

General Terms and Conditions (GTC) von AGS-Engineering GmbH, Auroldmünster

1. Application

1.1 These terms and conditions shall apply between us (AGS-Engineering GmbH) and natural persons and legal entities (in short client) for the present legal transaction as well as for all future transactions, even if in individual cases, for future supplementary or follow-up orders, no express reference is made to them.

1.2 The version of our General Terms and Conditions valid at the time of the conclusion of the contract, which can be found on our homepage (<http://www.ags-engineering.at>), shall apply.

1.3 We contract exclusively based on our GTC.

1.4 Any terms and conditions of business of the customer or amendments or supplements to our GTC shall require our express written consent to be valid.

2. Offers, Conclusion of Contract

2.1 Our offers are non-binding.

2.2 Promises, assurances and guarantees on our part or agreements deviating from these GTC in connection with the conclusion of the contract shall only become binding upon our written confirmation.

2.3 In catalogs, price lists, brochures, advertisements on exhibition stands, circulars, advertising mailings or other media (information material) information about our products and services which are not attributable to us, the customer shall insofar as the customer bases its decision to place an order. In this case we can comment on their correctness. If the customer violates this obligation, such information shall be non-binding unless it is expressly declared in writing.

2.4 Cost estimates and indicative price quotations shall not be binding.

2.5 Cost estimates shall be subject to payment.

3. Prices

3.1 Unless otherwise agreed, prices quoted are not to be understood as lump-sum prices.

3.2 For services ordered by the customer, which are not covered by the original order, there shall be a claim to reasonable remuneration in the absence of an agreement on compensation for work.

3.3 Prices are quoted exclusive of the applicable statutory value added tax and ex warehouse. Packaging, transport, loading and shipping costs as well as customs duties and insurance shall be borne by the customer. We shall only be obliged to take back packaging if expressly agreed.

3.4 The customer shall be responsible for the proper and environmentally compatible disposal of used materials. If we are separately commissioned to do so, the customer shall additionally pay for this to the extent agreed for this purpose, in the absence of a fee agreement. For this, in the absence of an agreement on compensation.

3.5 We are entitled on our own accord, as well as obligated at the request of the customer, to adjust the contractually agreed fees if changes in the amount of at least 1% occur.

a) wage costs by law, regulation, collective agreement, company agreements or

b) other cost factors necessary for the performance of the service, such as procurement costs of the materials to be used based on recommendations of the Joint Commissions or changes of the national or world market prices for raw materials, exchange rates, etc. after the completion of the contract. The adjustment shall be made to the extent that the actual manufacturing costs at the time of completion of the contract change compared to those at the time of actual performance if we are not in default.

3.6 The compensation for continuing obligations shall be agreed as value-assured in accordance with the CPI 2005 and as a result an adjustment of the compensation shall be made. The month in which the contract was concluded shall be taken as the basis.

3.7 Costs for travel, daily and overnight allowances shall be charged separately unless otherwise agreed in the contract. Travel times shall be deemed as working time.

4. Payment

4.1 Down payment: 30 % upon receipt of the written order.

Partial payment: 30% after design, E-plan, or visualization approval.

Partial payment: 30% after delivery. No later than 14 days after notification of readiness for delivery if delivery is delayed for reasons for which the customer is responsible.

Final payment: 10% after commissioning. If no immediate acceptance takes place through no fault of AGS, the last partial payment is due with the ready-for-use handover by AGS or with the use of the delivery item by the customer.

A withholding of the last partial payment due to unresolved defects is not permissible. If the assembly and IBN is delayed through no fault of AGS, the last partial payment shall be due no later than 30 days after delivery AGS. Payment 14 days net.

4.2 The right to deduct a discount is not available and requires an express written agreement.

4.3 Payment dedications made by the customer on transfer vouchers are not binding for us.

4.4 If the customer is in default of payment within the scope of other contractual relationships existing with us, we shall be entitled to suspend performance of our obligations under this contract until performance by the customer.

4.5 We shall then also be entitled to call due all claims for services already rendered under the current business relationship with the customer are immediately payable and due.

4.6 In the event that the payment deadline is exceeded, even if only regarding a single partial service, any compensation granted (discounts, deductions, etc.) shall be forfeited and added to the invoice.

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

4.8 The customer shall only be entitled to set-off insofar as counterclaims have been determined by a court or recognized by us.

5. Credit assessment

5.1. The customer declares his explicit consent that his data may be transmitted exclusively for the purpose of creditor protection to the state-preferred creditor protection associations AKV EUROPA Alpenländischer Kreditoren-Verband for credit protection and business management, credit reform Wirtschaftsauskunftei Kubicki KG and credit protection association from 1870 (KSV) may be transmitted.

6. Customer obligations to cooperate

6.1 Our obligation to perform shall commence at the earliest as soon as

- all technical details have been clarified,
- the customer has created the technical as well as legal prerequisites (which we will gladly provide upon request),
- we have received agreed down payments or securities, and
- the customer has fulfilled his contractual obligations to perform in advance and to cooperate, also those mentioned in the following subsections.

6.2 In the case of assembly work to be carried out by us, the customer shall be obliged to ensure that the work can be started immediately after the arrival of our assembly personnel.

6.3 The customer shall arrange for the necessary permits from third parties as well as notifications and permits from authorities at his own expense. These can be requested from us.

6.4 The material and energy quantities required for the performance of the service, including the trial operation, shall be provided by the customer at their own expense.

6.5 The customer shall provide us, free of charge, with lockable rooms that are inaccessible to third parties for the stay of the workers and for the storage of tools and materials during the performance of the service.

6.6 The customer shall be liable for ensuring that the necessary structural, technical, and legal requirements for the work to be performed or the object of purchase are given, which were described in the contract or in information provided to the customer prior to conclusion of the contract or which the customer should have known due to relevant expertise or experience.

6.7 The customer shall provide remote maintenance access. Otherwise, the costs for resulting service calls must be borne by the customer.

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

6.9 We shall be entitled, but not obliged, to inspect these facilities for a separate fee.

6.10. In particular, the customer shall provide the necessary information on the location of concealed power, gas and water lines or similar installations, escape routes, other obstacles of a structural nature, possible sources of danger as well as the required structural data without being requested to do so before the start of the installation work.

6.11. Order-related details of the necessary specifications can be requested from us.

6.12. The customer shall bear sole responsibility for the construction and functionality of parts provided.

In addition to the creation of a technical construction files and the certification of compliance with the machinery directive and any other applicable directives, there shall be an obligation to inspect any documents, information or instructions provided by the customer. Applicable directives - does not exist regarding any liability on our part in this respect shall be excluded. The obligation to issue the certificate may be contractually transferred to the customer who places the delivery item on the market.

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

7. Performance of services

7.1 Minor changes to our performance which are reasonable and justified for the customer shall be deemed to have been approved in advance.

7.2 If, for whatever reason, the order is amended or supplemented after the order has been placed, the delivery/service period shall be extended by a reasonable period. Subsequent changes/extensions as well as downtimes will be charged according to the valid hourly rates.

7.3 If, after conclusion of the contract, the customer requests performance within a shorter period, this shall constitute an amendment to the contract.

As a result, overtime may become necessary and/or additional costs may be incurred due to the acceleration of material procurement and the compensation shall be increased appropriately in proportion to the necessary additional expenditure.

7.4 If the performance of the service or delivery is delayed or interrupted due to circumstances for which the customer is responsible, AGS is entitled to charge a flat rate of 1% of the total order/week for the period of the delay.

7.5 If the performance of services or delivery is interrupted due to circumstances for which the customer is responsible, AGS is entitled to invoice immediately for services, deliveries and plant components already performed. In addition, in case of withdrawal from the contract by the customer, AGS is entitled to charge the customer for damages in the amount of 30% of the gross order value, without proof of the actual damage.

7.6 Partial deliveries and services that are objectively justified (e.g., size of the plant, progress of construction, etc.) are permissible and can be invoiced separately.

7.7 If delivery on demand is agreed, the object of performance/purchase shall be deemed to have been called off no later than six months after the order is placed.

8. Delivery and service deadlines

8.1 Delivery and service deadlines and dates shall only be binding for us if they have been defined in writing. Any deviation from this formal requirement must also be in writing.

8.2 In the event of force majeure, strike, unforeseeable delays by our suppliers for which we are not responsible or other comparable events beyond our control, deadlines and dates shall be postponed for the period during which the event in question lasts.

This shall not affect the customer's right to withdraw from the contract in the event of delays which make it unreasonable to commit to the contract.

8.3 If the start of the performance is delayed or interrupted due to circumstances attributable to the customer, due to the breach of the cooperation obligations pursuant to section 7, performance periods shall be extended accordingly, and completion dates shall be postponed accordingly.

8.4 We shall be entitled to charge 0.1 % of the invoice amount for each commenced month of the delay in performance for the storage of materials and equipment and the like in our company which is necessary as a result, whereby the customer's obligation to pay and its obligation to accept shall remain unaffected thereby.

8.5 In the event of a withdrawal from the contract due to delay, the customer shall set a grace period by registered letter and at the same time threaten to withdraw from the contract.

9. Transfer of risk and shipment

9.1 The risk shall pass to the customer as soon as we hold the object of purchase/work ready for collection at the factory or warehouse, or hand it or the material and equipment over to a carrier or transporter. Shipment, loading and unloading, as well as the transport shall always be at the risk of the customer.

9.2 The customer shall approve any appropriate mode of shipment. We commit to take out transport insurance at the written request of the customer and at the customer's expense.

9.3 We shall be entitled to collect the packaging and shipping costs as well as the cash on delivery fee from the customer if the customer is in arrears with a payment arising from the business relationship with us or if a credit limit agreed with us is exceeded.

9.4 The customer is responsible for the safety of the materials and equipment delivered by us and stored or assembled at the place of performance. Losses and damages shall be at their expense.

10. Default of acceptance

10.1 If the customer is in default of acceptance for more than 2 weeks (refusal of acceptance, default in advance performance or otherwise, no call-off within a reasonable period of time in the case of an order on call) and if the customer, despite having been granted a reasonable period of grace, has failed to remedy the circumstances for which he is responsible and which delay or prevent the performance of the service, we shall be entitled to otherwise dispose of the equipment and materials specified for the performance of the service, provided that, in the event of the continuation of the performance of the service, we procure such equipment and materials within a period of time which is reasonable under the respective circumstances.

10.2 If the customer is in default of acceptance, we shall also be entitled to store the goods at our premises if we insist on performance of the contract, for which we shall be entitled to a storage fee in accordance with clause 9.4.

10.3 In the event of a justified withdrawal from the contract, we shall be entitled to claim liquidated damages from the customer in the amount of 30 % of the gross order value without providing evidence of the actual damage.

10.4 The assertion of a higher damage is permissible.

11. Retention of title

11.1 The goods delivered, assembled, or otherwise handed over by us shall remain our property until payment has been made in full.

11.2 A resale shall only be permissible if we have been notified of such resale in good time in advance, stating the name and exact address of the purchaser, and if we consent to the sale. In the event of our consent, the purchase price claim shall already be deemed assigned to us.

11.3 Until full payment of the compensation or purchase price, the customer shall note this assignment in its books and on its invoices and draw the attention of its debtors to this assignment.

Upon request, the customer shall provide the contractor with all documents and information required to assert the assigned claims and receivables, claims and entitlements which have been assigned.

11.4 The customer declares his express consent that we may enter the location of the reserved goods to assert our reservation of title.

11.5 Necessary and reasonable costs for the appropriate prosecution shall be borne by the customer.

11.6 The assertion of the reservation of title shall only constitute a withdrawal from the contract if this is expressly declared.

11.7 We shall be entitled to dispose of the returned goods subject to retention of title on a discretionary basis and at the best possible price.

11.8. Until full payment of all our claims, the object of performance/purchase may not be pledged, transferred by way of security, or otherwise encumbered with the rights of third parties. In the event of seizure or other claims, the customer shall be obliged to point out our right of ownership and to notify us immediately.

12. Industrial third-party property rights

12.1 For delivery items which we manufacture according to customer documents (design data, drawings, models, or other specifications, etc.), the customer shall be solely responsible for ensuring that the production of these delivery items does not infringe the industrial property rights of third parties.

12.2 If property rights of third parties are nevertheless asserted, we shall be entitled to stop the production of the delivery items at the risk of the customer until the rights of third parties have been clarified, unless the unjustified nature of the claims is obvious.

12.3 We shall also be entitled to claim compensation from the customer for any necessary and useful costs incurred by us.

12.4 We shall be entitled to demand reasonable advance payments for any legal costs.

13. Our intellectual property

13.1 Delivery items and related execution documents, plans, sketches, cost estimates and other documents as well as software provided by us or created by our contribution shall remain our intellectual property. Cost estimates and other documents as well as software provided by us or created by our contribution shall remain our intellectual property.

13.2 Their use, in particular their disclosure, duplication, publication and making available, including only partial copying, as well as their imitation.
Processing or utilization requires our express consent.

13.3 The customer commits himself to maintain secrecy vis-à-vis third parties regarding the knowledge obtained from the business relationship.

14. Warranty

14.1 The warranty period for our services shall be one year from handover.

14.2 In the absence of any agreement to the contrary (e.g., formal acceptance), the time of handover shall be the time of completion, at the latest when the customer has taken over the service into his power of disposal or has refused to take over the service without giving reasons. In the absence of a justified refusal to accept the service, the service shall be deemed to have been taken into the customer's power of disposal on the day on which the customer is notified of its completion.

14.3 Remedies of a defect claimed by the Customer shall not constitute an acknowledgement of a defect.

14.4 The customer must always prove that the defect was already present at the time of handover.

14.5 Notifications of defects and complaints of any kind shall be made in writing without delay (after 5 working days at the latest) at the registered office of our company, describing the defect as precisely as possible and stating the possible causes, otherwise the warranty claims shall be forfeited.
The goods or works complained about shall be handed over by the customer if this is feasible.

14.6 If the customer's allegations of defects are unjustified, the customer shall be obliged to reimburse us for any expenses incurred in ascertaining that the goods are free of defects or in rectifying the defects.

14.7 We shall be entitled to carry out or have carried out any inspection we deem necessary, even if this renders the goods or workpieces unusable.
If this examination shows that we are not responsible for any defects, the customer shall bear the costs of this examination for a reasonable fee.

14.8 Transport and travel costs incurred in connection with the rectification of defects shall be borne by the customer.
Upon our request, the customer shall provide the necessary labor, energy, and premises free of charge, energy, and rooms free of charge and to cooperate in accordance with section 7.

14.9 The customer shall grant us at least two attempts to remedy the defect.

14.10. We may avert a claim for redhibitory action by improvement or reasonable price reduction unless the defect is substantial and irremediable.

14.11. If the objects of performance are manufactured based on information, drawings, plans, models, or other specifications of the customer, we shall only warrant the execution in accordance with the conditions.

14.12. The circumstance that the work is not fully suitable for the agreed use shall not constitute a defect if this is based exclusively on deviating actual conditions from the information available to us at the time of performance.

Information available to us at the time of performance because the Customer fails to comply with its obligations to cooperate pursuant to section 7.

14.13. Likewise, it shall not constitute a defect if the customer's technical equipment, such as supply lines, cabling, network, and the like, is not in a technically perfect and operational condition or is not compatible with the delivered items.

14.14. In case of resale of the hardware items delivered by us, the warranty period of the supplier is assumed.
Only distributed hardware items are covered by warranty or guarantee claims for the hardware trade.
No liability is assumed for any resulting consequential costs.

15. Liability

15.1 We shall be liable for breach of contractual or pre-contractual obligations, due to impossibility, delay etc. in the case of financial loss only in cases of intent or gross negligence.

15.2 Liability shall be limited to the maximum liability amount of any liability insurance taken out by us.

15.3 This limitation shall also apply regarding damage to an item which we have accepted for processing.

15.4 Claims for damages shall be asserted in court within six months, otherwise they shall be forfeited.

15.5 The limitations or exclusions of liability shall also include claims against our employees, representatives and vicarious agents due to damage caused by them to the customer without reference to a contract on their part with the customer.

15.6 Our liability is excluded for damage caused by improper handling or storage, overloading, non-compliance with operating and installation instructions, faulty assembly, commissioning, maintenance, servicing by the customer or third parties not authorized by us, or natural wear and tear, insofar as this event was causal for the damage.
Likewise, the exclusion of liability exists for omission of necessary maintenance.

15.7 If and to the extent that the customer is liable for damages for which we are liable, insurance benefits through a damage insurance policy of his own or concluded in his favor (e.g.: Liability insurance, comprehensive insurance, transport, fire, business interruption and others), the customer undertakes to claim the insurance benefit and our liability towards the customer shall be limited to the disadvantages incurred by the customer because of claiming this insurance (e.g.: higher insurance premium).

15.8 Those product characteristics are owed which can be expected by the customer regarding the approval regulations, operating instructions and other product-related instructions and notes (also inspection and maintenance) from us, third party manufacturers or importers, considering the customer's knowledge and experience.
The customer as a reseller shall take out sufficient insurance for product liability claims and shall indemnify and hold us harmless regarding and to indemnify and hold us harmless about recourse claims.

16. Severability clause

16.1 Should individual parts of these General Terms and Conditions be invalid, this shall not affect the validity of the remaining parts.

16.2 The parties undertake at this point to agree on a substitute provision - based on the horizon of honest contracting parties - which comes as close as possible to the economic result of the invalid condition, considering the customary practice in the industry.

17. General

17.1 Austrian law shall apply.

17.2 The UN Convention on Contracts for the International Sale of Goods is excluded.

17.3 The place of performance is the registered office of AGS-Engineering GmbH.

17.4 The place of jurisdiction for all disputes arising from the contractual relationship or future contracts between the contractor and the client is the court locally responsible for the contractor's registered office.

17.5 The client shall notify us immediately in writing of any changes to its name, company, address, legal form, or other relevant information.