

# NES – General Terms of Sale (Delivery and Payment) (GT) & Terms and Conditions of Nuclear Engineering Seibersdorf GmbH

On which all supplies and services provided by us, **Nuclear Engineering Seibersdorf GmbH**, as Contractor shall be based.

Version October 2020

## 1. Scope of application

- 1.1. These terms apply to all supplies and services, including research and development services, provided by the Contractor and are an inseparable part of the Contractor's offers and confirmations of orders.
- 1.2. These terms and conditions, as amended from time to time, also apply to future transactions as well as to agreed modifications or amendments, unless the contracting parties agree otherwise in writing; the requirement of the written form may only be waived by a written agreement.
- 1.3. General terms and conditions of business or delivery of the Client do not become part of the respective transaction even if the Contractor does not explicitly reject them.

## 2. Offer

- 2.1. Except as expressly set out otherwise in the offer itself, all offers of the Contractor are not binding. Likewise, quotations and cost estimates of the Contractor are non-binding unless the contracting parties expressly agree otherwise in writing.
- 2.2. Details contained in catalogues, brochures, price lists and similar as well as oral statements are only relevant if expressly confirmed in writing by the Contractor in the confirmation of the order.
- 2.3. The service description included in the offer has to be reviewed by the Client, and the Client shall be responsible for the correctness and completeness of the service description in so far as it relates to the Client's operational, technical and functional conditions and requirements.
- 2.4. Documents, testing programmes and other materials, which are provided to the Client in connection with the submission of the offer, are the intellectual property of the Contractor and must not be copied or made accessible to third parties without the written consent of the Contractor, unless they were remunerated. If no contract comes into existence, they have to be returned or deleted and generally must not be used.
- 2.5. The adequate expense related to drawings, sketches or samples made is to be reimbursed to the Contractor at the Contractor's request; this shall also apply if the envisaged order is not awarded and the expense has not been insignificant.
- 2.6. Any details regarding the type, subject and scope of the supplies and services, deadlines, time-limits, place of performance, remuneration, type and scope of the Client's special duties to cooperate and assist, acceptance or the scope of use, duration of the contract and other terms and conditions, have been laid down in the respective offer; otherwise, the regulations provided in the Contractor's price lists as amended from time to time, these GT, if an order placed is based on price lists, the information in or relating to such price lists, and/or the relevant laws shall apply, in the order as stated here.

## 3. Scope of services and time schedule

- 3.1. The Contractor shall provide its supplies and services pursuant to the agreed written service description included in the offer. Qualities and services beyond that scope are not owed by the Contractor.
- 3.2. The Contractor shall start to provide the agreed supplies and services (research and development services) at the following times at the latest:
  - 3.2.1. Date of confirmation of order;
  - 3.2.2. Date of clarification of all technical and legal prerequisites by the Client;
  - 3.2.3. Date on which the Contractor receives the payment on account or guarantee (letter of credit, bank guarantee etc.) agreed to be supplied before any work is carried out.
- 3.3. The Contractor is authorised to make, and invoice, advance and partial deliveries.
- 3.4. Mode and route of dispatch are decided by the Contractor to the extent no other written agreement exists. Unless otherwise agreed in writing, the price risk passes to the Client upon dispatch of the goods and/or, in case of the Client's default in acceptance, at the time when the Contractor is ready for dispatch.
- 3.5. In case the term of delivery is exceeded because of the Contractor's fault, the Client is entitled to withdraw from the contract and/or cancel any outstanding part performance, allowing a reasonable grace period of at least 6 weeks. The grace period starts the day the written declaration of withdrawal/cancellation is received. Any compensatory claims of the Client because of delayed delivery or in case of withdrawal/cancellation are excluded to the extent allowed by law.

## 4. Cooperation and assistance

- 4.1. To achieve the respective purpose of the contract in due time, any and all materials provisions, contributions and measures required for and conducive to performing the contract shall be made available and provided by the Client in a timely fashion and at its expense. Such provisions and contributions the Client is obligated to render include, without limitation, providing the Client's specific requirements, establishing the necessary technical and organisational or safety-relevant prerequisites, providing reports, documentation, carrying out tests and inspections, or obtaining any required (official) approvals, or procuring materials etc.
- 4.2. Documents and other materials made available by the Client to the Contractor must be flawless in terms of content and technology and free from any third-party rights. Where this is not the case, the Client shall compensate the Contractor for any loss or damage resulting from the use of such material and indemnify the Contractor with respect to claims, if any, raised by third parties in this regard.
- 4.3. Materials to be procured by the Client, irrespective of which kind, are to be delivered free works to the Contractor. The confirmation of receipt is not to be seen as a confirmation of the correctness of the kind and quantity of these supplies.
- 4.4. The duties to provide materials and to cooperate and assist which are incumbent on the Client are material obligations of the Client. Should these duties not be met by the Client in time or in the manner agreed upon or at all, the Client shall be liable for the resulting consequences, delays or extra costs incurred. Notably, the Client must, upon request, reimburse the Contractor in particular for the cost and storage fees associated with counting and quality examination.

- 4.5. The Client shall examine each provided service for defects without delay and complain immediately about any identified defects. Notice of visible or obvious defects must be given at once.

## **5. Prices/Terms of payment/Retention of title**

- 5.1. As a rule, prices set out in offers of the Contractor are fixed prices "ex works" (EXW Seibersdorf 2444) unless the contracting parties expressly agree otherwise in writing.
- 5.2. All invoiced amounts shall be plus statutory value added tax.
- 5.3. Appropriate travel costs, travel time and expenses as documented, packaging, insurance or freight shall be reimbursed additionally.
- 5.4. Price offers will be binding the moment that the Contractor has confirmed them in writing indicating the scope of supply. Any supplies or services exceeding such scope of supply may be invoiced by the Contractor separately.
- 5.5. In particular, the Contractor is entitled to invoice additional costs for delay in delivery not caused by the Contractor, e.g. costs due to incurred storage fees or to the clarification of quality/technical or legal prerequisites for the supply or because of extra hours, night or Sunday work requested by the Client etc.
- 5.6. Payments are due within 30 days of invoicing. Unless stipulated otherwise in writing, 40 per cent of the price is due upon receipt of the confirmation of the order, 30 per cent at the halftime of the delivery period and the remaining 30 per cent at delivery. The payment term for the entire invoice is 30 days from the invoice date without deductions.
- 5.7. In case of partial invoicing the relevant partial amounts are due upon receipt of the respective invoice. This also applies to amounts invoiced in addition to the original contractual amount because of subsequent supplies or other agreements, irrespective of the terms of payment agreed for the main performance.
- 5.8. In case of default in payment, the Contractor is entitled to charge default interest in the statutory amount, as well as reminder fees in the amount of EUR 10.00 (for the 2nd reminder) and EUR 40.00 (for the 3rd reminder); it shall be up to the Contractor to assert or raise any further rights or claims.
- 5.9. The Client shall have a right of set-off or retention vis-à-vis the Contractor only because of claims which are undisputed or have been adjudicated on with final legal effect and if the Client's counterclaim is based on the same contractual relationship.
- 5.10. Expressly granted rebates, discounts or bonuses depend on the complete payment being made in due time.
- 5.11. The Contractor reserves all rights in the work and services subject to the contract until its receivables under the respective offer have been settled in full.

## **6. Delivery and acceptance**

- 6.1. The Contractor shall have the right at any time to submit supplies or services, or partial deliveries/part performance suitable for acceptance procedures, for acceptance.
- 6.2. Partial deliveries/part performance suitable for acceptance procedures shall include, but not be limited to, self-contained work packages for providing the supplies or services specified in the offer or in any other contractual document. Irrespective of the foregoing, certain acceptance procedures or partial acceptance procedures for services may also be set out in the offer.
- 6.3. After readiness for acceptance has been declared by the Contractor, the Client shall carry out acceptance procedures without delay; otherwise, the performance provided by the Contractor shall be deemed properly provided and accepted. If no, or only insignificant, defects are identified during the acceptance procedures, acceptance shall be deemed completed. The same shall apply in any case if the affected work or service subject to the contract is used in live operations of the Client.
- 6.4. Profit and risk pass to Client the moment the object to be supplied leaves the Contractor's work premises or storehouse or is stored for the purposes of Clause 6.5 of these conditions. This is independent from the payment conditions agreed for the supply or service.
- 6.5. If it is agreed that the goods are to be called by the Client during a certain period, the Contractor is entitled to withdraw from the contract completely or in part in case of delayed calling, without having to grant a grace period. In any case, however, the Contractor is entitled to invoice storage fees for the duration of the time exceeded and may regard the goods to have been called one year after the placing of the order. As a consequence of default in acceptance, the Contractor is entitled to demand the performance owed by the Client in such case.

## **7. Confidentiality and data protection**

- 7.1. The contracting parties agree that any and all confidential information, be it oral or in writing, received because of the order, and including, without limitation, trade and business secrets, intellectual property rights, know-how as well as other information of a technical or commercial nature shall not be made accessible to third parties. This non-disclosure obligation shall remain in effect also after the termination or completion of the order, for a further five (5) years.
- 7.2. The obligation of confidentiality under Clause 7.1 does not apply to information having been disclosed to the other contracting party by an authorised third party or having been worked out autonomously by an employee who was not aware of the communicated information. Third parties within the meaning of this regulation do not include subcontractors of the Contractor that were commissioned to provide part performance under the order and were obligated to keep information secret.
- 7.3. Both contracting parties shall adhere to the provisions of the General Data Protection Regulation (Regulation 2016/679/EU) and of the Austrian Data Protection Act (*Datenschutzgesetz*) as currently valid. All the data entrusted to the Contractor by the Client shall be used by the Contractor only to carry out the respective order awarded to it by the Client as well as to comply with statutory obligations. If the Contractor uses the services of subcontractors, the Contractor shall do so only in the extent permitted by law and provide data to the subcontractor only in so far as this is required for the subcontract.
- 7.4. The data of the Client (company register data, postal address, telephone and fax number as well as other addressing details required as a result of modern communication technology, locations, contact persons, goods ordered, delivery quantities) collected in connection with the transaction in question will, on principle, be processed electronically only for purposes relating to the handling of the contract, in particular, for administrative and billing purposes. For technical reasons, it may be necessary to store these data on a server of a different group company or of a service provider. Further information pursuant to Articles 13 and 14 GDPR is available at <https://www.nes.at/en/privacy-policy/>.
- 7.5. If personal data are processed in the course of carrying out the purchase order, the data processing agreement available at [http://www.ait.ac.at/fileadmin/cmc/downloads/AGBs/ADV\\_en.pdf](http://www.ait.ac.at/fileadmin/cmc/downloads/AGBs/ADV_en.pdf) applies. Further information on how the Contractor handles personal data is available at <https://www.nes.at/en/privacy-policy/>.

## **8. Intellectual property rights**

- 8.1. After completion, the intellectual property rights contained in the results of the execution of the order are made available to the Client in the form of a non-exclusive license, or license to use the work (*Werknutzungsbewilligung*), for use in the field of use covered by the offer.

- 8.2. Irrespective of the provision of 8.1, the Contractor reserves the right to use the results of the execution of the order for research and teaching.
- 8.3. Where the Contractor contributes existing intellectual property rights including know-how and the respective protective rights applied for and granted, all these shall remain the property of the Contractor even if used to carry out an order. If these intellectual property rights are necessary for the Client to exploit its transferred results, the Client shall receive for them a simple, non-exclusive right of use, not limited in time, exclusively for the purpose of using the order results and in so far as this is not inconsistent with any other obligation on the part of the Contractor.
- 8.4. Special additional provisions for orders relating to software:
- 8.4.1. Unless otherwise agreed, the source code produced in the course of software development remains the property of the Contractor, and the Client is granted a license to use the object code.
  - 8.4.2. Editing or changing the software is permitted only in mandatory cases provided for by law for the purpose of error correction or establishing interoperability with other computer programmes. The Contractor has to be informed of this promptly.
  - 8.4.3. Reverse translating the object code into source code and/or reverse engineering and decompilation are generally not permitted, except in cases where this is necessary to establish interoperability or to ensure error correction and this is not done by the Contractor. In addition, section 40e of the Austrian Copyright Act (*Urheberrechtsgesetz, UrhG*) applies.
  - 8.4.4. The Client may reproduce the contract software only in so far as this is necessary for the intended use and exploitation of the software. However, the Client has the right to make back-up copies of the contract software. Back-up copies have to be clearly marked as such.
  - 8.4.5. The Client is not entitled to reproduce or hand over to third parties the user documentation or any parts thereof.
  - 8.4.6. In so far as the Client is permitted to replace hardware, the Client undertakes to fully and irreversibly remove the contract software from the replaced equipment.
  - 8.4.7. The Client shall keep copies of the contract software in safe custody.
  - 8.4.8. If the Client, for instance in the course of maintenance or subsequent improvement, receives software replacing software provided earlier, the Client's powers of use and the right of transfer relating to the earlier software now being replaced shall expire as soon as the Client productively uses the new software.
  - 8.4.9. Any use, or transfer to third parties, of the software going beyond the provisions of these GT or the offer requires the written consent of the Contractor. If the software is used without such consent, the Contractor may withdraw the Client's rights of use at any time. Regardless of the withdrawal of the rights of use, the Contractor reserves the right to assert a right to compensation.

## 9. Liability, warranty and withdrawal/cancellation

- 9.1. To the extent not otherwise provided in these GT, the Contractor's liability is in all cases limited to such loss or damage as has been caused exclusively by the Contractor. Any liability beyond such amount, including, without limitation, for consequential loss or damage caused by a defect, for loss of profit, or for loss or damage arising from third-party claims and for loss or damage of recorded data shall be excluded. The Contractor's liability shall also be excluded if modifications of and/or amendments to the agreed performance are made by the Client or a third party without demonstrably having obtained the Contractor's consent.
- 9.2. The Contractor shall not be liable for slight negligence, with personal injuries being excepted.
- 9.3. Furthermore, the liability shall be limited at the price stated in the order for supplies or services.
- 9.4. The aforementioned exclusions and limitations of liability shall also apply to the liability of the directors and officers, employees and vicarious agents of the Contractor and to their personal liability.
- 9.5. If the performance owed by the Contractor as agreed based on an explicit written commitment consists in the production or supply of a work, the relevant provisions of the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*) regulating cases of defects shall apply only subject to the following paragraphs.
- 9.6. The Contractor's warranty extends exclusively to those defects that existed already at the time of handover or acceptance of the performance. Proof of defects existing at that time must be provided by the Client.
- 9.7. Deficient performance on the part of the Contractor has to be reported by the Client without delay and in a comprehensible manner in written form, providing relevant information for the detection of errors. Any rectification of errors requires that the defect has been reported in writing and is reproducible in the case of software.
- 9.8. The Contractor shall eliminate defects under warranty that have been reported by the Client in written form by providing improvement. If the Contractor's efforts at improving the defective performance fail, the Client may claim a reduction of the purchase price or rescission of the contract, but only after the fruitless expiry of another reasonable grace period (of at least 30 days) given to the Contractor in writing.
- 9.9. Compensation for costs incurred due to the elimination of defects by the Client or third parties (substitute performance) shall be excluded.
- 9.10. The Contractor provides no warranty if notice of defects was not given without delay and in writing, if the defect was caused by incorrect or incomplete information received from the Client or by defects regarding the materials provision or cooperation and assistance made available by the Client, or if the Contractor's performance was changed by the Client or third parties without prior written consent having been obtained. Minor defects shall be disregarded. In addition, defects caused by overstress, negligent or improper treatment, use of inadequate operation materials by the Client or materials supplied by third parties, instructions of the Client or assembly work of third parties are excluded from the warranty. The Contractor, in particular, is not liable for damage caused by acts of third parties, atmospheric discharges, overvoltage and chemical influences. Parts subject to normal wear and tear are excluded from warranty.
- 9.11. If the Contractor eliminates defects for which it is not responsible, the Contractor may claim adequate remuneration; Clause 5 shall apply accordingly.
- 9.12. The warranty period is 12 months starting at the date of acceptance or partial acceptance; in case acceptance is refused by the Client without justification, the warranty period starts at the date readiness for acceptance is declared (6.1).
- 9.13. With regard to the defect itself, the Client can initially claim only improvement or replacement, also if a right to compensation is asserted; only if the prerequisites of price reduction or termination of the contract under these GT are met, the Client is entitled to claim the payment of monetary damages based on a right to compensation; Clause 9.2. applies also to such compensation claims.
- 9.14. Reporting defects does not release the Client from its payment obligation.
- 9.15. To carry out warranty work in the company of the Client, the Client has to make available to the Contractor the required auxiliary workers, materials and tools free of charge. The Client has to take all other necessary measures at its place to enable the warranty work to be carried out.
- 9.16. The Contractor shall be entitled to withdraw from the contract completely or in part in case the performance of the supply or the beginning or the continuation of the service become impossible for reasons for which the Client is responsible or are further delayed in spite of a grace period.
- 9.17. Events of force majeure affecting the Contractor or one of the Contractor's upstream suppliers entitle the Contractor to interrupt the supplies for the duration of the impediment and an adequate period of restarting or, corresponding to its effects, partially or completely withdraw from the contract. Events of force majeure are deemed to include, without limitation:
- any operation of the forces of nature, like earthquakes, lightning, frost, storm, floods;

- epidemics or other outbreaks of diseases or plagues;
- furthermore war, laws, official acts, seizure, destruction of transports, export, import and transit bans, international payment restrictions, raw material and energy failure;
- interruptions of operations like, for instance, explosion, fire, strike, sabotage and all other events which could be prevented only at disproportionate cost and with economically unjustifiable means.

9.18. In case insolvency proceedings are instituted or an application for bankruptcy is refused for lack of assets of our Client, we are entitled to withdraw from the contract without allowing a grace period.

9.19. Without prejudice to our claims for compensation, in case of withdrawal we are entitled to claim payment of supplies shipped and services rendered so far as well as for the preparatory actions taken with regard to the contract, even if the contract has been performed only in part. Even if nothing has been supplied, we are in such case entitled to the reimbursement of costs having arisen for the preparation of the supply.

## **10. Statute of limitation**

10.1. Any and all claims under the contractual relationship shall become statute-barred after 12 months.

10.2. If acceptance of the performance is provided for, the period after which claims based on defects shall become statute-barred will start to run upon acceptance; otherwise, it commences at the time of handover.

## **11. Industrial property rights and protective rights of third parties**

11.1. The Contractor shall inform the Client without delay of any third-party protective rights that become known during the performance of an order and may be inconsistent with the use agreed under Clause 8. The contracting parties will decide by mutual consent in which way such protective rights will be considered in the course of the continued performance of the service.

11.2. In case of a defect in title due to an infringement of protective rights of third parties caused by the use of the work or service subject to the contract, the Contractor shall be held liable only if (i) verifying that the agreed work or service was free from rights formed part of the contract and (ii) only in so far as the third party is justified in asserting such rights vis-à-vis the Client and (iii) the Contractor was informed without delay and in writing of the claims raised by the third party.

11.3. In addition, the limitations of liability pursuant to Clause 9 apply.

11.4. The Contractor is entitled to print a company or trademark name onto the products to be manufactured even without express approval of the Client. In general, the Contractor's goods are marked with a trademark and/or company logo. In case such goods are further processed, mixed with other products etc., the marks mentioned above may subsequently only be used with the Contractor's prior written consent.

## **12. Miscellaneous**

12.1. All agreements between the contracting parties must be concluded in writing, oral agreements have no effect. Likewise, any modifications of and amendments to contracts must be made in writing.

12.2. Austrian law shall be applicable, excluding its conflict-of-law provisions. The place of jurisdiction shall be Wiener Neustadt.

12.3. The assignment of rights, and transfer of obligations, performed by the Client in connection with an offer which is subject to these GT require the prior consent of the Contractor.

12.4. Any and all taxes, duties and charges related to the execution of a contract which is subject to these GT shall be borne by the Client.

12.5. The application of the UN Sales Convention is excluded. Unless otherwise agreed in writing, the "INCOTERMS", as amended from time to time, are to be used to interpret the contractual clauses used.

12.6. Should one or several provisions contained in the contract be invalid or ineffective or lose their effectiveness due to events occurring at a later date or should there be a gap in the contract as identified by mutual consent, this shall not affect the validity of the remaining provisions thereof. In such an event, the invalid or ineffective provision or the gap shall be replaced by or supplemented with a provision which comes as close as possible to the legal and commercial intention of the invalid or ineffective provision, or, in the event of a gap, to what the parties would have agreed upon conclusion of the contract had they been aware of the gap.