

Special Terms of Trade for the Construction Contracts of AVL Emission Test Systems GmbH

1. SCOPE OF VALIDITY; ACCEPTANCE; CONTRARY TERMS OF TRADE

- 1.1 These General Terms of Trade (GTT) for work contracts apply to all contracts made between us, the AVL Emission Test Systems GmbH (referred to below as AVL) and the opposite party (referred to below as the "Contractor").
- 1.2 The Contractor's contrary terms or conditions which deviate from these GTT do not become a content of contract, even if AVL does not specifically protest against them. If the Contractor does not agree to this, it must notify AVL of this circumstance without delay in writing.

Reference to the Contractor's General Terms of Trade on some kind of form is hereby expressly contradicted.

2. COMPONENTS OF CONTRACT

The following are components of contract in the stated sequence

- The contract between AVL and the Contractor
- These GTT
- The General Terms of Contract for Executing Construction work (VOB/B) for the construction work to be performed under this contract in the sense of § 1 VOB/A in the version prevailing upon conclusion of contract, as well as the provisions of the German Civil Code (BGB) in the version prevailing upon conclusion of contract
- The generally recognised state-of-the-art, including the General Technical Conditions of Contract for Construction Work (VOB/C) in the version prevailing upon conclusion of contract
- The pertinent DIN standards issued by the Deutsche Institut für Normung e.V. plus the yellow print-outs of the DIN standards, VDI, VDE and VdS provisions, the requirements of the Workplace Ordinance/Directive, all TÜV and trade provisions, each in the version prevailing upon acceptance
- The regulations for Architects and Engineers

3. THE CONTRACTOR'S RESPONSIBILITY

- 3.1 The Contractor assures that it has inspected all local circumstances before presenting its offer and has found out about the technical provisions and construction laws to be complied with.
- 3.2 The Contractor must check the documents handed out to it for inspection for correctness and completeness with the care expected from an experienced trade undertaking. The Contractor is obliged to inform AVL in writing of any errors or contradictions in these documents.
- 3.3 Upon submission of its offer, the Contractor shall present a company profile and a list of references of comparable construction work performed over the last three years, unless something different has been agreed.
- 3.4 The Contractor shall nominate an authorised representative responsible for performing the construction work to AVL in writing. This representative is authorised to issue and accept binding riders and/or additional offers, to receive instructions, to issue legally binding declarations and participate in construction meetings as representative of the Contractor, to issue binding declarations in the Contractor's name and to conclude agreements. The representative must take part in construction meetings.
- 3.5 Before starting its work, the Contractor shall nominate a responsible supervisor in writing in the sense of the health, safety and environmental regulations ("SGU supervisor").

4. EXECUTION DOCUMENTS

- 4.1 The plans and detail drawings approved by AVL, the documents released by AVL from architects ordered by AVL or experts appointed by AVL (e.g. static engineers and building supply planners) are regarded as components of the execution documents.
- 4.2 The Contractor must request all the documents required for the contractual performance of its work from AVL and to be provided by AVL in good time, so that its work does not encounter any hinderance. These

documents shall be provided to the Contractor by AVL free-of-charge (digital).

- 4.3 The Contractor must submit the execution documents and suggestions for samples that it must produce in good time, so that the necessary decisions can be made to schedule, without threatening deadlines.
- 4.4 The costs of these execution documents to be compiled and/or provided by the Contractor and for producing and removing samples are settled by the unit prices and flat-rate prices.
- 4.5 AVL's release of documents and samples does not mean that they have been tested for technical correctness and/or suitability. Such does not release the Contractor from its responsibility of providing the agreed work in a proper manner, including any signs or notices required.

5. CHANGES TO THE SCOPE OF THE ORDER / RIDERS / WORK BASED ON HOURLY WAGES

- 5.1 If the scope of work changes or is added to, the Contractor must inform AVL in writing without delay, although before execution, that such work triggers additional remuneration. At the same time, it must present an offer to AVL on the basis of its original calculations for the order. This additional offer must show all extra costs in a binding manner and contain reviewable details on dates and other impacts of the changed or additional work. If it is not possible to reach an agreement on the reason and/or the amount of the additional work before the changed or additional work starts, the Contractor is still nevertheless obliged to perform the work, as soon as AVL issues an order for this in writing.

- 5.2 After the order has been issued, the Contractor must submit its calculations depicting the agreed price of the contract to AVL in paper form and in digital form (at least pdf format) in accordance with AVL stipulations without delay, although at the latest within 7 work days from the issue of order, in a sealed envelope. The calculations must show the following costs separately:

- Single costs of the work sections
- Site overheads
- Wages for the means of calculation
- General business costs
- Risk
- Profit

AVL is entitled to open the calculations in order to check the Contractor's principles of price determination in case of extra or lower claims to remuneration, changes in quantities or other circumstances which could lead to an adjustment of remuneration. Before opening the calculations, AVL shall inform the Contractor in good time and give the latter the opportunity to participate. If the Contractor fails to attend the date for opening the calculations, despite being invited in good time, AVL can open the calculations in the absence of the Contractor.

- 5.3 Work based on hourly wages that have not been agreed in the contract will not be remunerated unless the client has ordered such beforehand in writing.

- 5.4 The Contractor must keep hourly wage sheets each work day concerning work based on hourly wages. Apart from the details listed in § 15 Para. 3 VOB/B, these must contain the following;

- The date
- The designation of the construction site
- The exact designation of the on-site place of execution
- The nature of the work
- The names of the workers and their trade and wages or salary groups
- The work hours performed by each worker, possibly broken down into overtime, work at nights, on Sundays and on public holidays,

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and the difficulties not included in the price rate

Invoices for work on an hourly wage basis must be itemised in accordance with the hourly wage sheets.

- 5.5 By signing the hourly wage sheets, AVL alone declares that the designated work has been performed and the designated expenses incurred. AVL reserves the right to review the justification for settlement on the basis of hourly wages basis as well as the reason and the amount.

6. EXECUTION DEADLINES

The deadlines agreed in the contract are contractual deadlines in the sense of § 5 VOB/B. This specifically applies to the individual deadlines contained in a construction time schedule.

7. CONTRACTUAL FINE AND PARTICULAR RISKS

- 7.1 In case of culpably missing the milestones agreed as contractual deadlines, the Contractor must pay a contractual fine of 0.15% of the order sum (net) for each work day of default.

- 7.2 In case milestones agreed as contractual fines are missed, the reference variable to calculate the contractual fine is always the value of the work to be performed by contract up to this date. If milestones agreed as contractual deadlines are missed, no account is taken of days which have been charged if further milestones agreed as contractual deadlines or the end date is missed for the calculation of any further contractual fine.

- 7.3 In case of culpably missing the overall completion date, the Contractor must pay a contractual fine of 0.15% of the overall, net order sum for each work day of default.

- 7.4 In case contractual fines are imposed for culpably missing milestones agreed as contractual deadlines, these are offset against contractual fines for the overall completion date. If the Contractor complies with the overall completion date, despite missing milestones agreed as contractual fines, any contractual fines already imposed for missing milestones are waived.

- 7.5 The rules on contractual fines also apply to contractual deadlines that have been newly agreed or to contractual deadlines that are to be extrapolated, without this requiring a separate agreement.

- 7.6 The amount of the contractual fine agreed is limited to 5% of the overall, net order sum.

- 7.7 AVL can pursue a contractual fine imposed up to the final payment.

- 7.8 Apart from the contractual fine, the pursuit of claims to damages remains unaffected. However, a contractual fine imposed shall be offset against any of the Client's claims to damages.

- 7.9 Specific reference is made here to the Contractor that AVL has agreed contractual fines with its customer concerning the contractual deadlines, the amount of which exceed the contractual fines agreed here. AVL shall inform the Contractor without delay if missing a deadline agreed between AVL and its customer as punishable by contractual fine is threatened because of the Contractor's default.

Against this background, AVL bears a considerable risk of damage. AVL therefore specifically reserves the right to pursue the Contractor in accordance with its degree of guilt for every loss it suffers, for which the Contractor is responsible in full or in part.

The Contractor has the express right to prove that the customer of AVL and/or AVL itself has suffered lower damages or none at all.

8. SUBCONTRACTORS

§ 4 Para. 8 VOB/B applies to the deployment of subcontractors.

9. SITE FACILITIES AND CLEANLINESS

- 9.1 AVL shall provide on-site electricity and water to the Contractor during the construction period. The Contractor itself must arrange for the distribution and supply from the point of handover stipulated by AVL. The

Contractor must effectively use the resources required to the usual extent for the relevant trade (in particular, materials, energy and water) and minimise the impact on the environment (in particular, waste, sewage, air and noise pollution). The same applies to expenses for logistics/transport.

- 9.2 The Contractor is obliged to register all the chemical substances contained in the materials used in accordance with the laws applicable for each market concerned (e.g. the REACH Ordinance [EC] No. 1907/2006). If necessary, the Contractor shall apply for their approval or report such.

- 9.3 The Contractor must obtain the permission required to use public roads and neighbouring grounds and comply with all safety precautions (fences, lighting, signs, etc.) at its own expense. The Contractor bears any costs for using these facilities. This is calculated in the prices for the contract.

- 9.4 Written approval from AVL is required in advance to set-up and use workplaces, stores, traffic routes and the site facilities. At the request of AVL, the Contractor must undertake a necessary relocation of workplaces, stores, traffic routes and the site facilities during the construction period free-of-charge.

- 9.5 The Contractor is obliged to clean the site or the place it is working in at regular intervals and to leave it clean and tidy after completing its work. The associated expenses are settled in the prices for the contract.

- 9.6 The Contractor must keep a daily report on the site and present this each day to the local construction supervisor. A copy shall be given to AVL. The daily site reports must contain all the details relevant to the execution of contract and settlement (e.g. work progress, the weather, number and type of worker employed on-site, the quantity and scope of large equipment used, the start and end of work, acceptances, interruptions in the work time detailing the reasons, accidents, official orders, other unusual circumstances etc.).

10. ACCEPTANCE/WARRANTY

- 10.1 Acceptance of the Contractor's performance is exclusively formal, § 12 Para. 4 VOB/B. The same applies to the acceptance of defects rectified/residual work by the Contractor.

- 10.2 The Contractor must notify completion of the contractual work in writing. AVL must receive the notice at least 12 work days before the planned completion date.

- 10.3 Claims to defects expire by limitation of time in 5 years. This does not affect the further regulations of § 13 VOB/B.

11. INSURANCE AND LIABILITY

- 11.1 The Contractor must demonstrate operational indemnity and environmental insurance with a minimum coverage sum of € 5,000,000 per event of loss or damage for personal losses and material damage, including asset losses.

- 11.2 The Contractor even now releases AVL from all justified claims concerning indemnity and damage pursued against AVL by third parties in the context of the Contractor's execution of the work, to the extent that the Contractor is responsible for the damage.

12. COMPANY ADVERTISING SIGNS

Company advertising signs on-site require written approval from AVL in advance. If such signs are demanded by official bodies, the Contractor waives any remuneration for creating and maintaining these signs.

13. PAYMENTS

- 13.1 The due date of instalment payments is governed by the pertinent regulations of VOB/B.

- 13.2 If the Contractor does not have to hand the agreed contract fulfilment bond over to AVL in accordance with § 15.1 of these GTT, instalment payments are made within 21 days after receipt of invoice and at 90% of the work performed without defects, insofar as the Contractor

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continues its work as per schedule.

13.3 The due date of the final payment is governed by § 16 VOB/B. The Contractor must submit to AVL all settlement documents as per the contractual regulations, as per § 16 VOB/B and the prevailing technical standards, at the latest with the final invoice. Specific reference is made to the Contractor that regular settlement and presentation of all the necessary documents is essential. The agreed retained amount of 5% to secure claims due to defects will be paid when a bond to cover these claims due to defects is presented in accordance with § 15.2 of these GTT.

13.4 The final payment is made after the Contractor has definitively completed its work free of defects, acceptance, receipt of the final invoice along with all the settlement documents in accordance with § 16 VOB/B and after the final invoice has been reviewed by the Client within 30 days following receipt of the final invoice.

13.5 The assignment of the Contractor's claims and/or the transfer of collection of the Contractor's claims against AVL requires written approval from AVL in advance.

14. RELEASE IN ACCORDANCE WITH § 48 B ESTG

14.1 Unless this has already happened upon the submission of offer, the Contractor must present a release certification from its responsible tax office to AVL in accordance with § 48 b EStG without delay after conclusion of contract. If the temporal validity expires, it shall submit a new certification without prompting. A copy of a temporally limited release certification (3 years as a rule) can be submitted to AVL. The original of a release certification restricted to the order must be handed over to AVL. The Contractor is obliged to inform AVL without delay in writing of every change made by its responsible tax office with regard to the submitted release certification.

14.2 If AVL does not have a valid release certification in accordance with § 48b EStG at the due date for one of the Contractor's claims, the Contractor must notify its tax number, the tax office responsible for it and details of its bank account without delay. Without regard to this, AVL shall deduct any taxes and contributions incurred from the due payment in accordance with §§ 48 ff. EStG. The Contractor must declare these tax deductions as payment for working wages. AVL shall handover a copy of the tax registration made to the Contractor for every deduction as a settlement voucher.

15. SECURITIES

15.1 Fulfilment of contract

As security for the fulfilment of contract, the Contractor shall furnish AVL upon conclusion of contract a contract fulfilment bond not limited by time, payable on first request, from a bank or credit insurer conforming to the requirements of § 17 Para. 2 VOB/B amounting to 10% of the gross order sum. Security for the fulfilment of contract covers the fulfilment of all the Contractor's obligations under this contract up to acceptance, in particular, the execution of the work conform to contract, including settlement, claims due to defects, claims to damages and claims to recourse and release from this contract. It furthermore covers the reimbursement of over-payments and under processing relationships (for example, the justified termination of the contract by AVL), plus interest. It furthermore secures claims due to non-payment of the minimum remuneration (§ 14 AEntG) / minimum wage (§ 13 MiLoG) and due to non-payment of contributions to the holiday scheme (§ 14 AEntG).

The bond must waive the objection of contestability and the benefit of discussion in accordance with §§ 770, 771 BGB. Furthermore, the bond must waive offsetting, unless the Contractor's claim is not disputed or has been established by a court of law. The right of deposit must be excluded.

The expiry of the claims covered by the bond under limitation of time may not occur before the expiry of the claims insured by the bond, although at the latest 30 years after the start of limitation by time under law. The maturity of the bond requires a written availment of the bond by

AVL, thereby stating the amount.

§ 17 Para. 8 No. 1 VOB/B applies to the return of this bond.

15.2 Claims due to defects

As security for claims due to defects, the Contractor shall submit to AVL following acceptance a bond not limited by time, payable on first request, from a bank or credit insurer complying to the requirements of § 17 Para. 2 VOB/B amounting to 5% of the gross sum of the final invoice. The security of claims due to defects covers the fulfilment of claims due to defects following acceptance (including rework, refund of damages, cost advances and diminution), the reimbursement of over-payments plus interest and of claims to recourse and release under this contract including any additional work performed.

This furthermore covers claims due to non-payment of the minimum remuneration (§ 14 AEntG) / the minimum wage (§ 13 MiLoG) and due to non-payment of contributions to the holiday scheme (§ 14 AEntG). The bond must be made out for the duration of the agreed expiry under the limitation of time for claims due to defects. The expiry of the claims covered by this bond under limitation of time may not occur before the expiry of claims insured by this bond. § 202 Paragraph 2 BGB (Ban on extending the limitation period beyond a period of 30 years) remains unaffected.

The bond must waive the objection of contestability and the benefit of discussion in accordance with §§ 770, 771 BGB. Furthermore, the bond must waive offsetting, unless the Contractor's claim is not disputed or it has been established by a court of law. The right of deposit must be excluded.

The expiry of the claims covered by the bond under limitation of time may not occur before the expiry of the claims insured by the bond, although at the latest 30 years after the start of limitation by time under law. The maturity of the bond requires a written availment of the bond by AVL, thereby stating the amount.

AVL must return a security not exploited for its claims due to defects after acceptance once the agreed warranty time has expired. However, if its claims pursued have still not been fulfilled at this date, AVL is entitled to retain a corresponding part of the security.

15.3 Each bond must contain the declaration that the right of depositing the amount of the bond must be excluded. It must likewise be ensured that German law applies exclusively to disputes arising from such a bond and that disputes arising from the bond are conducted at AVL's headquarters.

15.4 The Contractor bears the costs of bonds.

15.5 § 17 Para. 3 VOB/B remains unaffected.

16. INCLUSION OF AVL'S GENERAL TERMS OF PURCHASE

As a supplement to these GTT, items 2.1 to 2.3, 2.6, 3.2, 3.4, 5.2 to 5.4, 9, 10.3, 12 and 13 of the General Terms of Purchase of AVL Emission Test Systems GmbH, which can be called up at <https://www.avl.com/-/avl-ets-company> or <https://srm.avl.com>. At the Contractor's written request, AVL shall send these General Terms of Purchase to the Contractor.

17. CONCLUDING PROVISIONS

17.1 Changes and supplements to these provisions require the written form. The same applies to the waiver of this clause of written form itself.

17.2 Should one or more provisions in these terms of purchase and/or any other contracts concluded between the parties be or become unworkable, or if it transpires that they contain a loophole, this shall not affect the validity of the remaining provisions. In such a case, the unworkable provisions shall be replaced or the loophole closed by reasonable, admissible regulations which the parties would have wished or which they would have chosen in the sense and purpose of the provisions, if they had considered the unworkability or the loophole in the first place.

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- 17.3 The place of fulfilment for work and deliveries is the place stated in the single contract where performance is to be provided. The place of fulfilment for payments is the business headquarters of AVL.
- 17.4 The exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship is Neuss. However, we are entitled to instigate action at the headquarters of the Contractor.
- 17.5 The parties agree that German law shall prevail exclusively over all legal affairs under this contractual relationship, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and other international reference norms.