

# General Terms of Trade for the Work Contracts of AVL Emission Test System 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. THE CONTRACTOR'S PERFORMANCE

- 2.1 The Contractor owes the success of the work actually commissioned.
- 2.2 At the start of work, the Contractor shall nominate a contact person to AVL, who is authorised to receive declarations. All communications in the existing contractual relationship run through this person. A new contact person must be nominated in the written form.
- 2.2 In case of work on AVL's premises, the Contractor is obliged to strictly comply with the prevailing "Safety regulations for outside firms / temporary workers", the "Safety regulations concerning the use of hazardous substances and/or poisons" and AVL's Fire Protection Directive. The Contractor shall find out from AVL about such provisions before starting its work for AVL. The Contractor is obliged to inform the full contents of the aforesaid regulations to its employees and to other third parties it deploys on the premises of AVL, and to check that these regulations are being complied with. The Contractor shall submit a protocol signed in the own hands of its employees and any other third party it deploys to work on the premises of AVL concerning instruction about the aforesaid safety regulations to AVL's project management before starting work on the premises of AVL. This protocol shall contain the full name of the person and his/her vehicle number plate. If additional employees or third parties are deployed on the premises of AVL whilst the work ordered is being performed, their data must likewise be submitted without prompting along with evidence of their instruction. If the Contractor is still not aware of these safety regulations, it must request these from AVL. Serious violations against the safety regulations (e.g. against the ban on photography) entitle AVL to immediately impose a site ban against the person who has violated the safety regulations.
- 2.3 2.2 applies accordingly to the safety regulations of a customer of AVL, if the Contractor works on the premises of a customer of AVL on behalf of AVL. The Contractor will find out about such provisions from AVL before starting its work at a customer of AVL on behalf of AVL.
- 2.4 The Contractor may not deploy subcontractors unless it has obtained written approval from AVL in advance.

## 3. CONTENT OF CONTRACT

- 3.1 AVL's orders are based on the Contractor's offers. Offers must contain all the main details for the provision of performance/delivery, in particular, the following:
  - the exact scope of performance
  - the fixed price. Among other things, this includes all the Contractor's costs of materials and wages and all its travel expenses and other auxiliary costs
- 3.2 The contract does not enter force until accepted by AVL in writing ("single contract").

## 4. CHANGES TO PERFORMANCE AND EXTRA WORK

- 4.1 AVL can demand changes to the contractual work at any time. The Contractor can protest against the Change Request, insofar as its operations are not able to cope with the execution of the Change Request, within three work days from receiving the Change Request. The Contractor

shall present a new written offer for the change of work, which takes account of the extra or lower costs caused by the change. Additional work may not be performed until a written rider has been concluded to the single contract; otherwise it will not be remunerated.

- 4.2 The Contractor's new offer must be able to be reviewed and based on the principles of calculation originally agreed between the parties.

## 5. PROVISION OF WORK

- 5.1 The Contractor guarantees that its work fulfils the basis of a state of the art (in accordance with the standards of the European automobile industry) project management (in particular, with regard to tracking dates, costs and quality) over the entire project.
- 5.2 AVL and the Contractor shall agree regular meetings to coordinate and track the work. These will check the progress of the project and, if necessary, outline corrective action. The regular meetings shall be held as telephone/Skype conferences and face-to-face meetings with AVL, the Contractor or the customer of AVL.
- 5.3 Reports are submitted according to the stipulations of AVL. AVL will provide appropriate monitor sheets to the Contractor.
- 5.4 All documentation shall be prepared in the language(s) defined in the single contract.
- 5.5 If the Contractor does not provide its work properly, AVL reserves the right to take appropriate acceleration action to ensure that the work ordered is fulfilled (e.g. by ordering additional capacities) at the Contractor's expense.
- 5.6 If the Contractor makes use of AVL's operating resources to provide its work, it must pay the remuneration for this, which shall be detailed in the offer as a price reduction.

## 6. REMUNERATION AND PAYMENT

- 6.1 Unless something different has been agreed in the single contract, payments are made only on completion of the service. Payment of the agreed remuneration includes all the Contractor's work/deliveries, including the assigned rights. There is no claim to further remuneration beyond this.
- 6.2 Discounts granted to the Contractor in a single contract also apply to additional work ordered for this single contract.
- 6.3 The prices agreed include everything required for the proper performance of all the Contractor's work.
- 6.4 Unless agreed otherwise in writing, payments are made after performance of the work conform to contract and receipt of a proper invoice able to be reviewed after 14 days at 2% discount or 30 calendar days net.

## 7. CONTRACTUAL FINE AND PARTICULAR RISKS

- 7.1 A detailed project schedule for the individual work/deliveries in each project is a component of each single contract.
- 7.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 In case contractual fines are imposed for culpably missing milestones agreed as contractual deadlines, these are offset against contractual

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finer 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.

- 7.6 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.
- 7.7 The amount of the contractual fine agreed is limited to 5% of the overall, net order sum.
- 7.8 AVL can pursue a contractual fine imposed up to the final payment.
- 7.9 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.
- 7.10 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. ACCEPTANCE AND TRANSFER OF RISK

- 8.1 The Contractor cannot demand acceptance of its work until the contractually owed performance has been provided in full. The acceptance criteria (including acceptance testing and written acceptance protocol) are defined in the single contract.
- 8.2 Acceptance of the Contractor's total performance is made on a formal basis. The same applies to the acceptance of defects rectified.
- 8.3 Unless a different agreement has been made, partial acceptances are excluded. Reviews and tests of intermediate results and the release of part-payments are not acceptance.
- 8.4 AVL's payments to the Contractor do not mean acceptance of the Contractor's work without reservation.
- 8.5 The Contractor bears the risk for its work as per contract up to the formal acceptance of the work by AVL.

## 9. GUARANTEE

- 9.1 The Contractor guarantees that its work/deliveries are free of defects and complete, including the associated product documentation and delivery papers. In particular, it warrants that the knowledge, work results, processes and documents it presents in the course of the order are correct, usable, complete, according to specifications and documented.
- 9.2 The guarantee runs for 36 months from the date of acceptance.

## 10. INSURANCE

The Contractor is obliged to maintain reasonable coverage with an insurance sum of at least EUR 5,000,000 per case of damage applicable across the world (including the USA/Canada) for an appropriate time after the contract has ended (at least ten years) in order to cover all the risks arising from the present insurance relationship (in particular, operational liability, product liability, extended product liability, including costs of disassembly and re-assembly and the costs of testing, sorting and of vehicle call-backs). Evidence of this insurance cover must be presented within ten days from conclusion of the single contract without further prompting. The Contractor shall notify AVL in writing without further prompting of every change in its insurer in the time after the contract has ended.

## 11. RIGHTS TO THE RESULTS OF WORK/PROTECTED RIGHTS

- 11.1 The results of work in the sense of these provisions consist of all knowledge acquired in the performance of the single contract, including all inventions, regardless of whether these are able to be protected and regardless of whether these are recorded, stored or embodied as drawings, descriptions, trial arrangements, models, devices or systems (referred to below as the "results of work"). All the results of work which arise, whether or not they are able to be protected, must be documented by the party by whom they arise.
- 11.2 All results of work derived by the Contractor become the exclusive, unlimited property of AVL immediately they arise. They must be notified and made available to AVL without delay. The same applies to inventions or shares in inventions made by the Contractor. The Contractor assigns all rights to such inventions or shares in inventions to AVL without limitation. If AVL waives the rights to inventions or shares in inventions in full or in part, the Contractor is not entitled to pursue the rights to such inventions or shares in inventions (e.g. own use, applying for protected rights, issuing licenses to third parties etc.). Inventions or shares in inventions are settled by the remuneration agreed in section 6 of these GTT.
- 11.3 With regard to the patents accruing to the Contractor in the context of the work contract, it grants AVL the unlimited right to use the work, free-of-charge, on a long-term basis.
- 11.4 The Contractor is obliged to provide services/deliveries that are free from third party protected rights. The Contractor is liable for the fact that the protected rights of third parties are not violated in the execution of the contract or in the use of the object of contract. Insofar, the Contractor shall release AVL from justified claims pursued by third parties due to protected rights.

## 12. DURATION OF CONTRACT AND NOTICE OF TERMINATION

- 12.1 The duration is agreed in the single contract.
- 12.2 Termination with immediate effect can be served on each single contract if the opposing party has violated a cardinal contractual duty and this infringement has not been rectified within a reasonable period, despite a written reminder.
- 12.3 AVL can terminate a single contract with immediate effect in the following cases:
  - (i) The Contractor is in default with its work/deliveries for more than three months due to an unforeseeable event over which it has no control;
  - (ii) The contractor's ownership relationships change in such a way that major interests of AVL are affected. This is particularly the case if a competitor of AVL acquires shares in the Contractor;
  - (iii) The customer of AVL or AVL itself rescinds the end customer contract on which the single contract is based.
- 12.4 Notice must be served in writing (not by fax or e-Mail) with proof of delivery.
- 12.5 In case AVL ends the contract prematurely, the Contractor shall receive remuneration for all the costs it has incurred and can demonstrate up to the date of termination under the single contract which has been terminated. The Contractor has no claim whatsoever against AVL beyond this.

## 13. INCLUSION OF AVL'S GENERAL TERMS OF PURCHASE

As a supplement to these GTT, items 2, 3.1, 3.2, 3.4 to 3.10 and 3.12, 4.2 and 4.3, 5, 8, 9, 11, 12 and 13 of General Terms of Purchase of AVL Emission Test Systems GmbH apply, which can be called up at <https://www.avl.com/-/avl-ets-company> or at <https://srm.avl.com>: At the Contractor's written request, AVL shall send these General Terms of Purchase to the Contractor.

## 14. CONCLUDING PROVISIONS

- 14.1 Changes and supplements to these provisions require the written form.

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The same applies to the waiver of this clause of written form itself.

- 14.2 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.
- 14.3 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.
- 14.4 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 supplier.
- 14.5 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.