

General Terms of Contract of AUSTRO CONTROL österreichische Gesellschaft für Zivilluftfahrt mbH (ACG)

1 Scope and Placing of Orders

1.1 These general terms of contract are sent out by means of automatic electronic transmission. They are agreed with any Contractor unless otherwise provided in the course of an award procedure or unless the parties stipulate otherwise. If tenders are submitted on the basis of general terms of contract of the tenderer or on the basis of other provisions divergent to the objective general terms of contract, such tenders will be rejected as being inconsistent with the tender documents.

1.1 Unless otherwise determined, the objective general terms of contract and of the Austrian Standard ÖNORM A 2060, edition 2013-03-15, are agreed with the Contractor. The subsequent contractual provisions are supplementary/additionally applicable to this Austrian Standard ÖNORM A 2060. The Austrian Standard ÖNORM A 2060 and all technical standard and state of the technology comprising EN-Standards, international Standards and Austrian Standards are available at the Austrian Standards Institute, A-1021 Vienna, Heinestraße 38.

1.2 The tenderer approves these general terms of contract by confirmation of order/beginning of work.

2 Invoicing, Terms of Payment, Prices

2.1 Contractor shall work out requirements specifications, which are to be confirmed by ACG upon the due completion of work as ordered. Invoices for such work must comprise confirmed requirements specifications.

2.2 Invoices stipulating the precise order number must be sent to ACG, Department for Financial Affairs (shortly: "FR"). ACG accepts invoices in electronic form; these should be sent in PDF-form to Fr-Kreditoren@austrocontrol.at. If there are several items indicated on one invoice, these must be stated in the sequence of items as listed on the order form. Invoice amounts concerning amendments according to Point 7.1 Austrian Standard ÖNORM A 2060 and/or ancillary services are to be stated separately and documented in detail.

2.3 According to § 11 Sg each invoice must be issued to ACG. Invoices exceeding the total amount of 10.000,-EUR must indicate VAT-Nr. of ACG (ATU 37259408). Invoices which are not consistent with Austrian legal requirements will be returned and cannot be accepted.

2.4 Invoices received by the ACG Accounting Department will be paid within 30 days.

2.5 The tendered prices cover and settle all services and work according to the provisions of the objective tender contract and according to the requirements specifications comprising all potential ancillary services and known difficulties.

2.6 The day of the receipt of payment is not taken into account. Place of payment is Vienna. Invoices are regarded as being paid as of the date of the debit entry in the account of ACG, on the condition that the payment is received by the Contractor. In case of delay in payment by more than 10 bank days, ACG shall pay interest in the amount of 9,24% p.a. above the bank rate ("Basiszinssatz") published by the Austrian national bank. In this case the base rate in force on the first calendar half year shall be applicable. If ACG is not responsible for the delay, she has to pay only the interest which is defined in § 1000 Abs. 1 ABGB (Civil Code). This title to interest shall expire if the Contractor does not demand it within 6 months following payment. In this event any damages arising beyond the replacement of the statutory debt costs shall be excluded.

2.7 Data and determinations concerning the respective work/services disclosed in the requirements specifications shall also take into account prearrangements, necessary material and equipment, a schedule until completion of work as well as the compliance with statutory and magisterial provisions in the relevant items.

2.8 The outward journey to the place of performance from the commercial seat of the Contractor including the time spent on the outward journey are not remunerated by ACG – unless explicitly

mentioned – and have to be taken account of in the items prices. The same applies to the return journey.

2.9 The Contractor must not lodge additional claims of any kind on the grounds of lack of knowledge of the facts. The Contractor is responsible to reassert himself of all circumstances pertaining to pricing.

2.10 Tenderers are not eligible for demanding the verification of their calculation. Calculation errors are at sole risk of the tenderer. Calculation errors do not entitle the tenderer to rescind the contract on the grounds of error.

2.11 Price adjustments: Offered prices are agreed to be fixed prices for the year following the day of the filing of the tender. Subsequently all prices comprising all possible rebates are variable. Price adjustments are effected on the basis of the price level of the respective month of the filing of the tender, and on the basis of the therefore determined base number. Price adjustment is effected the first time in the beginning of the second year following the end of the filing period of the tender on the basis of the price level of the respective month of the end of the filing period of the tender. Additional price adjustments are effected in the respective beginning of a new calendar year on the basis of the price level of the respective month before the last month of the calendar year (e.g. November 2010 for price adjustments as of 1st January 2011). The price level relevant for the objective price adjustment, that is to say the base number and the respective actual index value, is – unless otherwise explicitly stated in the tender documents – determined on the basis of the consumer price index 2005 monthly published by Statistics Austria. This newly determined base number serves as a reference number for all prices invoiced as of the new calendar year. All calculations are to be commercially rounded down to one decimal place.

3 Default, penalty, risk

3.1 ACG is obliged to consider the establishment of the service provided within 30 days and accept the service.

3.2 The acceptance of delayed services/delivery/work by ACG shall not preclude the lodging of claims for damages and/or contractual penalties by ACG for late performance.

3.3 In case of delayed performance, Contractor is bound to pay ACG compensation in the amount of 0,5% of the total invoice amount according to civil law (incl. VAT) per week started; the total compensation must not exceed a maximum of 10% of the total invoice amount according to civil law. Regardless of this obligation to pay contractual penalties Contractor shall reimburse ACG for all exceeding damages.

3.4 Title and risk of loss/damage shall pass from the Contractor to ACG upon delivery and acceptance of ACG. In case of loss/damage prior to the delivery and acceptance the Contractor shall not be entitled to any remuneration therefor.

4 Termination of contract

4.1 The period of contracts (indefinite period/definite period/contract on credit) is determined by the requirements specifications or by the other documents of the objective agreement.

4.2 Contracts for the performance of work concluded for indefinite periods of time, or for periods of four years or more, may be terminated by ACG, observing a three-month period of notice, as at the end of each calendar month. Notice of termination must be in writing via mail or fax in order to be effective. The notice shall be deemed given timely when mailed (date of posting or sending) in good time. If overall performances as well as individual performances are put out to tender, the parties are also entitled to terminate the contractual relationship with regard to individual performances.

5 Supplementary terms and conditions

5.1 Drawings, sketches or other documents which form part of the tender documents are intellectual property of ACG and are only to be used for the filing of a tender and the implementation of the respective order.

Please indicate order number both confirmation of order and invoice!

Invoices not in conformity with order are returned without exception! EDP#0447277

Location and jurisdiction: Vienna, Register of Companies: Commercial Court Vienna I, Register no. 71000m VAT No. ATU 37259408

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- 5.2 Drawings, sketches, documents, software or other pieces of work created by the Contractor upon request of ACG devolve to the property of ACG when handed over. ACG acquires the exclusive right to use, disperse, reproduce and process such drawings, sketches, documents, software or other pieces of work by any means and in any form, without any limitation as regards time and place. In this sense ACG acquires the right to use, disperse, reproduce and process individually ordered elaborations as well as requirements analysis and requirements specifications by any means and in any form, without limitation of time and place.
- 5.3 Insofar the order provides for the use of standard works (including standard software, standard know how), performance objects in this regard (e.g. documents, data storage media) pass into the ownership of ACG upon delivery. ACG acquires the right to merely use these standard works according to the requirements specifications or according to other contractual provisions; at least the right of use for own purposes without limitation of time and place.
- 5.4 Other parties, who then have the right to use the hardware on which such software runs. All sublicenses shall explicitly refer to the use of the software on the respective hardware; the use of a larger number of applications than contracted with ACG is ruled out.
- 5.5 Contractor undertakes to keep all information perceived in performance of the order or learned from documents of ACG confidential, unless ACG relieves the Contractor of this confidentiality duty in a particular case in writing or unless the relevant information is made public.
- 5.6 If Contractor employs third parties in performance of his work, he undertakes to reoblige these third parties in writing with regard to the duty of confidentiality according to Section 5.5.
- 6 FAB-CE and respective participating ANSPs (only applicable for orders based on tender procedures with prior publication)**
- 6.1 Austria is part of the FAB-CE and Austro Control is the participating ANSP in Austria. All ANSPs in FAB-CE are (international) central purchasing units for all other ANSPs and intend to share specific data, information and documents gathered from procurement procedures and the execution of the contracts among each other. In addition, all ANSPs intend to share spare parts, manpower and technical services procured for among each other. The FAB-CE are named as: Bosnia & Herzegovina, Croatia, Czech Republic, Hungary, Slovakia and Slovenia. The respective participating ANSPs are: BHANSA, Croatia Control, ANS CR, HungaroControl, LPS SR and Slovenia Control and shall be called hereafter also "FAB-partner". In addition, Austro Control is a(n) (international) central purchasing unit for other contracting authorities and intends share spare parts, manpower and technical services procured for with them.
- 6.2 The Bidder and/or Contractor hereby accepts that the ANSPs in FAB-CE share all specific data, information and documents gathered from procurement procedures and the execution of the contracts among each other and with other contracting authorities.
- 6.3 The specific data, information and documents are defined as:
- Technical specifications of installed systems
 - Data and parameters needed for technical operation of the systems, e.g. ATN-addresses, routes.
 - Practical experienced figures on Availability, "Mean Time Between Failures" (MTBF), "Mean Time To Repair" (MTTR),
 - Any information on available spare parts in the area of responsibility of "FAB-partners"
 - Information relevant for maintaining the systems, like software-releases
 - Coverage diagrams of radio sites
 - Values of negotiated SLA's between technical and operational organizations of "FAB-partners"
 - Any dates and parameters to create the declaration of Conformity according EC-regulation 552/2004
 - Any dates and parameters to create the national aviation safety cases
- Any further extension of specific data regarding this paragraph, has to be agreed mutually between both parties.
- 6.4 The Bidder and/or Contractor hereby accepts that the ANSPs in FAB-CE share all spare parts, manpower and services the procurement of which has been subject to the rules of (international) central purchasing units among each other and with other contracting authorities. Austro Control and all other ANSPs are permitted to share in particular spare-parts, manpower and technical services with its partners in FAB-CE and other contracting authorities as follows:
- Austro Control hereby is permitted to share "Line Replaceable" Units (LRU's) of same type and release between "FAB-partners" and other contracting authorities as stated above.
 - Austro Control shall not be limited to operate general usable spare parts only in specific sites by any kind of technical means, like bounding serial numbers to sites or software loads to sites. However, general usable spare parts may be operated at any other site operated by a FAB-partner or any other contracting authority.
 - Software loads shall be subject to be adoptable to local sites operated by any "FAB-partner" or any other contracting authority.
 - Technical Services such as installation and maintenance shall be performed / executed at any other site operated by a FAB-partner or any other contracting authority.
 - Manpower shall be operated / left to any FAB-partner or any other contracting authority at any place of delivery.
- 6.5 Any indirect costs and costs for the extended licenses shall be calculated with the prices. Only direct costs arising to the Bidder and/or Contractor directly from the transfer/sharing of spare-parts, man power and technical services justify a further reimbursement of costs.
- 7 Miscellaneous provisions**
- 7.1 All disputes arising out and of or in connection with the present contract shall be settled exclusively by the court of Vienna-Innere Stadt that is competent in terms of subject matter.
- 7.2 The contractual relationship shall be governed by Austrian law. References to foreign law (conflict of laws rule) are excluded. The UN Convention on Contracts for the International Sale of Goods is inapplicable.
- 7.3 In case of breach of the confidentiality duty pursuant to Sections 5.5 and 5.6 or according to the confidentiality duties mentioned in Section 15 of the Act on Data Protection 2000 (Datenschutzgesetz 2000), Contractor is obliged to pay a contractual penalty in the amount of EUR 36.000,00 which is subject to the judicial reduction. ACG reserves the right to claim further damages.
- 7.4 In case any of the provisions contained in these General Terms of Contract or any of the provisions of the contract for service shall be, or become, invalid, ineffective, or unenforceable, the validity, effectiveness and enforceability of the remaining provisions shall not be affected thereby. The parties agree that they will replace an invalid, ineffective or unenforceable provision by one that comes as close as possible to the original economic purpose of the invalid, ineffective or unenforceable provision.
- 7.5 Claims under a contract to which these General Terms of contract apply must not be transferred.
- 7.6 Amendments of these general terms of contract have to be effected in writing. This applies also to the abandonment of the requirement of the written form. Oral subsidiary agreements are ineffective.
- 7.7 Building and construction activities on the premises of ACG are to be carried out according to the security (occupational safety and health) <http://www.austrocontrol.at/agbs> directive for third parties and contractors.
- 7.8 ACG is an ISO 9001 certified company and therefore reserves the right to conduct supplier audits, after prior notice.

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