



**GENERAL TERMS AND CONDITIONS OF PURCHASE FOR  
STRUCTURAL ENGINEERING AND CIVIL ENGINEERING  
SERVICES  
(GTCP-ENG)**

Version February 2019

(1) The Customer – as named in the purchase order – is a company belonging to the Telekom Austria Group, hereinafter referred to as “Customer”.

(2) The Contractor is any company that concludes a contract with the Customer on the basis of the conditions set down in this document, hereinafter referred to as “Contractor”.

(3) These General Terms and Conditions of Purchase for Structural Engineering and Civil Engineering Services (GTCP-ENG) form an integral part of all contracts concluded with the Customer. The GTCP-ENG shall apply irrespective of any references made by the Contractor to its own general terms and conditions or any other of its own contracts or business which shall have no legal effect, even if the Customer does not expressly raise any objections to them. However, the foregoing applies even if the services provided by the Contractor are unconditionally accepted although the Customer is aware of the Contractor’s conditions, which are contrary to or deviate from this GTCP-ENG.

**1. Contractual bases**

The mutual rights and obligations are based on the following documents and shall apply in the following order of precedence:

- a) the purchase order
- b) this GTCP-ENG

**2. Requirements, provision of services**

**2.1 General requirements**

All deliverables and services shall be required to evince the properties specified in the order or in the contractual Agreement, or those agreed by the Contractor; in cases of doubt, these are to be properties customary to the trade. Furthermore, they must comply with the applicable safety regulations and all other appropriate legal provisions (particularly relevant ÖNORMEN [Austrian Standards] and industry standards), duly taking into account state-of-the-art technology.



### **2.1.1 Place of performance**

(1) It shall be agreed that the place of contractual service provision shall be identical to the place of performance. Unless otherwise agreed, the place of performance shall be the destination specified by the Customer in the order, whereby the delivery will be executed at the Contractor's cost and risk. If no destination has been specified in the order, the Contractor shall ask the Customer to name a destination and the Customer shall be free to choose any place in Austria or in any country according to the contract receiving the object of agreement. Unless otherwise agreed, deliveries shall be made on working days (excluding Saturdays) between 9 a.m. and 3 p.m., however, on Fridays only until 12:00 noon. Deliveries shall be announced via phone or email. Expenses for repackaging of deliveries whose packaging fails to meet the requirements of logistics as well as for the absence of the EAN code shall be reimbursed to the Customer.

### **2.1.2 Performance timelines**

(1) All deadlines connected with contractual service provision shall start on the working day following contractual service provision. Performance incorporates the execution of all construction services, including restoration and the requisite building documentation and direct services.

(2) The Contractor is obligated to start work at the time stipulated by the Customer. Construction services are to be provided in consultation with the Customer.

### **2.1.3 Workers of the Contractor**

(1) In connection with the provision of the services Contractor shall only assign the number of workers necessary for the project.

(2) The workers must possess the appropriate skills and experience, be sufficiently well-versed in the German language, and provided with appropriate tools and the necessary equipment. Workers, who are unsuitable or who are not appropriately equipped shall be rejected by the Customer. Upon request, they are immediately to be replaced by suitable workers. The same shall apply to equipment, tools and means of transportation.

(3) The Contractor undertakes to comply with the legal regulations governing the employment of foreign workers and shall indemnify and hold the Customer wholly harmless in this respect vis-à-vis third parties.



(4) Contractor shall ensure that in connection with the performance of this contract all regulations of the International labour Organisation (ILO) regarding the rights of workers and their working environment (minimum standards such as compliance with human rights, prohibition of child labor and forced labor, appropriate remuneration, guaranteeing suitable remuneration, measured in terms of the minimum standard of living of the respective country, as well the implementation of measures to protect workers. etc) are adhered to. Contractor shall ensure that these obligations are binding upon its suppliers.

#### **2.1.4 Modification of services**

(1) The Customer shall be entitled to adapt the type and scope of the contractual services or the circumstances surrounding the provision of services in accordance with project requirements. If the proposed modification of a service or the circumstances surrounding the provision of a service impact/s the contractually agreed price, or if additional services are proposed, any claim in respect of price amendment is to be asserted immediately by the Contractor before carrying out the service, and the Contractor shall be required to submit an additional offer to the Customer with the new prices framed by drawing upon on the pricing bases and the price base set forth in the contractual Agreement.

(2) If services are rendered to account according to unit prices, and if the quantities to be rendered to account deviate from the estimated quantities, the Customer shall be entitled to demand that lower unit prices be agreed if such deviation entails either the total price being exceeded by 10% or the price of a service category being exceeded by 20%.

#### **2.1.5 Provision of services without an order**

Services that have been performed by Contractor without an order are compensated only, if the Customer subsequently accepts them. If not, these services have to be removed by the Contractor upon request of the Customer within in a reasonable timeframe; otherwise, the Customer shall be entitled to arrange for their removal at the expense of the Contractor.

#### **2.1.6 Direct services**

These rights and obligations shall also apply in cases where construction services or even ancillary services are provided directly.



### **2.1.7 Confirmation of services**

(1) The delivery shall be accompanied by a delivery note which shall include the Customer, the item, order and material numbers, and the exact description of the material as far as this is included in the order, as well as the exact quantity supplied. In the case of working time being charged or assembly work a time sheet confirmed and signed by the Customer shall be supplied. Each delivery note or time sheet shall only comprise items included in the same order. As far as delivery note forms have been attached to the order, the Contractor shall use these forms, unless otherwise agreed. Any deliveries shall only be deemed to be in conformity with the contract if all required documents are attached. Otherwise the Customer shall be entitled, at its option, to either return or store the goods at the risk and expense of the Contractor.

(2) Dimensioning is always to be carried out in consultation with the Customer and is included in the prices.

(3) Moreover, in delivering goods to a central warehouse of the Customer the Customer Logistics Guidelines must be adhered to. Those are available under [www.a1.net](http://www.a1.net).

### **2.1.8 Conduct of Contractors on the company premises of the Customer**

(1) The Contractor shall be obligated to comply with the environmental regulations of the Customer and the effective legislation and norms under environmental law specific to the services to be carried out. Service is to be rendered while duly conserving resources, such as – in particular – energy and water consumption. All incidental packaging and other waste materials arising in the course of rendering service are to be removed by the Contractor and disposed of at that Party's expense.

(2) The instructions of the Customer's contact person are to be followed under all circumstances. The Customer's contact person is to be notified when beginning and concluding work. If keys or company access cards are issued, the General Terms and Conditions for the Cession of Keys and Company Access Cards are to be complied with.

(3) In the instance of unforeseen events, a report is to be submitted to the Customer's contact person.

(4) The respective house rules are to be observed. In particular, smoking in the corridors, garages, lift lobbies, customer service zones and other, separately designated premises, is not permitted.



(5) The respective fire safety regulations and notices pertaining to conduct in the event of fire, as well as existing alarm regulations, are to be observed. When carrying out operations that present a potential fire hazard (operations involving an open flame and high temperatures, such as welding, cutting, etc.), the release note is to be arranged with the Customer ahead of time. Furthermore, sufficient first aid materials and fire extinguishers are to be made available by the Contractor. Other hazardous operations are to be notified to the Customer consistent with Section 8 ff of the Occupational Safety and Health at Work for Employees Act (ASchG), and appropriate coordinating and protective interventions are to be carried out in conjunction with the Customer.

(6) The Road Traffic Act (StVO) and a speed limit of 10 kmph, or walking pace, shall apply on the company premises.

## **2.2 Requirements specific to construction services**

### **2.2.1 Legal regulations / approvals and regulatory permits**

(1) If for the fulfilment of the contract, import, export or other official permits or approvals or the consent of third parties is required, the Contractor shall be obliged to procure them. Only in the case the permit/authorisation can only be obtained by the Customer itself; the Contractor shall be required to guide the Customer accordingly and to support the Customer during processing.

(2) The Contractor shall be responsible for ensuring that the relevant legal regulations and regulatory directives are observed.

(3) The Contractor warrants that it is in the possession of, or will obtain in a timely manner, all authorisations and approvals that are required in order to fulfil the contractual obligations in accordance with applicable law, such as business licences. The Contractor shall obtain from competent authorities all necessary permits, licenses and authorizations related to its respective obligations under this contract at its own costs. Contractor indemnify and hold harmless the Customer against all costs and infringement.

### **2.2.2 Construction site coordination**

The Contractor undertakes to provide support to the Customer in respect of these construction services during the implementation of the Construction Work Coordination Act (BauKG), particularly assuming charge of construction site coordination, as set forth by this Act.



### **2.2.3 Provision of materials / execution documents**

(1) Insofar as material is provided by the Customer for the purpose of order fulfilment, this shall remain proprietary to the Customer – even in the instance of processing and/or re-processing – and, as far as possible, is to be stored separately, managed and labelled free of charge. The Contractor shall be obligated to confirm such cession and shall be permitted to use the material provided by the Customer solely for the designated fulfilment of the respective order.

(2) Should the Customer delay provision of material, the covenanted delivery timeline shall be extended accordingly for the Contractor. In this context, the Contractor's claims for compensation are excluded, other than in the instance of gross culpability on the part of the Customer.

(3) If the Customer intends to provide material, the use of material other than that provided by the Customer shall be impermissible.

(4) The execution documents (plans, drawings, etc.) handed over by the Customer are to be used exclusively and specifically for contractual fulfilment. If further execution documents, beyond those already handed over, are required for contractual fulfilment, the Contractor shall be required to procure these at that Party's own expense.

(5) All drawings, sample models and other aids that are handed over to the Contractor by the Customer shall remain the material and intellectual property of the Customer, even in the instance of processing or re-processing. The documents handed over are to be kept confidential by the Contractor.

### **2.2.4 Obligation of inspection and alerting**

(1) The Contractor shall be required to immediately and thoroughly inspect all documents made available by the Customer, as well as all directives and information provided by that Party, and to alert the Customer in writing of substantiated concerns based upon that Party's expertise. The same shall apply to any construction materials, devices and tools provided by the Customer.

(2) The Contractor shall be required to present suggestions by means of which the concerns can be redressed.

(3) However, the Contractor must, over and above any express request, wholly comply with the directives issued, provided no legal, construction-specific or security policing regulations or other security



regulations conflict with them. It shall, therefore, be required to reject, in particular, directives of the Customer, which, if executed, might entail risk to persons or material assets.

(4) All further execution documents are subsequently to be developed by the Contractor itself.

(5) The obligation of inspection and alerting also encompasses costs and timelines. Once the Contractor realises that timelines may be postponed, thus entailing cost implications, or that other additional costs may be incurred, that Party shall be required to alert the Customer to this immediately and to propose solutions for avoiding such additional costs and/or timelines.

(6) The Customer shall assume no liability for damage arising from the Contractor carrying out work contrary to the aforementioned regulations, and the Contractor shall indemnify the Customer and hold that Party blameless.

(7) If the Contractor has substantiated concerns in respect of the proper execution of the services by other contractors that are linked with the Contractor's work, that Party shall be required to notify the Customer of this immediately. If the Customer refrains from providing such notification, it shall be liable for any defects in its services that arise owing to deficient execution of services on the part of other contractors.

#### **2.2.5 Construction site facilities**

(1) As far as is necessary for the execution of the accepted order, the Contractor shall be required to provide storage facilities and workstations on the construction site, accommodation for its own workers, as well as access roads and feeder tracks. Furthermore, that Party shall be responsible for establishing and demolishing or dismantling any requisite water, gas and high-voltage power connections or other auxiliary construction equipment or operating facilities, or those already in existence for shared use. Any costs incurred on consumption shall, under all circumstances, be borne by the Contractor.

(2) The workstations, storage facilities and access roads and so on used by the Contractor are to be restored to their previous state upon completion of the construction services.

#### **2.2.6 Records**

(1) The Contractor shall be obligated to maintain daily construction reports. Upon request, these daily construction reports are to be



handed over to the Customer as soon as possible, and in any case no later than within two weeks, such handover being documented. The Customer shall also be entitled to make its own entries in the daily construction reports; the objection period applicable to such entries in daily construction reports is 14 days from the date of the site manager becoming privy to this information. An entry or confirmation does not entail acceptance.

(2) Occurrences at the place of performance, which may fundamentally influence execution of the service, as well as any findings that, at a later point in time, cannot or can no longer be expediently followed through on are – consistent with the obligation of inspection and alerting stated above – similarly to be recorded in writing and notified to the Customer immediately.

#### **2.2.7 Monitoring**

(1) The Customer shall be entitled to inspect the contractually compliant execution of the service at the place of performance at any time. The Contractor shall be required to ensure that this is facilitated, also with respect to any sub-contractors.

(2) The Customer has the right to issue orders, particularly in respect of the realisation of structures, the quality of the building materials and the work progress at the construction sites in terms of timelines.

#### **2.2.8 Construction site safety**

(1) The Contractor shall be required to observe the relevant statutory regulations and regulatory directives respective to traffic safety. In this context, the Contractor shall be obligated to assume charge of traffic routing respective to the construction site. This shall involve the Contractor being required to particularly cater to proper signage, fencing, safeguarding extending to the requisite coverage of areas that can be accessed by foot or otherwise, as well as the lighting of the entire construction site, including of the building materials and equipment in storage specific to this construction site. The Contractor shall be required to provide not only the requisite materials and equipment, but also the staff required to handle them.

(2) In the instance that these obligations are infringed, the Customer may itself take the requisite measures at the Contractor's expense, or may arrange for such measures to be taken by third parties. The Contractor shall be liable to the Customer for any damage resulting from this infringement of obligations and shall indemnify the





Customer and hold that Party harmless also in the instance of claims being asserted by third parties.

(3) The Contractor shall be obligated to prominently and legibly display its name and address at the construction site, as well as the purpose of the digging operations or building activity until cessation of the work. If the construction site is extensive, this must be carried out at both extremities of the site.

(4) Furthermore, the Contractor shall be required to erect a construction site information board provided to that Party by the Customer in the construction site area such that it is clearly visible.

#### **2.2.9 Measures taken by the Contractor to secure existing facilities**

(1) The Contractor shall be required to ensure that no damage occurs to structures, other facilities and underground installations as a result of the work to be carried out. To this end, that Party is required to determine the depth and quality of the foundations and structures prior to beginning work, as well as the type and position of underground installations, which might be compromised by the construction work. This shall also apply to facilities that are not exposed during the course of the work to be carried out.

(2) If, during construction work or after its completion, structures or underground installations are at risk of being compromised as a result of digging operations, the Contractor shall be required to take all necessary safety measures (e.g. to guard against subsidence). In order to determine the necessity of such safety measures, and for their execution, the Contractor must have the necessary commercial licences or must operate via an authorised party that is in possession of such commercial licences.

(3) The Customer is to be apprised of the potential risk and the proposed safety measures immediately.

(4) In the instance of damage occurring to structures, the Contractor shall be required to indemnify the Customer and hold that Party harmless in the face of any compensation claims asserted by third parties.

#### **2.2.10 Underground installations, maintenance of cleanliness in circulation areas**



(1) The parts of underground installations in and above street level (covers of shafts, steam chests, sewer inlets, hydrants, etc.) or other important amenities that serve the public (fire alarms, letterboxes, etc.) must always remain accessible. Care must constantly be taken to keep the circulation areas clean. If traffic has been impeded owing to a large portion of the circulation areas being used for storage of excavation material, the area to be used for storage is to be fenced in by creating an appropriate boundary. If required, the excavated material is also to be stored adjacent to the trench or the construction pit.

(2) Gutters routed above street level to drain away surface water (e.g. runlets) must be maintained so as to be functional, but at all events such gutters are to be covered along their length.

#### **2.2.11 Protection of landscape and water bodies**

While executing the service, the Contractor shall be required to ensure that, in addition to complying with the statutory regulations and regulatory directives, no damage is caused to the landscape and water bodies in the area of the place of performance beyond the unavoidable extent necessitated by the provision of construction services.

#### **2.2.12 Usage of roads and paths**

If needed, the Contractor shall be required to come to an agreement with the respective road maintenance unit or owner specific to the usage of roads and paths, and bear any additional costs for their maintenance itself. Both in this regard and in terms of damage sustained by other road users that is attributable to the Contractor, the latter shall be required to indemnify the Customer and hold that Party harmless in the face of any claims that are asserted.

#### **2.2.13 Use of equipment**

The Contractor shall be obligated to provide all the equipment needed for the proper and timely provision of the covenanted service in a suitable manner and quantity and at the appropriate time.

#### **2.2.14 Storage and disposal of construction rubble / waste materials**

(1) The Contractor undertakes to store the materials arising during the course of construction work separately according to their material categories and to consign them to collection and recovery in accordance with the 'Regulation on the Segregation of Material Occurring During Construction Work'.



(2) The Contractor undertakes to hand over the signed construction rubble disposal certificates – segregated according to their material categories – to the Customer, duly signed in accordance with company procedures, no later than at the time of acceptance of the services.

(3) All waste material arising during the course of construction work, e.g. cables, is to be handed over to the Customer or to a third party identified and authorised by the Customer, or, should the Customer so desire, is to be disposed of by the Contractor in an appropriate and professional manner. Proof of such appropriate and professional disposal is to be provided to the Customer by the Contractor.

## **2.3 Delivery requirements associated with construction services**

### **2.3.1 Electromagnetic Compatibility, Safety Requirements**

- (1) In addition, all applicable safety regulations and all other relevant European and national legal provisions (guidelines, laws, ordinances), especially the common OVE, OVE/EN, ÖVE/ÖNORMEN, IEC, EN standards, national provisions and industrial standards, must be adhered to under consideration of the state of the art.
- (2) As far as stipulated by law or by the generally accepted standards, the object of agreement shall have an ÖVE test symbol, a CE symbol of conformity or a safety symbol equivalent to the above-mentioned symbols accepted by the EU.
- (3) Notwithstanding the aforementioned, all EMC relevant components, all hardware shall comply with the actual EU directives and standards as well as with the respective national implementations
- (4) All hardware components and each system devices (eg. Telecommunication Network-, Information Technology- or Radio Equipment) shall comply with all current EU directives and standards.
- (5) The Contractor shall state the applied standards and testing methods (limit values, evaluation criteria).
- (6) If technical extensions or modifications will have a negative impact on the EMC, surge and safety properties of the already delivered components (e.g. deployment of new cable adapters), the Customer shall be informed about such impact in writing.
- (7) In order to check the criteria, upon request by the Customer all relevant documents (CE declaration of conformity, test reports according to safety and health, electromagnetic compatibility



and the allocated radio spectrum, technical construction files and the instruction manual with safety information in German language) shall be provided within a period of 10 days.

- (8) If the above-mentioned deliveries and services have none of the safety symbols named or if the Customer is in doubt about EU conformity of components, the Contractor shall be obliged to have the object of agreement checked according to the applicable provisions at its own cost by an officially authorised testing institute in Austria or in the country of origin provided, that this country is a contracting party of the Agreement on the European Economic Area (EEA). The Contractor shall be obliged to furnish a confirmation of such test. Confirmations in a foreign language shall be accompanied by a certified translation.
- (9) The Customer reserves the right to stipulate stricter limit values in order to maintain network and service quality.
- (10) The Customer assumes that the contractual services of the Contractor (as far as these are deliveries), are environmentally friendly during their entire life span as far as this is possible, i.e. that they meet national legal regulations and the European legal regulations applicable, in particular such as the provision on waste electrical equipment (WEEE and the RoHS criteria) in the relevant valid version, and other generally accepted standards and limit values. The Contractor shall notify the Customer in writing about any obligation of exemption from obligation by the Customer currently applicable according to the provision on waste electrical equipment in the relevant valid version of the relevant common stipulation, and the Customer shall be held free of charges by the Contractor with regard to all expenses related to such exemption from obligation.
- (11) Any packaging used must be licensed according to the Packaging Ordinance 2014 in the relevant valid version. The Contractor shall make a legally binding confirmation that it itself or an upstream manufacturer or distributor participates in an approved collection or recycling system according to the above-mentioned ordinance (e.g. presentation of an ARA licence).
- (12) Furthermore, the Contractor shall make a legally binding confirmation that it has already paid the advance disposal fee according to the Battery Ordinance II Federal Law Gazette in the relevant valid version for the batteries and accumulators delivered to the Customer or that the Contractor itself and/or an upstream manufacturer or distributor will take back the batteries and accumulators from the Customer for free disposal.
- (13) As a matter of principle, any waste incurred by the Contractor in the framework of service provision shall be properly disposed of at the Contractor's costs and risk.
- (14) By means of enclosed safety data sheets, the Contractor shall be obliged to inform the Customer if the object of agreement



contains hazardous substances. Depending on the quality and/or the manufacturing process and the technical feasibility, the Contractor shall especially be obliged to fulfil the following requirements:

- Obligation to inform about and label all products concerning their environmental aspects, such as their disposal, recycling, content, energy consumption, emissions and noise level, especially to provide information about the code number according to the ÖNORM S2100 and/or the European Waste Catalogue (EWC);
- Serviceability;
- Optimization of the material and energetic recyclability of the products at the end of their use;
- Resource-saving use of material (especially packaging material) and energy, such as e.g. the deployment of old material and/or recycling material instead of primary raw material use;
- Preference for substances not damaging to health and/or low in emissions as well as avoidance of the use of ozone damaging substances;
- Easy dismantling of products as well as enclosure of the relevant dismantling plans;
- Ensuring easy and low-cost declassifying of products containing compounds classified as hazardous.

(15) Upon request by the Customer, the Contractor shall be obliged to provide evidence of the origin of the goods delivered and to make the supporting documents required available.

## **2.4 Code of Conduct**

(1) The Customer is committed to conducting business honestly, fairly and transparently. As a matter of course the Customer complies with all applicable laws and principles of business ethics. The Customer also expects such compliance from its suppliers. Moreover, social commitment and climate and environmental protection are of great importance to the Customer.

(2) The Contractor shall ensure that in connection with the performance of this contract all regulations of the International Labour Organisation (ILO) regarding the rights of workers and their working environment (such as compliance with human rights, prohibition of child labour and forced labour, minimum standards in the area of job safety and health protection, guaranteeing appropriate remuneration, etc.) are adhered to. The Contractor shall ensure that these obligations are binding upon its suppliers.

(3) The Contractor confirms that no intermediaries gain a personal advantage and/or pecuniary benefit from concluding an agreement with the Customer.



(4) The Contractor shall avoid any conflict of interests with the Customer and commits to refrain from any actions that could harm the Customer, in particular that could cause harm to its reputation.

(5) The Contractor ensures its compliance to all legal stipulations.

(6) The Customer rejects corruption and bribery in every respect. Therefore, in particular the Contractor agrees to refrain from demanding or accepting benefits or other advantages that are illegal and/or offensive to common decency, or offering or granting such benefits.

(7) A violation against the provisions of this Code of Conduct is an important reason that would entitle the Customer to terminate the contract with immediate effect.

(8) In this case the Contractor loses any claims on the agreed reimbursement, unless services/deliveries already provided are of use to the Customer. This is without prejudice to the Customer's right to claim damages. The Contractor shall be liable to the Customer for any disadvantages and shall bear all additional costs that may be incurred in connection with a violation against the terms of this Code of Conduct and/or termination due to the default of the Contractor.

### **3. Remuneration, invoicing, payment terms, liability retention**

(1) All prices shall be understood to be in Euro. Value added tax shall be stated separately.

The Value added tax (VAT) is to be shown as per the regulations of the VAT Act in its respectively valid version and the current VAT policy.

(2) Prices shall be deemed to be guaranteed fixed prices with regard to the contractually agreed service and, if requested by the Customer, shall be offered as either purchase and leasing. Any avoidance on the grounds of error or reduction by more than half shall not be accepted by the Contractor.

(3) All services and ancillary services stated in the service specifications or the contractual documents are to be included in the unit prices, unless they are to be separately itemised.

(4) Remuneration for deliverables and services also includes the costs of all ancillary services, such as dismantling and removal of the equipment from the site after use, as well as the costs incurred on the disposal of packaging, batteries and rechargeable batteries and the costs involved in displaying maintenance certificates. Costs of transportation, too, in particular (e.g. freight charges, customs duties, insurance, commission), expenses incurred on the Contractor's



employees and any sub-contractors (e.g. travel and accommodation expenses, daily allowances, fixed travel rates, travel time), as well as the procurement of approvals, construction site facilities, construction site insurance, site monitoring, etc., and also any fees or other levies and taxes are to be borne by the Contractor. The Contractor undertakes to provide to the Customer the information that is necessary from the standpoint of tax regulations.

(5) The prices are to be categorised in accordance with the deliverable and service. Furthermore, each individual component and each alternative is to be priced separately (unit price). General price reductions occurring between the date of contractual conclusion and the date of delivery/service are, however, to be passed on to the Customer. If a service is provided by the Contractor without the remuneration having been agreed in writing in advance, this service is covenanted as being subject to non-remuneration.

(6) A wage is to be covenanted for service agreements respective to the services to be provided. The wage is fixed. Any change in pricing – for any reasons whatsoever – is expressly excluded. All services provided within the parameters of the issued order, including any travel expenses, ancillary fees and accommodation costs, shall be deemed to have been compensated by way of payment of the wages specified.

(7) The period agreed for payment of the remuneration shall start upon proper and objection-free invoicing, however, at the earliest as of contractual service provision and not before the working day following the agreed date of delivery. All invoices shall be paid net within 30 days as of start of the term of payment with a 3% discount, within 45 days with a 2% discount or within 60 days. Whether payments are deemed to have been made in time is determined by the date of the credit transfer order or, if any other common method of payment is used, the date of the payment.

(8) Invoices shall be deemed to have been properly submitted only if they include the order number, the item number, the model and serial number specified on the equipment, the Customer's specialist department and the processors with jurisdiction therein, as well as the date on which the order was placed; they must also comply with the regulations of the VAT Act, and a single copy must be received by the respectively specified invoicing department. If they relate to working time services or assembly work, the corresponding time sheet is also to be appended thereto. All invoices are to indicate any discounts or rebates. A maximum of 4% p.a. in default interest may



be asserted against the Customer. Each invoice pertaining to deliveries/services within the EU must include the statistical goods numbers, the UID number and – if applicable – the dead weight of the deliverable, and a delivery note is to be enclosed. Improperly submitted invoices, particularly those that are wrongly addressed or those that show factual or calculative deficiencies or errors, shall not constitute documents that require settlement until they have been corrected by mutual agreement, and can be returned by the Customer at any time.

(9) Payments made by the Customer shall not be deemed to be an acceptance of proper fulfilment by the Contractor. In particular, it shall not constitute a waiver by the Customer with regard to any claims for warranty, guarantee and damages.

(10) During execution, partial invoices and partial payments may be asserted for scaled services. The partial invoices are to be based upon precisely determined scaling. They are to relate to a specific period of service. A listing of the services cumulated during this period of service and the documents required for inspection are to be enclosed with the partial invoices.

(11) By way of the end or final invoice, the Contractor declares, and is bound by such declaration, that that Party has thereby asserted all claims arising from the Construction Agreement.

(12) Claims of the Customer asserted against the Contractor may be offset by the Contractor's claims, even if the claims do not originate from the same contractual relationship. Invoices may not declare any provisos. Additional claims can no longer be recognised once the final invoice has been submitted. Over-payments may still be reclaimed within a period of three years from the time of acknowledgement of the end or final invoice.

(13) If circumstances leading to the withdrawal of the Contractor are attributable to the Customer, only demonstrated outlay and expenses for services not yet provided shall be compensated, but not any loss of advantage or profit.

### **3.1 Acceptance/approval of construction services**

(1) Completion of the construction service is to be intimated in writing. The Customer shall be at liberty to then accept the construction services *in situ* in the presence of the Contractor and the other affected parties by way of a provisional acceptance log, wherein any deficiencies that have been determined are recorded. If the





service is free of defects, an acceptance log is to be prepared. The warranty period is to commence from the date of acceptance.

(2) Upon acceptance/approval, the Contractor shall be obligated to hand over to the Customer all documents ceded to that Party, such as plans, models, sketches, computations, materials, information of all types, as well as evidence of construction rubble and the construction documents (daily construction reports). At the express order of the Customer, documents ceded by that Party are to be destroyed – if desired, under the supervision of the Customer.

### **3.2 Cover retention and liability retention**

(1) The Customer reserves the right to withhold a non-taxable liability retention of at least 5% for the duration of the warranty period from the time of the contractually compliant provision of the deliverable/service (acceptance). The liability retention is to be withheld from the sum finally invoiced (total price plus VAT).

(2) Insofar as partial invoices are issued, a cover retention of 10% can be withheld from the respective partial invoice, provided it has not been obviated by a cashless guarantee. The cover retention amount is to be offset and released against the final or partial final invoice unless it is offset against a liability retention amount.

(3) The liability retention amount can be paid out prematurely against provision of a guarantee. The guarantee is to subsist in the assumption of liability by recognised credit institutions within the EU region (abstract bank guarantee, which can be revoked at any time without further substantiation). These guarantees must remain valid for at least 30 days beyond the end of the warranty period.

(4) In the event that the guarantee specific to the fulfilment of obligations shall not suffice, the Customer shall have the right to offset the amount in abeyance by deducting claims asserted by the Contractor, even if these do not originate from the same contractual relationship.

### **3.3 Guarantee consistent with Section 1170b of the ABGB**

In the event that the Contractor solicits a guarantee consistent with Section 1170b of the Austrian Civil Code (ABGB), the Customer shall also be entitled to solicit a guarantee that is equivalent in terms of type and amount for the contractually compliant service *pari passu*.



## **4. Disruptions to services**

### **4.1 Default of delivery/service**

(1) Default shall be in evidence if the service is not provided at the appropriate time, at the appropriate place or in the stipulated manner. If default of a delivery/service occurs for reasons that are not attributable to the Customer, that Party shall be entitled to either insist upon fulfilment of the contractual Agreement and to demand remittance of a contractual penalty, or – irrespective of the right to assert a penalty – to withdraw from the contractual Agreement at any time without setting a grace period.

(2) Payment of an amount equivalent to 3% of the order amount is covenanted for each commenced week of delay. The Contractor shall be liable for the covenanted penalty even in the instance that the contractual object is accepted without reservation. Assertion of further claims for compensation shall remain unaffected.

### **4.2 Warranty**

(1) The warranty period shall span a period of at least 36 months and shall commence from the date of contractually compliant delivery/service (acceptance). For civil engineering services, the warranty period shall span at least 36 months and shall conclude upon lapse of the 30th of September following these three years, on the proviso that a longer warranty period has not been stipulated for specific construction services (e.g. surfacing work). For structural engineering services, a warranty period of five years shall apply to waterproofing work.

(2) In the instance that any deficiencies entail replacement and redress, the warranty period shall commence anew for the objects of performance.

(3) In case of doubt, the warranty obligation shall also include the costs for remedying defects on site.

(4) Any deficiency must, under all circumstances, be rectified immediately. In the event that the Contractor fails to undertake such rectification of deficiencies immediately, the Customer shall have the right – irrespective of the possibility of a claim for price reduction being asserted – to arrange for substitute performance or to withdraw from the contractual Agreement. In the instance of imminent danger, the Customer may arrange for deficiencies that arise to be rectified at the expense of the Contractor, or may take other suitable measures.



(5) For each provision of defective service, the Contractor shall be obliged to pay a penalty of 5% of the purchasing value of the contract to the Customer to cover its administrative costs but not more than €10.000,-, except in case of minor defects; this shall apply without prejudice to warranty and other replacement claims of the Customer.

(6) Any secret/hidden defects may also be claimed upon expiration of the warranty period within 6 months as of having gained knowledge of the defect. In case the object of agreement normally remains in its original packaging until use or reselling, defects that only become visible when it is first unpacked shall be deemed to be secret defects.

(7) The Contractor shall bear the burden of proof for the non-existence of defects or the existence of minor defects only. The Contractor shall also bear the costs and expenses arising in this connection.

(8) The Contractor shall expressly waive the objection of timely notification of defects according to § 377 of the UGB [Austrian Commercial Code].

(9) The Contractor undertakes to reimburse the Customer for all costs and expenses arising for the Customer towards its own customers incurred from the warranty. Any such claims shall be put forward by the Customer as of fulfilment of its own warranty obligation. A judicial claim shall not be required.

(10) If the Contractor is not the manufacturer of components, it shall state the extent to which the manufacturer will additionally assume warranty towards the Customer.

(11) Shortly before cessation of the warranty period, a written conclusive determination is carried out pertinent to the state of the service executed.

## **5. Liability regulations / sub-contractors/WOCO**

### **5.1 Liability**

(1) The legal liability regulations shall apply.

(2) Furthermore, the Contractor shall be liable to the Customer for operational disruptions of all kinds, for injury to persons and for material damage, particularly for damage occurring to buildings, as well as to all underground installations, caused by the execution of the construction services. The Contractor shall be released from such



liability only when that Party can demonstrate that neither it nor any of its vicarious agents is culpable as set forth in civil law.

(3) From the time that the construction site is set up, the Contractor shall be liable – regardless of culpability – for all of the Customer's building materials and equipment supplied to and stored in the construction site area, as well as for all of the Customer's building materials that have already been installed. Irrespective of the construction site facilities, the Contractor shall, under all circumstances, be fully liable for all building materials and equipment for which it assumes responsibility.

(4) The Contractor shall be obligated to indemnify the Customer and hold that Party harmless in every respect in the face of claims for compensation of any kind whatsoever that are asserted by third parties in connection with the work carried out by that Party.

(5) If the Customer has assigned only earthworks and surfacing work and arranges for its own workers or other contractors to conduct other operations in the construction pits, the liability of the Contractor for the earthworks and surfacing work shall not be affected by the other operations.

(6) Should the Customer be sued due to an alleged fault in the object of agreement according to the stipulations of the product liability law or other legal stipulations, the Contractor shall indemnify the Customer in whole or in part – regardless of any fault or cause.

## **5.2 Force majeure**

(1) In the event of *force majeure*, the Contractor shall be liable in accordance with statutory regulations.

(2) Even in the event of *force majeure*, as well as in the event that work stops for any reason whatsoever, the Contractor shall nevertheless consistently be liable for the contractually compliant quality of the services and for the implementation of the construction-specific or security policing regulations and the other safety regulations.

(3) In the event that the construction services, portions thereof or materials, structural components or other objects intended for the building that have been handed over by the Contractor are damaged or destroyed owing to an unavoidable event, the Contractor shall be entitled to compensation only if that Party can prove that it has taken all necessary measures, and those that



can reasonably be expected of it, to prevent such events and their consequences.

### **5.3 Insurance**

In order to further cover its risks, the Contractor shall be required to take out an appropriate business liability insurance policy and to furnish proof of this (insurance policy document, insurance certificate, proof of payment, etc.) upon the request of the Customer. Any changes in the insurance benefit are immediately to be notified to the Customer in writing.

### **5.4 Sub-contractors**

(1) The Contractor shall be entitled to commission sub-contractors only after receiving the prior written approval of the Customer, whereby the Customer shall not be obligated to substantiate rejection. The requirement specific to the prior written approval of the Customer shall extend to the entire sub-contractor chain, and thus certainly to any sub-contractors of sub-contractors that have already been authorised. The Contractor shall be obligated to exclusively avail of sub-contractors that are in possession of the requisite commercial licences, can produce appropriate references that are technically and economically efficient and thus offer sufficient guarantee for technically seamless and timely contractual fulfilment.

(2) The liability of the Contractor vis-à-vis the Customer shall remain unaffected thereby. The Contractor shall bear particular responsibility and liability vis-à-vis the Customer for the monitoring, management and coordination of its sub-contractors and for their provision of services. Any monitoring carried out by the Customer or by third parties commissioned by the Customer shall not release the Contractor from the contractual obligation of providing the service in a timely and proper manner and shall not result in any limitation of liability on the part of the Contractor.

(3) The Customer reserves the right to withdraw approval for a sub-contractor that is already active if it considers the provision of services to be jeopardised by that party. If, in such an instance, the Contractor is unable to fulfil the contractual Agreement, that Party shall be required to immediately identify another sub-contractor for the Customer's approval. Any additional costs arising from this shall be required to be borne exclusively by the Contractor.



(4) Consigning the entire order to other quarters is, nevertheless, prohibited. Consigning the entire order to other quarters without the approval of the Customer shall entitle that Party to immediately terminate the contractual Agreement.

(5) In the event that the Contractor engages a sub-contractor without the approval of the Customer, an immediately payable penalty of €10,000.00 is covenanted – irrespective of further action on the part of the Customer.

### **5.5 Bidding consortia and working communities**

(1) Bidding consortia and working communities are, as a rule, permissible only if the Customer provides its consent thereto. In such an instance, the bidders shall be required to append a binding declaration to their offer, stating that they shall be forming a working community (WOCO) upon order placement, with the individual members of the working community being jointly liable for the contractually compliant provision of all deliverables and services and for all other obligations arising from this contractual Agreement. Furthermore, within this declaration, the bidders shall be required to specify which services are to be provided by which bidder.

(2) By virtue of signing the contractual Agreement or the confirmation of the order, the members of the working community declare the formation of the latter.

(3) The WOCO shall be required to provide notification in writing of one or more authorised parties who shall represent it in all aspects of contractual processing, such that the binding declarations on behalf of the working community can thereafter only be issued to the Customer by that party or those parties and shall consistently be deemed to have been issued by the entire working community.

(4) All changes within the WOCO are immediately to be disclosed in writing ahead of time. The Customer shall be at liberty to approve these changes in writing or to immediately terminate the contractual Agreement with the WOCO.

(5) If the WOCO fails to nominate an authorised representative in writing for purposes of processing the contractual Agreement, the latter may be processed by the Customer in conjunction with any member of the WOCO, effective for all members of the same.

## **6. Contract termination**



## 6.1 Term and ordinary termination

(1) The contractual relationship shall expire in accordance with the respective delivery dates or timelines mutually agreed in the purchase order, without this requiring separate notice.

(2) The Customer shall be entitled to terminate the contractual relationship at any time, also with regard to individual components of the object of agreement, for any reason and for no reason, subject to 30 days' prior notice.

(3) In case of termination according to this point, remuneration shall be the amount due for the achieved results up until termination in relation to the amount due for the aspired final result, but at the maximum limited to the amount due for services that have been actually performed up until termination, and which have been evidenced accordingly, and finally, that are of use to the Customer.

(4) Termination of contract have to be done in writing.

## 6.2 Extraordinary Termination

(1) The Customer shall be entitled to terminate this agreement immediately with immediate effect and without prejudice to any other provisions of this agreement (unless stated otherwise in the following), as well as all other orders issued, in particular if

- circumstances arise which obviously make the timely performance of the contract impossible, if the Customer itself is not responsible for this,
- the Contractor violates secrecy obligations or other important terms of the contract,
- the Contractor violates clause 2.4 ("Code of Conduct"),
- the Contractor – if there are several, also if there is only one of them - dies or loses its legal capacity and/or there is a change in ownership with regard to the Contractor, a head company or holding company; this change of ownership shall go into effect at the time set down in the written notice by the Customer,
- the Contractor concludes a sub-contractor contract without the required consent of the Customer,
- if other extraordinary reasons for termination referred to in this GTP-GS exist.

(2) If the Customer makes use of its right to rescind from the contract, the Contractor shall lose any right of remuneration unless partial services have already been rendered which can be used by the



Customer. If it is the fault of the Contractor for immediate termination of the contractual relationship, it shall reimburse the Customer for any consequential damages and all supplementary costs resulting from the order being passed on to third parties.

(3) The Contractor is entitled to terminate the contractual relationship if the Customer does not fulfil its payment obligations in accordance with this agreement and does not have a reason for non-fulfilment of the payment (e.g. there has not been a violation of contractual obligations) and if this delay in payment is not sustainably solved within 30 days of the respective written reminder.

(4) A notice of termination will only be valid if expressed in writing.

(5) In case of insolvency the statutory provisions shall apply.

## **7. Miscellaneous**

### **7.1 Confidentiality/Data Protection**

(1) The Contractor shall be obliged to keep secret all information and data becoming known to it during the execution of the purchase order/contract unless it was exempted from such obligation by the Customer on a case-by-case basis in writing. Furthermore, the Contractor shall be obliged to use data that becomes known to it only for the purpose of contract fulfilment.

(2) The Contractor agrees that its data which is made available in connection with the order is processed by the Customer and disclosed to companies associated with the Customer.

(3) The Contractor shall use only those employees and vicarious agents who have been expressly instructed in writing to maintain secrecy; the obligation of maintaining secrecy shall meet the requirements of the legal data protection regulations.

(4) In addition, the Contractor undertakes to adhere to the applicable security and safety regulations of the Customer (e.g. „A1 Information Security Supplier/Provider Requirements, <http://einkauf.a1telekom.at>) and all other legally stipulated data protection provisions, especially those of the Austrian Telecommunications Act. If agreed with the Customer, such components shall be destroyed by the Contractor under the Customer's supervision.

(5) In case that any personnel data is processed by Contractor, Contractor is obliged to conduct the A1 Standard Data Processing Agreement (<http://einkauf.a1telekom.at>), so that A1 can comply with its legal obligations.

(6) In case of a violation of the legal data protection regulations or other agreed obligations of secrecy by the Contractor, the payment of a penalty per violation amounting to 20% of the purchase value of





the contract, limited with €30.000,- per case shall be agreed. Regardless of the payment of the penalty, the Customer shall be entitled to claim further damages exceeding said amount.

(7) The provisions concerning confidentiality and data protection shall also apply after the order has been completely fulfilled by the Contractor and after completion of all contractual relationships.

## **10.2. Most Favoured Nation Clause**

### **10.3. Retention, Settlement**

(1) The Contractor shall not be entitled to retain and/or cease services in case of a dispute.

(2) The Contractor shall have the right to set off claims against claims by the Customer only if such claims have been recognised by court or by the Customer.

## **7.2 Most Favoured Nation Clause**

If the Contractor grants better conditions to a third party for comparable orders, it shall be obliged to adapt the contract with the Customer accordingly.

### **7.3. Retention, Settlement**

(1) The Contractor shall not be entitled to retain and/or cease services in case of a dispute.

(2) The Contractor shall have the right to set off claims against claims by the Customer only if such claims have been recognised by court or by the Customer.

## **7.4 Written Form, Language of the Contract, Start of Deadlines**

(1) Any contracts, amendments, supplements as well as other contract-relevant declarations shall only become effective if in writing and if signed by both parties, provided that there are two parties. This shall also apply to the abolition of the requirement on written form.

(2) Furthermore, orders, delivery call-offs as well as amendments and supplements – being approved by the Customer – may also be submitted by means of electronic communication (e.g. via email). The transmission made in this way shall be deemed to be a legally valid declaration, according to the will of the parties.

(3) Declarations shall be deemed to have been received by the other contractual party if they arrived at the (business) address last stated



by it or if they could not be delivered because the other contractual party is no longer registered under this address. With regard to adherence to deadlines and effectiveness of declarations, according to this provision the date of receipt shall be relevant.

(4) The exclusive language of the contract shall be English; this shall also apply to all communications concerning the contract.

## **7.5 Place of Jurisdiction, Applicable Law**

(1) For any disputes arising from the contractual relationships between the Contractor and the Customer, exclusive application of Austrian law, excluding its conflict of laws principles, shall be agreed. Moreover, the competent court shall be the relevant court for A-1010 Vienna which has subject-matter jurisdiction.

(2) At its own discretion, the Customer shall be entitled to take legal action against the Contractor before any court competent for the place and matter according to the applicable legal regulations of the country in which the Contractor has its registered seat.

(3) The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 shall not apply to relations between the parties.

## **7.6 Transfer of Rights and Obligations**

Unless otherwise stipulated, the contractual parties shall not be entitled to transfer rights and obligations arising from the contractual relationship including rights for remuneration (in particular factoring and the sale of receivables) and possible damages to third parties without the consent of the respective other party. If rights and obligations are transferred to universal or partial successors of the Customer and to companies directly or indirectly controlled by the Customer or directly or indirectly controlling the Customer and to all companies controlled by the latter, the consent of the Contractor shall be deemed to have been given.

## **7.7 Severability**

Should one of the provisions contained in this GTCP-Bau be invalid, the validity of the remaining provisions shall remain unaffected. The invalid provision shall be replaced by a provision best suited to fulfil the purpose of the invalid provision.