

## **1. Scope of application**

- 1.1. The following General Terms and Conditions (GTC) shall apply exclusively to all deliveries and services of tectos gmbh (hereinafter referred to as “tectos”) provided for another company (hereinafter referred to as “Contractual Partner”) as well as to any resulting rights and obligations.
- 1.2. Any conflicting or deviating terms and conditions of the Contractual Partner shall only become integral part of the contract if tectos submits to them expressly and in writing. Accordingly, the present GTC of tectos shall also apply if tectos provides deliveries and services without reservation while being aware of conflicting or deviating terms and conditions of the Contractual Partner.
- 1.3. The present GTC of tectos shall apply to all current and future business transactions with the Contractual Partner, even if no express reference is made to them.
- 1.4. The current version of the GTC that applies to the contractual relationship is available at [www.tectos.at](http://www.tectos.at). The German original version shall apply; other versions are provided for convenience only.
- 1.5. tectos shall be entitled to change the present GTC. The modified GTC shall also apply to existing contractual relationships and shall be published at the tectos homepage (and/or shall be sent to the Contractual Partner upon request).

## **2. Offer and conclusion of contract**

- 2.1. Unless expressly described as binding, any offers submitted by tectos to the customer shall not be binding.
- 2.2. A contract shall be deemed concluded between tectos and the Contractual Partner if tectos has issued a written order confirmation after having received a written purchase order or job order or if tectos has started the actual performance (e.g. preparation of a calculation model).

## **3. Cost estimate**

- 3.1. Cost estimates prepared by tectos shall be subject to a fee; they are prepared by tectos to the best of their knowledge and ability. The correctness of estimates shall not be guaranteed. Should there be a cost increase of less than 15% after the order has been placed, such costs shall be invoiced without

separate notification to the Contractual Partner. Should the costs increase by more than 15%, tectos shall inform the Contractual Partner without delay.

- 3.2. Unless otherwise agreed, any order changes or additional orders may be invoiced at reasonable prices.

#### **4. Confidentiality**

- 4.1. The Contractual Partner hereby irrevocably undertakes to keep all trade and business secrets that are made available or provided to them by tectos or that have otherwise become known to them in connection or on the basis of a business relationship with tectos strictly confidential and not to disclose them to third parties in any manner without tectos' consent.

- 4.2. Content and concept of the offer prepared by tectos shall remain the sole property of tectos, who shall also be solely entitled to the exclusive right to use the work and/or service. If no contract is concluded with tectos, all project documents and developments shall be returned to tectos. Even if a contract is concluded, the Contractual Partner shall not be permitted to copy the offer or any other project documents or make them available to third parties, unless the Contractual Partner has obtained the express written consent of tectos.

- 4.3. All records, documents, developments and other documents that have been provided to the other party thereto, in whatever form, shall remain the exclusive property of the providing party. They shall be kept confidential by the receiving party and only used by the latter for the work during the term of the contract.

- 4.4. The Contractual Partner shall be authorised to pass on the information received in the manner described above on a "need to know" basis only, and to use it only within the framework of the related contract.

- 4.5. This confidentiality obligation shall remain valid for 3 years after termination of the business relationship with tectos, and for 3 years after tectos has issued the related offer irrespective of any business relationship.

- 4.6. Every time the Contractual Partner violates the obligations stated in item 4.1, the Contractual Partner shall pay a penalty in the amount of EUR 10,000.00. tectos' right to claim further damages as well as injunctive relief shall remain unaffected.

- 4.7. Likewise, tectos shall not pass the content and concept of the offer on to third parties. If tectos has engaged third parties with the performance of the contract, they shall commit such third parties to the confidentiality obligation stated here in.

## **5. Content and execution of the contract**

- 5.1. If a written order confirmation is issued, such order confirmation and the related written agreements of the parties thereto referring to them shall be exclusively relevant for content and scope of the contract, unless otherwise agreed expressly in writing. Details given in brochures, catalogues and other sales materials shall only be binding to tectos if express reference is made to them in the order confirmation.
- 5.2. Modifications and supplements to the contract shall only be effective if tectos give their express written consent. If additional costs arise due to such modifications or due to circumstances tectos was not aware of at the time the order was placed, such costs shall be invoiced separately to the customer.
- 5.3. If the creation and delivery of software forms the subject matter of the contract, the content and scope of the contract shall be the specification to be signed by both parties thereto (system analysis). The delivery shall include the program code that can be executed on the described facilities and a program description. All rights to the programs and to the documentation shall remain with tectos, unless expressly otherwise agreed in writing.
- 5.4. The Contractual Partner shall inform tectos about and provide them with all technical data relevant to the performance of the works and services (such as drawings, models, etc.) and other information, and obtain any necessary consent from third parties. If changes occur in this regard during the execution of the contract, the customer shall inform tectos without delay.
- 5.5. tectos shall not be obliged to check the completeness and correctness of data, information and other works or services provided by the Contractual Partner, and shall not be liable for any damage as a consequence of faulty or incomplete information on part of the customer.
- 5.6. After the works or services under the contract have been performed, all documents provided to the Contractual Partner shall be returned.
- 5.7. All notifications of the Contractual Partner to tectos shall be made in writing.
- 5.8. The Contractual Partner shall inform tectos immediately and in writing about any changes to their name or address. If such notification is not given, documents shall be deemed received by the Contractual Partner if they are sent to the address last notified by the latter. Any changes requested with regard to invoices shall not lead to the postponement of the due date.
- 5.9. tectos shall be entitled, after prior notification to the Contractual Partner, to engage third parties in their name and at their cost for the execution of the contract or individual works or services under the contract; such approach

shall not adversely affect the Contractual Partner's interests. tectos shall be liable for the conduct of the third party engaged by them in the same manner as tectos is liable for their own conduct.

## **6. Prices and terms of payment**

- 6.1. The prices of tectos shall be stated in EUR. The statutory value added tax shall be invoiced additionally in the applicable amount.
- 6.2. Unless otherwise agreed, the agreed prices shall apply ex works of tectos excluding packaging and loading. Such prices shall not include the costs for transport, assembly or set-up. If duties are charged in connection with the delivery, they shall be borne by the Contractual Partner. If deliveries include shipment, this as well as any transport insurance requested by the customer shall be charged separately.
- 6.3. The services including the training and familiarisation of the Contractual Partner's employees shall be charged according to the applicable service price list. Should the services be provided on Saturdays/Sundays and during times other than the regular working hours (Monday to Thursday from 09.00 am to 05.00 pm, Friday from 09.00 am to 01.00 pm) and on public holidays, a surcharge in the amount stated in § 10 para. 1 clause 1 of the Austrian Working Times Act shall be charged. The normal hourly rate set out in the price list shall be taken as a basis for the calculation of the fee.
- 6.4. Any travel costs and out-of-pocket expenses accruing during the execution of the order shall be borne by the Contractual Partner in addition to the agreed price.
- 6.5. Both any sums payable and any additional claims shall expressly retain their value. The consumer price index disclosed monthly by the Austrian Central Statistical Office or any index replacing it shall be the benchmark for the calculation of value retention. The index number calculated for the month the contract is concluded shall be the reference value. Any upward or downward fluctuations of the index number up to and excluding 3% shall not be taken into account. This leeway shall be recalculated with every upward or downward fluctuation of more than 3%; in doing so, the first index number outside the applicable leeway shall always be the basis for both the new determination of the claimed amount and for the calculation of the new leeway. The resulting amounts shall be rounded up to one decimal.
- 6.6. If partial deliveries are made, partial invoices shall be permitted.
- 6.7. The compliance with the agreed prices requires that items the contract is based on remain unchanged and may be provided without any impairments attributable to the Contractual Partner. Any subsequent extensions and

changes causing additional costs shall be remunerated by the purchaser in addition.

- 6.8. Payments shall be due without deduction within 30 days from invoice date.
- 6.9. If payment deadlines are missed or if payment instructions are ignored, all sums payable shall become due immediately without a separate reminder upon the expiry of the agreed deadline (immediate maturity). If partial payments have been agreed, the payment deadline shall be deemed to have been missed if one partial payment is not made in time or in the full amount. If such deadline is missed, the entire outstanding residual amount shall be due for payment immediately.
- 6.10. If the payment deadline is missed, tectos shall be entitled to take the goods delivered under reservation of ownership into custody without withdrawing from the sales contract until the entire sum payable plus additional costs has been settled in full.
- 6.11. If payment is delayed, tectos shall be entitled to charge all costs required for the relevant debt recovery procedure plus default interest in the amount of 18 percent p.a.
- 6.12. In addition, if payment is delayed, all collection costs as well as a reminder processing fee in the amount of EUR 10.00 per reminder shall be charged.
- 6.13. The claim for any further damages caused by delay shall remain reserved, irrespective of any fault of the Contractual Partner.
- 6.14. Any objections to the invoiced claims shall be raised by the Contractual Partner within 30 days from invoice date; otherwise, the claim shall be deemed acknowledged.
- 6.15. The Contractual Partner shall not be entitled to retain or reduce any payments on the basis of claims asserted against tectos.

## **7. Reservation of ownership**

- 7.1. The works or services under the contract shall remain the property of tectos until complete payment of the purchase price including any additional claims by the Contractual Partner. The Contractual Partner shall take all legal precautions for the protection of tectos' property, i.e. any pledge, transfer by way of security or other exploitation shall be prohibited.
- 7.2. The Contractual Partner shall adequately insure the goods obtained from tectos, e.g. against theft, vandalism, water and fire.

- 7.3. If the insured item is damaged or destroyed, the Contractual Partner shall hereby assign to tectos the rights and claims that they have against the damaging party and the latter's insurer or that they have against their own insurer in order to guarantee our rights. tectos shall hereby accept such assignment. After the business relations have been settled, tectos shall transfer the assigned claims back.
- 7.4. After tectos have taken back the goods, withdrawn from the contract or set a deadline that expired unsuccessfully, tectos shall be entitled to freely dispose of the goods they have taken back. The resulting proceeds shall be credited to the Contractual Partner. The credited amounts shall be offset against the sums owed to tectos.
- 7.5. Any standard software included in the delivery shall be subject to such licence terms that are agreed by the Contractual Partner directly with the relevant software producer, such as Microsoft, SAP or third party providers.

## **8. Delivery, acceptance and default**

- 8.1. Delivery dates shall be the estimated time of provision and handover to the Contractual Partner and shall be met, where possible. However, these dates shall not be binding, unless they have been expressly agreed as binding.
- 8.2. The purchaser may only withdraw from the contract due to delay in delivery after they have set a reasonable grace period of at least two weeks. The withdrawal shall be notified by means of registered letter. The right to withdraw shall only refer to such part of the delivery or service that is in default.
- 8.3. If binding delivery dates are agreed in writing in individual cases, the purchaser shall be entitled to withdraw from the contract if the delivery date is not met; any further claims shall be excluded.
- 8.4. The Contractual Partner shall accept any minor exceedance of the deadline without being entitled to any right of withdrawal or claim for damages.
- 8.5. tectos shall be released from the obligation to deliver if circumstances occur that make the production or delivery of the goods impossible or excessively hard, such as difficulties in the procurement of raw materials, which may also arise subsequently, as well as all cases of force majeure, interruption of operations, strikes, traffic obstructions and the like.
- 8.6. tectos shall be entitled to make partial deliveries, unless they fall short of the reasonable minimum.
- 8.7. If the purchaser incurs a loss due to a delay in delivery attributable to tectos , the Contractual Partner may demand such loss to be compensated at no more

than 5% of the value of the affected part of the total delivery. Any further claims in case of delay in delivery, particularly claims for damages, shall be excluded according to the provisions set out in item 13 (Liability).

- 8.8. The Contractual Partner shall accept the deliveries and services provided by tectos. If partial deliveries are agreed, partial acceptance shall be permitted.
- 8.9. If the goods notified as ready for shipment are not taken over immediately by the Contractual Partner, tectos shall be entitled, at their discretion, to send the goods or to store them for 6 weeks at the cost and risk of the Contractual Partner. The storage fee shall be EUR 5.00. If the goods are dispatched, unless otherwise specifically agreed, tectos shall select the means and route of transport.
- 8.10. At the same time, tectos shall be entitled to either insist on the execution of the contract or to withdraw from the contract, after having set a reasonable grace period, and to otherwise dispose of the goods. If the goods are disposed of, a penalty in the amount of EUR 1,000.00 shall be deemed agreed.
- 8.11. The Contractual Partner shall take receipt of delivered items, even if they show any defects.
- 8.12. If installation works have been agreed, the work shall be deemed accepted at the earliest of the following:
- when acceptance is confirmed by the Contractual Partner or their end customer;
  - when the installed delivery or service has been commissioned by the Contractual Partner or their end customer;
  - four weeks after the installation at the latest.
- 8.13. Any services and force account work shall be accepted upon actual completion.
- 8.14. If the Contractual Partner identifies significant defects after acceptance, they shall be entitled to have them eliminated by tectos in line with the warranty.

## **9. Transfer of risk**

- 9.1. Costs and risk of transport shall be borne by the Contractual Partner. The risk shall be transferred to the Contractual Partner upon the handover to the means of transport and/or upon the start of storage.
- 9.2. If the subject matter of the contract is data, the risk of loss and/or modification of the data shall be transferred to the Contractual Partner, with download and dispatch via the Internet, upon the crossing of the tectos network interface.

9.3. If the dispatch or delivery is postponed at the Contractual Partner's request or for reasons attributable to the latter, the risk shall be transferred to the purchaser for the time of the postponement from the day of readiness for dispatch.

## **10. Intellectual property rights**

10.1. Any know-how, ideas, inventions and patents existing and introduced into the development of the relevant works or services under the contract or developed in the course of the performance of the contract shall remain the exclusive intellectual property of tectos.

10.2. Apart from the above conditions, the Contractual Partner shall receive the following free and non-exclusive permits to use the work after they have fulfilled their financial obligations based on the contract, in accordance with the following types of use, the right to process not being granted:

- a) to use all ideas, know-how and inventions of tectos according to item 10.1 that are relevant for the execution of the contract, patented or not, for the fulfilment of the contractual purpose, but for no other purposes;
- b) to use the findings, documents and documentations of tectos that are relevant for the fulfilment of the contract; the Contractual Partner being obliged to keep all project documents provided by tectos confidential;
- c) to copy the documents relevant for the fulfilment of the contract for their own use.

10.3. If claims are asserted against the Contractual Partner due to the violation of proprietary rights of third parties during the normal use of the contractual item, they shall inform tectos immediately (within two working days) and in writing. They shall not issue any statements, acknowledgements or settlement suggestions to the claimant. tectos shall defend the claim or modify the contractual item accordingly. If the customer is permanently not permitted to use the product as intended in the contract due to a violation of existing proprietary rights of third parties, tectos shall, depending on the degree of economic efficiency:

- modify the contractual item so that it no longer violates any rights;
- acquire the necessary rights to the violated proprietary rights for the Contractual Partner.

10.4. Apart from the above provisions, tectos shall not assume any liability for agreements or settlements that concern the Contractual Partner and products other than the ones sold and produced by tectos. In no event shall tectos assume any liability for:



- any direct or indirect damage occurred due to infringement;
  - costs of proceedings or other hearings of the Contractual Partner and/or any compensations granted to third parties for the violation of their proprietary rights.
- 10.5. If proprietary rights of third parties are violated, the Contractual Partner shall indemnify tectos and hold the latter harmless with regard to:
- contractual items that have been created exclusively on the basis of drawings, plans or other instructions of the Contractual Partner;
  - contractual items that have been designed by tectos, but produced by a third party;
  - components, parts, etc. that have been provided to tectos by the Contractual Partner;
  - claims based on the installation, use, development or modification of the contractual item by the Contractual Partner or by a third party commissioned by the customer.
- 10.6. When software is created and delivered, unless otherwise agreed, tectos shall grant the Contractual Partner a non-transferable, non-exclusive permit to use the contractual software for the purposes of their company. The Contractual Partner shall furthermore be authorised to copy printed or machine-readable parts of the software to the extent required for any use in conformity with the contract.
- 10.7. The Contractual Partner undertakes to comply with the licence terms applicable to the third-party software included in the delivery and with any terms of use, such as in case of “shareware” or “public domain”, and not to pass on or copy the software. In case of non-compliance, the Contractual Partner shall indemnify tectos and hold them harmless.

## **11. Warranty**

- 11.1. The warranty obligation shall be 6 months and 3 months for software, from acceptance.
- 11.2. The existence of defects shall be proven by the Contractual Partner. § 924 of the Austrian Civil Code [ABGB] shall not apply.
- 11.3. The Contractual Partner shall check the contractual item for defects immediately after receipt and notify any defects to tectos within seven working days in writing and in detail. Defects identified later shall also be notified in this form within 7 days after the defects have been identified. If this obligation to check and notify defects is not met, the customer's claims for warranty, damages due to the defect and claims based on a mistake regarding the freedom from defects of the item shall lapse.

- 11.4. If there is a defect attributable to tectos, tectos shall eliminate such defect, at their discretion, by subsequent improvement or exchange. Rescission and price reduction shall be excluded. If software is created and delivered, the warranty shall be limited to reproducible (permanently repeatable) defects in the program function.
- 11.5. Any warranty claims of the customer beyond this provisions shall be excluded, in particular, compensation for damage that has not occurred on the contractual item itself. This shall not apply to the extent mandatory liability applies in cases of intention, gross negligence or lack of properties assured by tectos.
- 11.6. § 933b shall not apply. Therefore, all recourse claims shall be excluded after the expiry of the warranty period.
- 11.7. If tectos eliminates defects outside the warranty or renders other services or force account work, they shall be charged according to the valid price list of tectos according to the actual expenditure.
- 11.8. No warranty shall be assumed in the following cases:
- unsuitable or improper use or treatment;
  - assembly or commissioning by the Contractual Partner or a third party;
  - non-compliance with the installation requirements and operating conditions;
  - normal wear and tear and excessive use;
  - use of unsuitable operating materials and processing by the customer with products of a different origin;
  - violation of intellectual property rights of third parties that arise due to the fact that tectos has produced and delivered according to drawings and instructions provided by the customer.
- 11.9. If software is created and delivered, in addition to the cases described above, no warranty shall be assumed
- if the Contractual Partner has carried out or has had carried out by third parties program changes, additions or other interventions;
  - if the software has been contaminated by computer viruses on part of the Contractual Partner;
  - for software independently retrieved by the Contractual Partner (“public domain” or “shareware”); or
  - if unsuitable data carriers are used.
- 11.10. Moreover, tectos shall not assume any warranty
- that the delivered software meets all requirements of the Contractual Partner (unless they have expressly been agreed in the contract);

- that the programs run error-free and without interruption;
- that the software cooperates with other programs of the Contractual Partner; or
- that all software errors can be eliminated.

## **12. Assignment of rights and obligations, transfer of rights**

- 12.1. The transfer of rights and obligations under the contract by the Contractual Partner to third parties shall be subject to the prior express written consent of tectos. This shall also apply to any other grant of a right, such as the grant of a licence or any other provision, in law or in fact, regarding the entire contract or parts of it.
- 12.2. All rights and obligations under the contract shall be transferred to the relevant legal successor. Unless it is a universal succession, each party thereto shall transfer the rights and obligations under the contract to the legal successor.

## **13. Liability**

- 13.1. tectos shall only be liable for damage to the delivered goods themselves, and only in case of intention, gross negligence or intentional or negligent violation of essential contractual obligations, but not for damage caused by slightly negligent behaviour of tectos or their agents. Other and further claims of the Contractual Partner, particularly for lost profit, lost savings, consequential damage, financial damage, loss of interest and damage based on claims of third parties, also based on product liability, against tectos shall be excluded in all cases; this limitation of liability shall not apply in dealings with consumers.
- 13.2. The amount of damages shall be limited to three times the order value (but to the maximum of EUR 10,000.00). The order value shall be the remuneration for the delivery of the contractual item.
- 13.3. The above liability provisions shall not affect the liability for personal injuries and the statutory product liability.
- 13.4. If liability is limited, this shall also apply to the personal liability of workers, employees, representatives and vicarious agents of tectos.
- 13.5. Any claims for damages shall become statute-barred 6 months after the damage and the damaging party have become known. In cases of intentional violation or grossly negligent breach of duty and malicious concealment of defects as well as claims for damages according to the Product Liability Act, the statutory limitation provisions shall apply.

**14. Exclusion of set-off**

The Contractual Partner shall not be entitled to offset any claims of tectos against any outstanding claims against tectos, unless tectos becomes insolvent or the counter-claim is undisputed and established as final and absolute.

**15. Place of performance, place of jurisdiction, applicable law, severability clause**

- 15.1. Place of performance for both contractual parties shall be the registered office of tectos in Graz.
- 15.2. Place of jurisdiction for all disputes arising from contracts with the customer shall be the competent court at tectos' registered office in Graz.
- 15.3. Austrian substantive law shall apply exclusively. The United Nations Convention on Contracts for the International Sale of Goods shall be excluded.
- 15.4. Should any provision of the above terms and conditions be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by such provision that comes closest to the economic purpose of the contract by reasonably maintaining the mutual interests of the parties.
- 15.5. Any modifications or amendments to the contract shall be made in writing. This shall also apply to the modification of this written form requirement.

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