

## General Terms and Conditions

### 1. Scope

- 1.1 These General Terms and Conditions shall apply to all deliveries of goods, works or services by AVL List GmbH (the "Supplier"). In case of software deliveries and of installations, specific Supplier Conditions for Software and Conditions for Installation and Commissioning shall be applicable.
- 1.2 Unless the Supplier expressly agrees in writing, the Supplier shall not be bound by any terms or conditions, whether written, oral or otherwise, that are different or vary from or are in addition to these General Terms and Conditions and any such terms or conditions shall be null and void and of no effect whatsoever.

### 2. Offer and Acceptance

- 2.1 Offers by the Supplier are made without obligation and any sales contract shall become effective and binding on the Supplier only when the Supplier delivers to the Customer its written Order Confirmation Form and the Customer countersigns and delivers to the Supplier the return portion of the Supplier's Order Confirmation Form, or if the Supplier, at its election effectively delivers the goods to the Customer.
- 2.2 Specifications and quotes in catalogues, brochures etc., are only binding if expressly referred to in the offer and the Order Confirmation Form.
- 2.3 The Supplier's offer and project documentation (the "Documents") must not be reproduced or disclosed to third parties without the Supplier's written consent. The Supplier reserves all property-, usage- and copy-rights on the Documents. All Documents must be immediately returned to the Supplier upon the Supplier's request if the Customer does not issue a purchase order to the Supplier.

### 3. Prices

- 3.1 Prices are quoted ex Supplier's works or warehouse, excluding packaging, dispatch and VAT. All expenses, duties, tariffs, and taxes related to the delivery are paid by the Customer.
- 3.2 If a Customer's order should differ from the offer, the Supplier reserves the right to change prices accordingly.
- 3.3 Prices are based on the material and labour costs valid at the time of the first offer. Any changes to these costs prior to the date of delivery entitle the Supplier to change prices accordingly.

### 4. Delivery and Dispatch

- 4.1 Delivery periods do not commence before the date on the Order Confirmation Form and are deemed to be fulfilled when the goods are dispatched from the Supplier's factory or warehouse.
- 4.2 If not explicitly agreed otherwise by the Supplier, any governmental or other permits required for delivery in the Customer's country may delay, unless received in time, delivery dates. The Customer must obtain such governmental or other permits in the Customer's country and must provide the Supplier with a copy of such permit(s) prior to delivery.
- 4.3 If the provision of material and/or services by the Customer is necessary for the fulfilment of the Supplier's contractual

obligations the Customer will provide the Supplier with all documentation related to such material/services (e.g. declaration of conformity, safety instructions, description of interfaces, wiring diagrams, etc.) without further request. The Customer will supply such documentation in due time (at the latest two weeks after receipt of the offer) and in an electronically editable form. Terms and obligations of delivery may at the election of the Supplier be suspended during any period in which the Customer's payments or provision of material and/or services are in arrears.

- 4.4 The agreed delivery periods are subject to events of unforeseen events or events beyond the control of the Supplier, such as
    - a) war, terrorism, Acts of God,
    - b) governmental interventions, obstacles due to applicable national, EU or international regulations of Foreign Trade law (including embargos),
    - c) energy and raw material shortages or outages,
    - d) strikes, transport damages or delays,
    - e) viruses or other attacks on the Supplier's IT system if they occur despite the Supplier's reasonable care.These events shall entitle the Supplier to extend the time of delivery, also if they affect any of its sub-suppliers.
  - 4.5 The Supplier delivers goods, works and services according to state of the art at the time of offer. If the goods, works and services should fulfil requirements beyond that (e.g. local regulations in the country of destination or in the Customer's country, special governmental orders or other technical requirements) the Customer must inform the Supplier in writing of such specific requirements. The Supplier will comply with these requirements only if it has accepted them in writing (e.g. in the offer).
  - 4.6 The Supplier, at its election, may ship all or part of its goods and immediately invoice the Customer for such partial or preliminary shipments.
  - 4.7 In case delivery of the goods ready for dispatch is not possible or not desired by the Customer, the goods will be stored at the Customer's cost and risk. The delivery shall then be considered as performed and the Supplier may, at its election, invoice for such delivery.
  - 4.8 Compensation for delay in delivery (if any) shall only be due in the event of a special agreement, whereby the Customer's claims for damages due to delay in delivery and claims for damages in lieu of performance which exceed any penalty shall be excluded. This shall not apply if the Supplier is held responsible for intent or gross negligence and in the event of death, injuries or impairment of health caused by the Supplier's negligence.
- ### 5. Performance of Contract and Transfer of Risk
- 5.1 Costs and all risks of loss are transferred to the Customer at the time of dispatch of the goods from the Supplier's factory or warehouse, in default of the agreed delivery terms. This also applies in case of installations at the Customer's premises and transport by the Supplier.
  - 5.2 If delivery is delayed by the Customer, transfer of costs and risk of loss shall become effective when the goods are ready for dispatch.
  - 5.3 All periods depending on the Supplier's performance of contract begin on and run from the dates specified in this section, irrespective of any quality tests or trial runs.

## 6. Payment

- 6.1 Unless otherwise agreed in writing, 30 % of the contract price shall be paid by the Customer upon receipt of the Order Confirmation, 60 % at the time of delivery and the remaining price after acceptance, but no later than 6 months after delivery. All invoices of the Supplier shall be due and payable within 30 days from the date of invoice.
- 6.2 Partial invoices are due immediately upon receipt. This also applies to payments which have to be made for additional performances, beyond the initial terms of contract, regardless of the conditions of payment applicable to the main performance.
- 6.3 Payment shall be made without any deduction in the agreed currency to the Supplier's bank. Cheques shall be accepted on account only, and all connected expenses shall be charged to the Customer's account.
- 6.4 The Customer shall not be entitled to any right of set off or to withhold or reduce any payments due because of warranty or compensation claims.
- 6.5 In case of delayed payment the Supplier is entitled at its election to do any of the following:
  - a) postpone performance of its own obligations until receipt of the payments due
  - b) accelerate and fix a due date for all outstanding payments (cancellation of periods for payment by the Customer)
  - c) charge to the Customer from such due date or maturity interest at the current discount rate (main refinancing operations) of the European Central Bank plus 8 percent per year or
  - d) rescind and cancel the contract if the Customer fails to pay within a reasonable period of grace.
- 6.6 Until the Customer has fulfilled all financial obligations, the goods supplied shall remain the Supplier's property. The Customer shall be obliged to meet all legal requirements in order to safeguard the Supplier's property or security interest. In case of attachment or other kinds of seizure the Customer shall evidence the Supplier's title and notify the latter immediately. By signing and returning to the Supplier the Customer Order Form or by accepting delivery of goods the Customer hereby agrees that it has granted the Supplier a secured interest in the goods until such time as the Supplier is paid in full.

## 7. Warranty

- 7.1 Unless otherwise agreed to in writing the warranty period shall be six months from the date of transfer of risk as stated in 5.1, regardless of the legal qualification of goods delivered or works performed.
- 7.2 Claims will be accepted only if the Supplier is immediately notified of the defect in writing. The Supplier's obligations for such claims are restricted to the repair or replacement of the defective goods. All other costs are to be borne by the Customer.
- 7.3 The legal presumption pursuant to Section 924 ABGB (Allgemeines Bürgerliches Gesetzbuch [Austrian Civil Code]) is excluded. The Customer must prove that any defect existed at the time of hand-over.
- 7.4 Defects which are due to abuse, misapplication, failure to follow the instructions for use, warnings, safety or other regulations provided by the Supplier, due to improper or prolonged storage or other mistakes on the part of the Customer, due to specific external influences not covered by the contract or due to software errors which cannot be

reproduced, are excluded from the warranty. In case of products which have been produced at the order of or according to the Customer's instructions or formulae, warranty will only cover the proper production of the goods.

Parts subject to normal wear and tear will not be replaced under warranty.

- 7.5 The Supplier's warranty obligations are also excluded if any changes, fitting-, installation-, alteration-, maintenance- or repair-work are caused by the Customer or a third person without the Supplier's prior written consent. The Supplier will not accept any invoices for such work.
- 7.6 The performance of a warranty obligation does not prolong the original warranty period.

## 8. Liability

- 8.1 The Supplier's liability and obligations according to the Product Liability Act or any other products liability acts or laws in any jurisdiction is excluded if specific provisions regarding the handling of the products, instructions for their use and/or warning and safety regulations as specified by the Supplier have not been observed.
- 8.2 Outside the scope of the Product Liability Act or other products liability acts or laws in any jurisdiction, damages shall be compensated only if the Supplier is held responsible for willful intent or gross negligence. In this case, however, the Supplier's obligations for such claims are limited to personal injury and material damage resulting directly from a defect in the subject of delivery or services (or any component thereof) with exception of the unit under test. Any liability going beyond the foregoing provisions is explicitly excluded. This applies especially to (consequential) damages resulting from a defect, including but not limited to production stop, loss of property or profit and other financial consequential damages.
- 8.3 In general damage claims which are caused by the following events are excluded from the Supplier's liability:
  - a) abusive and inappropriate use or handling of the subject of delivery or services; failure to follow the instructions for use, warnings, safety or other regulations provided by the Supplier
  - b) abnormal operating conditions (beyond specifications) including but not limited to atmospheric discharge, excess voltage, residual voltage, excess rotation speed, chemical influences, intense heat and failure of the Customer's earthing system
  - c) overcharge, overheating, fire or explosion of batteries
  - d) gas/fuel leakage due to improper maintenance and leak testing
  - e) events of force majeure according to 4.4
  - f) defective or incomplete provision of material and/or services by the Customer
  - g) presence of persons in test cells outside the safety areas during test operations
- 8.4 Claims must be made in writing to the Supplier within a period of six months from the date of occurrence of the damage, but no later than two years from the date of transfer of risk according to 5.1 and 5.2, otherwise they are forfeited.
- 8.5 The liability provisions in this paragraph do not apply to claims based on data protection regulations.
- 8.6 The Customer is liable to subject its customers to the limitations of liability contained in this paragraph.

## **9. Rescission of Contract**

9.1 The Customer at its election may rescind the contract if delivery is delayed more than 60 days because of gross negligence of the Supplier and despite a reasonable period of grace granted in writing.

9.2 Apart from the case of delayed payment according to Para 6.5 d) the Supplier can rescind the contract if

- a) delivery or performance becomes impossible for reasons attributable to the Customer, or is delayed beyond a reasonable period of grace established in writing;
- b) the Customer's financial situation has worsened notably after ordering the products, and the Customer is not prepared to pay in advance, or to provide sufficient security;
- c) the Customer discontinues its payments or if the Customer or one of its creditors files a petition of insolvency on the Customer's assets. The Customer has to inform the Supplier immediately about such circumstances;
- d) the Supplier has reasonable cause to suspect that the delivery of goods, works or services by the Supplier or any of its affiliates or any other performance of the contract infringe any sanctions, prohibitions or restrictions under resolutions of the United Nations or laws and regulations of the European Union, the Republic of Austria or any other state which are applicable to the Supplier and/or any of its affiliates;
- e) the Supplier's goods, works and/or services become subject to the restrictions imposed by the EC-Dual-use-Regulation No. 428/2009 as amended after the contract has been concluded if the Supplier does not obtain an export license under the EC-Dual-use-Regulation.

Such rescission of contract shall also be permissible if only parts of the delivery or performance, which are still to be fulfilled, are affected.

9.3 In case that, due to events indicated in Para 4.4, the agreed delivery times are delayed by more than one half of the period, but at least six months, either party shall be entitled to rescind the contract with respect to those parts of the delivery or performance which have still to be fulfilled.

9.4 In case of rescission of contract for other reasons than the one stated in 9.1 all performances or parts thereof which have already been fulfilled by the Supplier, shall be settled and paid according to the contractual provisions, notwithstanding and in addition to the Supplier's claims for damages. This also applies to deliveries and performances not yet accepted by the Customer as well as to any preparatory work undertaken by the Supplier. Alternatively, the Supplier is entitled to claim the restitution of products already delivered. Any other consequences resulting from a rescission of contract are excluded.

## **10. Patent Rights, Copyright**

10.1 If a product is produced according to the Customer's instruction, drawings or specifications, the Customer agrees to indemnify and hold the Supplier harmless for any infringement of patent rights of third parties.

10.2 All technical documents, in particular plans, drawings, technical descriptions, as well as catalogues, brochures, pictures or models etc. are the Supplier's exclusive property and are subject to legal and statutory restrictions on copy, reproduction, competitive use etc.

Para 2.3 also applies to such documents.

## **11. Disposal of old equipment/appliances**

The Customer is obliged to properly dispose of the electrical and electronic equipment purchased from the Supplier at the end of its use in accordance with the respectively valid legal regulations, within the EU member states in accordance with the Directive 2012/19 EU on waste electrical and electronic equipment. Furthermore, the Customer is obliged not to pass on personal computers (PCs) and PC accessories purchased from the Supplier to private households. The Customer bears the burden of proof for the fulfilment of the aforementioned obligations of the Customer. Should the Customer fail to comply with these obligations, it shall indemnify and hold the Supplier harmless for all resulting disadvantages.

## **12. Use of Data and Data Protection**

12.1 The Customer agrees that the Supplier shall be entitled to use, process and store data received by the Supplier in the course of the performance of its contract, in accordance with the applicable laws, and to allow third parties to use, process and store such data on behalf of the Supplier. Within the scope of the contractual relationship, the Supplier shall be entitled to process and use limited personal data of some of the Customer's employees or contractors in order to respond to inquiries or orders and to process the contract properly (e.g. to process or execute orders, process payments, arrange shipments and deliveries and provide repair and support services).

12.2 The Customer is obliged to process the personal data transmitted by the Supplier in accordance with the currently valid data protection regulations exclusively for the purpose of fulfilling the contract and to delete this data immediately after once the reason for processing such data has ceased to exist.

12.3 With regard to the Supplier's data protection information obligations under Articles 13 and 14 of the General Data Protection Regulation, the Supplier refers to the data protection declaration on its website. At the Customer's request, a copy of this data protection declaration will be made available to the Customer free of charge.

## **13. Place of Jurisdiction, Applicable Law**

13.1 In case of controversies arising from the contract the venue of legal proceedings shall be the Austrian tribunal at the Supplier's registered place of business. The Supplier shall, however, also be entitled to take action before a competent tribunal at the Customer's place of business.

13.2 The parties may also agree to have controversies settled by arbitration.

13.3 The contract shall be construed and interpreted according to Austrian law. It is mutually agreed that the UNCITRAL Agreement of the United Nations on the law of international sales of goods does not apply.

## **14. Miscellaneous.**

14.1 The Supplier in its sole discretion may assign or delegate any of its duties or rights under the order or contract at any time without prior notice to or consent of the Customer. The order or contract may not be assigned by the Customer without the Supplier's prior written consent, and in any event shall be binding on the Customer's successors and assigns.

14.2 No covenant, term or condition of this order or contract can be waived by the Supplier except by its written consent. This order or contract may be amended or modified only by a written instrument signed by the Supplier and the Customer.

