it possesses sufficient capacity of its own in order to be in a position to cover any peak planning requirements which may arise at short notice.

3.4 *Compensation rates for changes and additional work*

see Annex 2

4. PRICES

4.1 *Pricing*

The agreed fixed, lump-sum price in each case shall apply until such time as the Supplies and Services have been fully furnished and performed and shall include all costs for substantively correct and expert performance of the Services as well as all costs for human resources, non-staff and other expenditures of all kinds. The agreed fixed lump-sum price is deemed to include all taxes, customs and duties, licence fees, software programmes and insurance related to the CO's Supplies and Services in the countries in which they are furnished, and shall also include all such taxes (with the exception of VAT) and duties to be remitted to Austrian authorities. Where the Order document does not contain any provisions to the contrary, pricing shall be deemed based on DDP TMS Turnkey Manufacturing Solutions GmbH (TMS) department as referenced, pursuant to Incoterms 2010.

All costs incurred by the CO in connection with the foregoing capacity cover, performance, coordination and project meetings are deemed included in the fixed, lump-sum price.

4.2 EUROS

The payment obligations are exclusively in EURO (unless otherwise agreed in writing). The basis for conversion shall be the exchange rate in effect on the date of the Order, unless otherwise agreed in writing.

5. TERMS OF PAYMENT

5.1 Invoicing

The CO shall submit a single counterpart of its invoices, together with all such documents as are required for identification purposes such as order number, project code word etc. to the PC (company name and address, see Order).

COs from any EU Member State shall also indicate the movements of the supplies (Intrastat data) on all of their invoices, in addition to the details required by law for tax exemption purposes.

5.2 Payment

Unless otherwise agreed, payment of individual invoices shall be made on a net basis in each case, within 30 days from the date of receipt of the invoice and following satisfaction of all conditions precedent for this purpose referenced in the Order.

Monthly invoicing shall only be permitted where the processing period exceeds 3 months.

Payment shall not be deemed to constitute any acknowledgement of the correctness or propriety of the Supplies and Services and thus shall not constitute any waiver of the PC for performance of contract, warranty, compensatory damages etc.

5.3 Final invoice:

The PC's release of the last payment shall only occur upon receipt of a comprehensive final invoice for all of the Supplies and Services furnished pursuant to the Order and the claims associated with this.

By submitting its final invoice, the CO is deemed to declare that it has asserted all of its claims arising under the transaction in question and that it shall not assert any further claims in respect thereof.

The CO's claim for compensation for works and services shall be deemed prescribed upon the expiry of the statutory prescription period and is linked to the date of submission of the final invoice. As soon as it becomes objectively possible for the CO to submit an invoice, this must be done within a reasonable and customary period of time; in all other cases, the prescription period shall begin to run from the date on which it would have been objectively possible to submit the invoice.

5.4 *Set-off*

The PC is entitled to set off any and all claims the CO has against the PC against any and all claims and receivables of the PC and/or of direct and/or indirect PC group companies against the CO.

6. SUB-CONTRACTING

6.1 *Approval*

The CO shall bear an obligation to timely inform the PC regarding any intent to sub-contract and shall obtain written approval thereof from the PC prior to awarding any such contract. The CO shall furnish to the PC upon request a copy of the order in question.

Where these obligations are not complied with, the CO shall indemnify and hold the PC harmless with respect to any and all consequences arising from the foregoing, which may result, in particular, from the following criteria:

- Quality
- Deadline risk
- Compensation interest
- Technical cross-standardisation
- Sub-supplier requirements of FC

In cases in which the CO issues sub-contracts which have not been approved by the PC, the PC shall be entitled to resile in whole or in part from the contract, without prejudice to any other claims or rights of the PC.

Approval of any sub-contract by the PC shall not be deemed to limit the CO's obligations arising from the Order/contract. Even in the event of sub-contracting, the CO shall remain fully responsible to the PC for performance/execution of the entire Order/contract. The CO shall be liable for its sub-contractors' actions and omissions as it would be for its own actions/omissions.

In cases of sub-contracting to sub-contractors, the CO must ensure that these GCC 07/2017 the terms and conditions of contract between the PC and the CO are imposed upon and accepted by the sub-contractor.

6.2 *Value added*

The CO must absolutely adhere to any minimum proportion of value added from a particular country stipulated in the Order/contract within the meaning of the requirements of the Österreichische Kontrollbank (ÖKB) or of another financing and/or insurance institution and/or comply with relevant rules on country of origin documentation and shall furnish evidence thereof to the PC.

The PC and the ÖKB or respective other financing and/or insurance institution located abroad shall at all times have a right to undertake audits of the foregoing at any time.

In addition to any agreed transfer of exporter liability to the CO which may be agreed by the parties by counter-guarantee to the PC, the CO shall indemnify and hold the PC harmless in the event of a breach of this obligation with respect to

- additional costs due to the loss of an export credit on favourable terms over the entire financing term and
- the consequences arising out of the loss of cover for commercial and political payment default risk where the insured event occurs.

7. DEADLINES

7.1 Delivery date

With respect to the Services of the CO, the delivery date shall be deemed the date on which the Supplies and Services within the meaning of the Order/contract are completely and correctly furnished, and thus rendered free of defects and have been fully recorded in the electronic archive/on the database. The prescription period for claims, in particular claims for warranty and compensatory damages, on the part of the PC against the CO shall only begin to run at such time as the Supplies and Services have been fully supplied, free of defects. The prescription period for claims of the PC against the CO shall in any event correspond to those of the FC against the PC. The PC shall notify the CO of such prescription period.

7.2 Default

Where the CO sees that it is unable to meet the agreed schedules and deadlines, it shall be obliged to notify the PC thereof without delay in writing, indicating the reasons for the delay and the anticipated duration of the delay.

In the event that scheduling requirements affecting the PC (e.g. furnishing of documents) arise of its Order, the CO shall bear an obligation to issue timely, documented reminders in appropriate form. Where the CO fails to do so, the CO may not rely, in cases of defaults or delays with respect to its Supplies and Services on any delays on the part of the PC in furnishing its contributions. In the event that, despite a reminder, it should be impossible for the CO to meet the deadline as a result of delays on the part of the PC in furnishing its contributions, then the agreed deadlines and schedules shall be deemed to be extended maximally by the period of the delay for which the PC is responsible, without the CO being entitled to assert any claims for additional costs from this against the PC, including lost profits and down-times. The original deadlines, extended by the length of such delay, shall be deemed to constitute the new deadlines, which shall be subject to contractual penalties pursuant to sec. 8.1 of these GCC 07/2017.

In all cases of looming delays or defaults or of defaults or delays which have arisen, the CO shall bear a duty, irrespective of the cause of the default or the delay, to arrange its performance of the contract in so flexible a fashion that delays and defaults are minimised.

8. LIABILITY OF CONTRACTOR

8.1 Penalties for default

The CO is aware of the consequences which may be entailed by delays and/or deficiencies in furnishing the Services (see section 2.1).

If the CO should fail to meet the agreed schedules, interim or final deadlines agreed in the Order/contract, the CO shall be liable for the following penalties, irrespective of fault, up to the time of actual delivery (see sec. 7.1); (each of these penalties are calculated based on the overall Order volume):

- 2% of overall value of Supplies and Services ordered per week or part week of delay;
- however to a maximum of 20% of the overall value of Supplies and Services ordered;
- the PC is not obliged to furnish any evidence of loss.

The duty to pay a penalty for default shall arise on the part of the CO at such time as the default has arisen.

Payment of any penalties shall not relieve the CO of its duties of performance and of the liabilities resulting therefrom. Any claims of the PC which may go beyond the penalty (e.g. rescission, compensatory damages, lost profits, specific performance, negative injunctive relief etc.) shall remain unaffected thereby.

8.2 Liability

The CO shall be liable to the PC for all defects and losses of any kind whatsoever, whether indirect or direct, which arise as a result of any execution of the Supplies and Services which is deficient or not in conformity with the parties' contract, in line with the provisions of law, unless otherwise stipulated herein below. The foregoing shall likewise apply *mutatis mutandis* to any and all defects and losses attributable to sub-contractors/third parties engaged by the CO.

Any testing and approvals undertaken by the PC and/or third parties shall not relieve the CO in any manner whatsoever of its responsibility for correctly and completely performing its Services.

The CO hereby undertakes to indemnify and hold the PC completely harmless against any claims of third parties where such claims of third parties are the result of errors in the engineering and/or calculation work of the CO or its sub-contractors.

8.3 Statutory warranty

The CO hereby warrants that its Supplies and Services shall have such characteristics and qualities as are expressly stipulated in the Order and ordinarily assumed, shall be in line with the statutory requirements and other rules as well as the accepted state of the art, rules of technology and technical standards as well as the relevant norms and standards.

In particular, the Supplies and/or Services ordered shall be deemed deficient wherever they do not comport with the agreed requirements.

The PC shall notify the CO in writing of any potential defects upon receipt of the Supplies and/or Services, providing a description of the defect, within a reasonable time. The PC shall provide notice to the CO in writing of concealed and/or latent defects which could not have been ascertained upon proper scrutiny, following discovery thereof within a reasonable time. The parties hereby agree that the PC shall have no

duty to raise objections to defects and the CO hereby expressly waives the defence of belated notice of defects.

Any and all costs the PC may incur based on deficient Supplies and/or Services (costs of testing and examination, costs of experts, etc.) shall be borne by the CO, irrespective of fault.

8.4 Contractual cover

Where the CO fails within a reasonable time to be set by the PC to remediate defects following a request by the PC, the PC may itself remediate or engage another to remediate the defects at the CO's cost and expense, without any need to obtain price estimates. Within the meaning of these GCC 07/2017, such period shall always be deemed reasonable as is determined by the expert technician to be the briefest period possible.

In urgent cases, the PC shall likewise be entitled to itself remediate or engage third parties to remediate defects at the cost and expense of the CO after notifying the CO thereof but without setting any grace period, without this impairing the PC's claims based on such defects. In cases of imminent harm or loss, the PC may proceed in this manner even without notifying the CO.

In cases in which the PC has not communicated any option for improvement to the CO without special grounds to do so, but rather has itself remediated the defect or engaged third parties to remediate, the PC may then in any event claim such costs as the CO would have incurred if the PC had offered the CO the opportunity to undertake the remediation. The CO shall plead and prove that it would have incurred lesser costs for remediation of the defects if it had undertaken the remediation itself than the PC's own costs or the costs of any third party engaged to remediate the defect.

9. INSURANCE, CLAIMS

The CO shall submit the insurance policies to the PC regarding insurances taken out and the amounts thereof at such time as this agreement is concluded. Such insurance must be valid on a world-wide basis, i.e. must include all countries (with the exception of the US and Canada). The PC shall have the right to demand increased insurance for specific projects in individual cases.

The CO's liability for losses for which it is responsible pursuant to the terms of this agreement or the applicable statutes shall not be limited as a result of potential insurances taken out by the PC.

The CO shall forward such claims as the PC has asserted based on the CO's defective Services to its insurance provider without delay and ensure rapid processing of the same. In the event that, within 6 months from the date of handing over of the documents by the CO, there is no resolution as between the CO and the insurance provider, the PC shall be entitled to retain the amount of the claim asserted by the PC.

The CO hereby undertakes to notify the PC immediately of any changes to its insurance contracts relevant to the contracts with the PC.

10. RIGHTS IN THE SUBJECT-MATTER OF CONTRACT

10.1 Third-party rights:

The CO hereby undertakes to ensure that use of the CO's Services shall in no manner impair or infringe against existing boycott rules, blacklists etc. as the result of the assertion of third-party rights (intellectual property rights, copyright, trade marks, industrial design rights, patents, territorial protections etc.). The CO shall notify the PC without delay of any and all infringements of third-party rights or of boycotts, blacklists etc. which may subsequently be determined to exist.

In the event that such impairments or infringements are asserted, the CO hereby undertakes to fully indemnify and hold the PC and/or the FC harmless, without limitation, against third-party claims and to warrant to the PC and/or the FC their ability to use the subject-matter of contract without limitation or to ensure that it provides another acceptable alternative free-of-charge to the PC and the FC.

10.2 Third-party claims

The CO shall indemnify and hold the PC harmless with respect to all claims of third parties in connection with defects and/or non-compliant design or execution of its Supplies and Services.

10.3 Confidentiality, advertising

The CO shall preserve confidentiality *vis-à-vis* third parties with respect to the business relationship between the parties and with respect to all commercial and technical details which are not publicly known such as, in particular, but not limited to, design documentation, other documentation, business and trade secrets furnished to the CO or of which the CO gains knowledge directly or indirectly as a result of the parties' business relationship ("**Confidential Information**"), and shall use them exclusively to perform the contract in question. This duty of confidentiality shall also survive the termination of the parties' contract relationship. Without the written consent of the PC, the CO may neither publish nor use for advertising or other purposes any of the content of the Order or contract, of the transaction or any of the information and documents received directly or indirectly from the PC or FC or any information or documents to be supplied by the CO and based on such information provided by the PC or FC. A corresponding confidentiality undertaking must be imposed on persons who in the course of performing the contract must necessarily gain knowledge of Confidential Information. In the event of any breach of this duty of confidentiality, the CO shall bear an obligation to indemnify and hold the PC harmless, including against third-party claims.

The CO hereby undertakes that in the event it, its staff members or contract counterparties infringe on business or trade secrets of the PC it shall indemnify and pay compensation for the losses incurred thereby. In such case, the party undertakes to pay a penalty of EUR 100,000.00, irrespective of fault, per infringement of trade or business secret. The PC expressly reserves the right to assert claims for compensatory damages going beyond the penalty.

All documents provided to the CO and copies of Confidential Information provided to the CO shall be returned without delay or destroyed upon the PC's demand. The foregoing shall include the handing over or deletion of all work product and any and all information contained on data storage media and back-ups.

The CO shall impose a duty of confidentiality corresponding to the framework conditions set out above on the staff members and/or subcontractors employed by it to perform the contract.

10.4 Protecting and securing data

The CO hereby undertakes to take all such measures as are necessary to protect all of the information, data and documents provided to the CO from unwanted access or abuse by third parties. The CO furthermore undertakes to perform reliable back-ups of information, data and documents provided to it in order to avoid any loss to the greatest possible extent.

The CO hereby undertakes to comply with all provisions of data protection law.

10.5 Copyright

The CO hereby grants to the PC an irrevocable, exclusive and sole right of exploitation and use, unlimited in time or geographical scope, in respect of all Supplies/Services, including, in particular, drawings, calculations created/furnished by the CO on the basis of the contract.

The PC reserves its rights of use and exploitation based on its title and copyright to all documents and information furnished to the CO, including, in particular but not limited to drawings, samples, models, records, concepts, ideas, know-how etc. The CO hereby takes note of the fact that the foregoing are protected by copyright exclusively in favour of the PC. Following formal acceptance of the contract Supplies and Services or any other termination of the contract, the CO shall hand the foregoing over to the PC without delay, together with any and all copies which may have been made thereof, and without any special demand therefor.

The CO hereby undertakes to indemnify and hold the PC harmless against all claims of third parties arising out of the infringement of intellectual property rights, in particular including any infringement of copyright by the CO.

10.6 Inventions and improvements

The CO hereby confirms expressly and irrevocably (i) on its own behalf and on behalf of its respective successors-at-law, in a binding manner and on (ii) its staff members and their successors-at-law and on behalf of (iii) its subcontractors, all of the staff members or subcontractors engaged in connection with performance of the order (contract performance) that, with respect to work product and original work directly or indirectly created or created in future, including in particular all works as defined under the Copyright Act (such as software, programs, texts, graphics, graphic and conceptual designs (Designs), databases, images, layouts, ideas, concepts, plans, logos, sketches, etc.) and the rights which may potentially arise in respect thereof, including but not limited to the right to use the work, ancillary copyright, rights to concepts, ideas and inventions as well as other rights not protected by separate legal provisions (all of the foregoing referred to hereinafter in the aggregate as the "IP Rights"), it hereby waives the IP Rights in their entirety and exclusively in favour of the PC and hereby irrevocably assigns those rights to the PC.

The PC shall be exclusively entitled with respect to the IP Rights to apply for and register IP rights such as patents, utility models and industrial designs, trademarks and the like, and to use such rights without limitation. The CO and its staff members and/or subcontractors shall support the PC in respect thereof to the best of their abilities and shall in particular (where necessary) furnish (including repeatedly) all such declarations (including in notarial form) to third parties as may be required, which shall be unlimited in time.

The CO and its staff members and/or subcontractors hereby expressly and irrevocably waive (which waiver shall also be binding on their respective successors at law) any compensation in respect of the conveyance, use and/or exploitation of the IP rights to which they may be entitled against the PC, (ii)

waive any right to challenge this undertaking for mistake or *laesio enormis* and (iii) the right to assert any claims for damages whatsoever and/or claims for unjust enrichment.

In addition, in respect of employee inventions (sec 7 (3) Patent Act ("PatG")) the following specific rules shall also apply: The CO (or its staff members and/or subcontractors' staff members, as the case may be) shall immediately report to the PC all inventions made in the course of performing the order (contract performance). The CO hereby undertakes that it shall effectively claim any such employee invention, as a result of which the employee invention is deemed to subsequently pass to the PC's ownership on an unlimited basis and without any need for compensation; in any event, the PC shall be granted an unlimited licence/right of use in respect of the employee invention. Upon payment of the compensation agreed for the order, full and final compensation shall be deemed to have been paid for the conveyance of the invention made by the CO or its employees and/or subcontractors to TMS or, in any event, for the grant of an (exclusive) licence/right of use.

In the event that any invention or novelty created by a staff member of the CO or its subcontractor should be deemed not to constitute an employee invention within the meaning of secs. 6 et seq. PatG, the CO undertakes that it shall ensure that the employee immediately reports any such invention or novelty to the PC and that the employee shall assign any such invention or novelty to the PC without delay, on an unlimited basis and without any claim for compensation.

The CO is obliged to ensure and hereby warrants that the provisions set forth in sec. 10.4 of these GCCs are valid and effective and may be enforced against its employees and subcontractors and their employees at the CO's expense. The CO shall, in addition, ensure that its subcontractors assume an obligation of the same kind in favour of the PC. In the event that the provisions set forth in sec. 10.2 of these GCCs cannot be validly enforced, the CO shall indemnify and hold the PC harmless and shall in such case bear a duty to compensate the PC for lost profits.

11. FORCE MAJEURE

The CO shall be relieved in whole or in part of the duty to properly perform the contract in line with the stated deadlines if it is prevented from doing so by the events of *force majeure* set out below.

The sole events of *force majeure* shall be fire, natural catastrophe, war and civil unrest.

However, where the CO who is impeded in its work by an event of *force majeure*, he may only rely on the existence of a *force majeure* event if it furnishes to the PC without delay, but in any event no later than within 5 calendar days, notice of the beginning and anticipated end of the *force majeure* event, on the cause, the anticipated impacts and duration of the delay, which shall be furnished by registered post and confirmed by the respective government authority/chamber of commerce of the country in which the Supplies/Services are to be rendered.

In cases of *force majeure*, the CO shall undertake all efforts to eliminate/mitigate the difficulties and foreseeable losses and shall regularly report thereon to the PC.

Deadlines and schedules which cannot be adhered to as a result of the impacts of *force majeure* shall be deemed extended by the duration of the impacts of the *force majeure* event.

In the event that a *force majeure* event is of greater than 4 weeks' duration, the PC may resile in whole or in part from the contract.

The PC shall not bear liability to the CO for the consequences of impediments in performing the contract which are the result of *force majeure*.

12. TERMINATION

12.1 Breaches of contract

In the event of any breach of contract (such as defaults in effecting deliveries or rendering Services) the PC may resile in whole or in part from the contract, after setting a reasonable grace period in light of the degree of the breach of contract (*see supra* sec. 8.4).

Breaches entitling the PC to rescind the contract shall include, *inter alia*, such defaults in effecting deliveries or Services in respect of interim or final deadlines or such defects in the Supplies and Services as place the PC's contract performance *vis-à-vis* its counterparties at risk. The CO's obligation to pay a penalty shall not limit the PC's right of rescission.

The PC may also rescind the agreement without setting any grace period, in particular

- where a reasonable grace period was *de facto* available to the CO, even without any express setting of a grace period or;
- where the CO is manifestly unwilling to perform the agreement or;
- where the CO is manifestly not in a position to subsequently perform the agreement within a reasonable time or;
- where the CO is obviously not in a position to subsequently ensure satisfaction of the agreed characteristics and qualities or;
- where, despite demand made twice by the PC, the CO does not forward to the PC any forward-looking, binding planning summaries and progress reports or fails to update the same on an ongoing basis.

Where the PC rescinds the contract, it shall be entitled to itself carry out or engage third parties at the CO's cost and expense, to furnish the Supplies and Services which the CO failed to furnish or unsatisfactorily furnish (cover transaction). The additional costs arising therefrom (claims for the difference) may be either directly invoiced by the PC (here the parties are deemed to have agreed to a payment period of 30 days from the date of the invoice) or may deduct the same from the next payments of the PC to the CO and/or from payments of the PC to the CO which have already fallen due.

The CO shall reimburse the PC for amounts previously paid for Supplies and Services not rendered, together with such financing costs as the PC has incurred. The CO shall have no claim for compensation with respect to Supplies and Services it has failed to furnish and/or has only insufficiently or unsatisfactorily furnished.

Where the exercise of the right to effect contractual cover requires access to intellectual property rights, to documentation (such as workshop drawings, calculations) or other information, the CO shall procure the requisite rights, documentation, information for the PC free-of-charge and/or provide the same to the PC and shall likewise hand over such engineering work product as it has already produced.

12.2 Rights of use

In the event of rescission of the contract, the PC shall have a claim to use of the Supplies and Services rendered to the PC and/or FC up to that point in time.

12.3 Creditworthiness of CO

In the event of any composition with creditors or insolvency proceedings which have been threatened against or initiated against the CO or its sub-contractors, or in the event of any change in the ownership status of the CO, the CO shall notify the PC immediately and fully thereof.

In the event that any composition with creditors or insolvency proceedings are opened over the estate of the CO or in the event of any change in the ownership status of the CO, the PC may immediately dispose of any Supplies or Services held in storage at the CO and/or its sub-contractors and/or may immediately resile in whole or in part from the contract.

12.4 Cancellation

The PC shall also have the right even without any fault of the CO to cancel the contract in whole or in part. In such case, the PC shall be obliged to pay the CO the contract price *pro rata* in proportion to the Supplies and Services already furnished and, in addition, to reimburse it for its documented direct costs of Supplies and Services which are then currently being produced and/or arising from cancellation of sub-contracts. Following notice of cancellation, the CO shall be obliged to undertake all efforts to ensure that the costs to be reimbursed by the PC shall be kept as low as possible.

12.5 Suspension

The PC shall have the right to demand at any time that the CO suspend further performance of the contract. In such case, the CO shall describe the consequences arising therefrom to the PC in detail and shall offer the PC the best possible modifications of the schedule in commercial respects in connection with the project. The CO hereby confirms that it shall not assert any claims based on suspensions of up to a maximum of 3 months, and in such respects hereby waives its right to assert any claims.

13. LANGUAGE OF CONTRACT, GOVERNING LAW AND JURISDICTIONAL CLAUSE

13.1 Language of contract and correspondence

The contractual language as well as the language used in correspondence shall be English.

13.2 Jurisdiction and applicable law

All disputes arising from and in connection with this contract shall exclusively be referred to the courts having jurisdiction for Linz, Upper Austria. These Terms and Conditions shall be exclusively governed by and construed in accordance with Austrian law, to the exclusion of the Austrian conflict of law rules, if any, and the UN Sales Convention.

14. FINAL PROVISIONS

In the event that individual provisions of these GCC 07/2017 should be or become void, invalid, illegal or unenforceable, the remaining substance and content of the GCC 07/2017 shall not be affected thereby. The parties shall replace the ineffective term by such effective term as is legally valid and comes the closest in commercial respects to the intent of the parties.

No amendments, addenda or ancillary agreements to those GCC 07/2017 shall be valid unless made in writing. The foregoing shall also apply to any agreement of the parties to derogate from this written form requirement.

These GCC 07/2017 are deemed to incorporate all documents referenced therein and shall be taken as the binding basis for all offers and orders.

For the PC

For the CO

Date / Signature

Date / Signature

ANNEX 1

15. COMPANY AND PROJECT-SPECIFIC DATA

Sec. 1

PURCHASER:

TMS Turnkey Manufacturing Solutions GmbH
Gaisbergerstraße 50
4031 Linz, Austria

VAT ID number ATU 62051512

Sec. 5.1

Invoicing:

A single counterpart of your invoices must indicate the order number and the data required for invoicing purposes as well as the mandatory contents for purposes of invoicing (VAT identification number – UID, etc.) and must be forwarded to:

TMS Turnkey Manufacturing Solutions GmbH
(Gaisbergerstraße 50, 4031 Linz)
p.A.Business Center 281
4000 Linz, Austria

ANNEX 2

16. RATES OF COMPENSATION FOR CHANGE ORDERS AND ADDITIONAL WORK:

Sec. 3.3

- CAD construction (CATIA, NX, FIDES)	EURO/h.
- Design engineer (CATIA, NX, FIDES)	EURO/h.
- Detail designer (CATIA, NX, FIDES)	EURO/h.
- Simulation (PS, DELMIA)	EURO/h.
- Layout (Microstation, ACAD)	EURO/h.
- Planning	EURO/h.
- Coordination	EURO/h.
- OLP	EURO/h.
- VIBN	EURO/h.

Valid until:

End of project:

For the PC

For the CO

Date//Signature

Date//Signature