

**GENERAL TERMS AND CONDITIONS**

**of**

**ENGEL AUSTRIA GmbH**

**for the order to manufacture a mould**

(“ENGEL-GTC for mould-purchase”)

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# 1. Terms

## 1.1 Definitions

The following definitions apply within the scope of this agreement:

- "Acceptance": the procedure of ascertaining the contractual compliance of the mould and the declaration from the orderer that the mould has been accepted as compliant with the Agreement;
- "Order": the obligation of the supplier to provide the planning, development, design, manufacturing and delivery of the mould as set out in the purchase order / order confirmation;
- "Conditions": the legal requirements for the order set forth in this document, which are an integral part of the Agreement between the orderer and the supplier;
- "Orderer": ENGEL AUSTRIA GmbH;
- "Manufacture": the process of producing and subsequently delivering the mould and the production of products;
- "Customer": the recipient of the mould, who receives this together with the orderer's injection moulding machine;
- "Life Cycle": the period during which the mould remains fit for purpose subject to the defined production conditions (regular operating times, cycle times and availability) and is able to manufacture products to the quality agreed. The life cycle can also be defined by the minimum number of products that can be manufactured under the stated conditions by the mould or with the mould to the quality set down in the agreement;
- "Supplier": the mould construction company that commissioned by the orderer with the planning, development, design, manufacture and delivery of an injection moulding mould;
- "Sample": is a permanent structure, which is used as a basis for a repetitive component and which serves as a template;
- "Parties": the orderer and the supplier;
- "Product": any object that is manufactured (in series) by the mould or with the mould;
- "Delivery": the transfer of ownership of the mould as set down in point 6.1 and the handover of other documents concerning the mould;
- "Availability": percentage indicating the usage of the mould in series production subject to the requirements laid down in the agreement, including in particular regular operating times, cycle times and the products to be manufactured;
- "Agreement": the arrangement made between the orderer and the supplier under civil law as set forth in the order, in any documents referred to therein (annexes) and in these terms and conditions;
- "Mould" or "Injection mould": the object defined in point 3 to be planned, developed, designed and manufactured by the supplier;
- "Cycle time": the technical production value for each unit of time.

## **1.2 Plurals**

The terms used here in the singular shall also apply when used in the plural.

## **2. Object of the agreement**

### **2.1 Order**

2.1.1 By issuing a separate purchase order / order confirmation the orderer has commissioned the supplier (i) with the planning, development, design, manufacture and delivery of an injection mould, (ii) with the handover of the documents concerning the mould and (iii) with the provision of other ancillary services (additional supplies).

2.1.2 These terms and conditions form an integral part of the order issued by the orderer. A description of the characteristics of the mould, including those listed in point 3.2.1, sub-sections (i) to (iii), is given in the annexes to the order. These include the product specifications supplied by the customer (in the form of product drawings approved by the customer if necessary), the customer's specifications, details of the cycle times, regular operating times, availability and service life. For the purposes of interpretation, the priority of the documents forming the Agreement shall be in accordance with the following sequence:

- 1.) Order (purchase order / order confirmation issued by the orderer)
- 2.) Annexes to the order
- 3.) ENGEL-GTC for mould-purchase
- 4.) ENGEL-Purchasing Terms

2.1.3 General terms and conditions of business or forms of the supplier shall by no means be accepted or become part of the contract, independent of whether we knew them or not, whether we have contradicted their validity or not and irrespective of whether they are in opposition to the purchasing terms or not. Even the unopposed acceptance of the delivery or performance activities by us shall not be construed to indicate a submission to the supplier's terms and conditions. In case of continuous business transactions, these GTC for mould-purchase shall be applicable even without special reference to the said.

### **2.2 Subcontractor/sub-supplier**

2.2.1 The supplier undertakes to execute the order without the use of subcontractors. The subcontracting of all or part of the order must be approved by the orderer.

2.2.2 Sub-suppliers for parts that are critical to the function of the mould must also be approved by the orderer.

### **3. Definition/description**

#### **3.1 Object**

- 3.1.1 The object of the order issued to the supplier in accordance with point 2.1 is an injection mould for plastic parts (the mould). The supplier shall mark the mould with a reference to the orderer (ID code, rating plate, etc.). However, this marking must not in any way convey the impression that the orderer is the manufacturer of the mould.
- 3.1.2 The object of the order shall also cover (unless otherwise stated in the order or its annexes) the preparation, compilation and handover (i) of all manufacturing documentation, in particular the technical documents used for the manufacture/testing of the mould, including any necessary data such as CAD data carriers, design drawings, production plans, etc. and the assembly drawings, including all mechanical interfaces, (ii) the documents that comply with the requirements of the present (or future) guidelines set out in point 3.2.2, (iii) the operating, assembly and maintenance instructions and (iv) a parts list for all parts with particular identification of spare parts and wear parts. If the mould is part of a concatenated system (set of machines) and if the orderer bears the responsibility of a manufacturer in accordance with the guidelines referred to in sub-point (ii), the number and content of the documents must be adapted so that the orderer can also meet its obligations.

#### **3.2 Contractual compliance**

- 3.2.1 The mould is deemed compliant (i) if the products manufactured in series with the mould features the agreed technical, physical and visual characteristics; (ii) if the agreed cycle times, life cycles and availability levels are reached; (iii) if the unit costs for the product calculated on the assumptions defined in the agreement, are achieved; (iv) if the mould meets the safety requirements of the orderer and the customer in terms of protection of life and limb, health and property, in accordance with the latest available technical and scientific rules and standards; (v) if the mould meets the statutory requirements (national and international provisions) for the protection of consumers, employees or the environment; (vi) if the mould is free of all third-party rights and claims arising in relation to commercial or other intellectual property for example.
- 3.2.2 The agreed cycle times, life cycle and availability levels shall be defined in the order or its annexes along with other terms and conditions for the manufacture of the products. The statutory requirements set down in point 3.2.1, sub-point (v) include any technical standards and harmonised regulations of the European Commission, which are intended to protect employees, users and consumers, such as Directive 2006/42/EC ("*Machinery Directive*"), Directive 2006/95/EC ("*Low Voltage Directive*") and Directive 2004/108/EC ("*Electromagnetic Compatibility Directive*").
- 3.2.3 The obligation to provide the mould free of any third-party rights and claims and compliance with the statutory requirements listed in point 3.2.1 shall include claims and standards covered by the laws of the European Union and the laws of the State in which the customer has its registered office or in which it is using the mould, as

long as the latter is made known to the supplier or of which the supplier cannot have been unaware.

- 3.2.4 The characteristics and capacities of the mould and/or the product are, or shall be, defined in the order or its annexes. The characteristics of the product, which cannot technically be measured or can only be measured with disproportionately high expense, such as visual requirements, surfaces, etc. are deemed according to agreement if they match the samples. With regard to the contractual requirements for cycle times, regular operating times, availability levels and life cycle, the orderer is permitted to make reference to the customer's requirements when defining and testing these requirements.
- 3.2.5 In addition to the requirements set down in points 3.2.1 to 3.2.4, the mould is only deemed in accordance with the agreement if it has the characteristics normally required according to the latest technical and scientific rules and standards for the manufacture of the products.

### **3.3 Description of functions**

- 3.3.1 As the description of the mould's contractual compliance is only based on functions, in other words the outcome (the products), the supplier must assume sole liability for any methods by which it designs and manufactures the mould. Notes, drawings, plans or similar documents from the orderer shall not be regarded as instructions (in terms of § 1168a of the Austrian Civil Code) to the supplier by the orderer.
- 3.3.2 Approvals by the orderer or by the customer and the confirmation of drawings shall not release the supplier from its obligation to plan, develop, design, manufacture and deliver a mould in accordance with the agreement. If the orderer or the customer provides a description or if said description is used to create specifications for the specific manufacture of the mould, such descriptions and specifications shall not be binding on the supplier if they impair or prevent the intended purpose or the contractual compliance of the mould or the product. If the Supplier recognises or could recognise by using diligent care that the specifications rendered by the orderer (the customer) or other demands by the orderer or customer (for a certain manufacturing process, for example) are faulty, incomplete, not clear, objectively not executable or in contradiction to the requirement for the manufacture of products in accordance with the agreement, the supplier shall inform the orderer of the facts and the consequences immediately in writing.

### **3.4 Supplements, explanations and modifications**

- 3.4.1 If the desired description of the mould and/or the product is still incomplete and therefore requires supplementing at the time of concluding the agreement, this shall not affect the effective conclusion of the agreement. The parties shall jointly complete, supplement and/or clarify any outstanding descriptions. This must be carried out on the basis of the technical and economical requirements already available and on consideration of the existing requirements profile. Such completions, explanations and/or supplements shall not be deemed an amendment to the agreement. Said completions, explanations and/or supplements must be carried

out by the supplier when requested by the orderer and must be arranged with and approved by the orderer.

- 3.4.2 Such completions, explanations and/or supplements in accordance with point 3.4.1 generally include (i) the accurate definition, description and presentation of the possible connection types for the electrical, hydraulic and pneumatic connections between the mould and the injection moulding machine and the accurate definition of all other interfaces between the injection moulding machine and moulds no later than on completion of the design drawings for the moulds and (ii) the definition of outstanding details of the testing procedure and the test parameters from the data supplied by the customer and their approval with the customer. Irrespective of this the supplier is solely responsible for planning, developing and designing the mould in such a way as to ensure the manufacture of the products in accordance with the agreement with the orderer's injection moulding machine, without the injection moulding machine having to be changed and/or modified in advance.
- 3.4.3 The supplier is authorized to make changes to the design and manufacture of the mould prior to acceptance subject to the following point 3.4.4. Changes made by the supplier in order to achieve contractual conformity of the mould and/or for formal acceptance shall not be deemed changes within the meaning of points 3.4.3 to 3.4.5.
- 3.4.4 However, changes that could influence time limits and deadlines, prices and calculated unit costs (point 3.2.1, sub-point (iii)) require the prior approval of the orderer.
- 3.4.5 The orderer is entitled to change the scope of the execution of the order or the circumstances for the execution of the order and to demand additional services. The orderer shall not be entitled to make changes if the changed or additional services are not reasonable for the supplier.

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

### **4.1 Prices**

- 4.1.1 The prices shall be defined, calculated and fall due as set out in the order or its annexes. These must include the ancillary services (and additional supplies) listed in the order without the supplier being able to request any separate remuneration for said services. Unless otherwise indicated in the order, all prices are stated DDU to the named place of destination, or if no place of destination is specified, DDU the registered office of the orderer. The term DDU to the named place of destination shall be interpreted in accordance with Incoterms (as amended).
- 4.1.2 The prices stated are fixed prices and cannot be changed subject to point 4.1.3.
- 4.1.3 If the orderer requests changes in accordance with point 3.4.5, the new price must be (re)calculated in accordance with the original method for ascertaining prices underlying the order.

## **4.2 Terms of payment**

The price (or if applicable the individual instalments) shall fall due in accordance with the order or its annexes, but not (i) prior to the proper execution of accounting procedures (including compliance with statutory requirements, in particular fiscal and customs matters) and (ii) prior to the occurrence of the fact, which triggers the instalment payment.

## **5. Time limits and deadlines**

### **5.1 Schedule**

5.1.1 The intermediate and final deadlines are defined in the order or its annexes.

5.1.2 Unless otherwise agreed, the supplier shall in any case be bound by the time limits and deadlines for the completion of design drawings, initial samples, handover and acceptance.

### **5.2 Obstruction/delay/interruption**

5.2.1 If the supplier recognises that there is a risk of a time limit or deadline being exceeded or if the supplier becomes aware of an obstruction to the execution of the order, the supplier must notify the orderer as soon as possible, unless the risk of delay or obstruction is already known to the orderer.

5.2.2 If the delay or obstruction is not due to the suppliers default, the orderer may extend or postpone the time limits and deadlines, or the intermediate deadlines only, as appropriate. An event is deemed not to have been due to the suppliers default, if the supplier could not have foreseen or prevented said event if foreseeable using economically reasonable means and if the event is not attributable to the supplier and the supplier is not guilty of negligence.

5.2.3 Actions and/or omissions by the subcontractors or the sub-suppliers stated in point 2.3 shall be attributed to the supplier in the same way as an action and/or omission by the supplier.

5.2.4 The orderer has the right to request the interruption of manufacturing and delivery by the supplier at any time; payment deadlines shall be moved according to the change in the milestones used to trigger payment. In this case, the supplier must provide the orderer with details of the consequences, particularly with regard to costs and changing deadlines. If the orderer requests the interruption of manufacturing and/or delivery for a period of less than three months, the supplier shall not be entitled to claim compensation for any expenses incurred as a result or the loss of interest due to the change in payment deadlines.

### **5.3 Contractual penalty**

- 5.3.1 If the supplier is responsible for the delay, the supplier must pay a contractual penalty. The contractual penalty applied shall be 2% for each calendar week or part thereof up to a maximum of 10% of the gross price.
- 5.3.2 The supplier shall be liable for the contractual penalty irrespective of the existence and extent of damage. This shall not affect any of the orderers rights to claim for further damages or losses.

### **5.4 Withdrawal/termination**

- 5.4.1 If the supplier falls behind schedule, the orderer is permitted to withdraw from the agreement, provided that the orderer has provided the supplier with appropriate written notice of at least two weeks.
- 5.4.2 Until manufacturing and delivery of the mould is complete, the orderer is entitled to terminate this agreement without reason. In this case, the orderer must reimburse the supplier for all unavoidable costs incurred up to that point. No claim shall be admissible due to loss of profits.

## **6. Delivery/acceptance**

### **6.1 Delivery**

- 6.1.1 The delivery of the mould to the orderer shall be carried out on completion DDU to the named place of destination; if no such named place of destination exists, delivery shall be made DDU to the registered office of the orderer.
- 6.1.2 The documents described in point 3.1.2 must be handed over at the time of delivery of the mould. Unless otherwise agreed, the documents must be supplied in triplicate in legible as well as in machine-readable format.
- 6.1.3 Delivery shall be deemed on time if the entire object of the delivery is complete and if the mould and/or the documents do not demonstrate a lack of conformity that could justify the orderer to refuse acceptance or to reject the delivery.

### **6.2 Acceptance**

- 6.2.1 Acceptance requires the contractual compliance of the mould to be tested and established. Acceptance of the mould as conforming in terms of the agreement is carried out by means of a written declaration from the orderer (formal acceptance). The acceptance procedure, the test setup and the object and content of the review must be defined in the order or its annexes. If there is no express regulation to this effect, this does not change the requirement for formal acceptance. In this case, the procedure checks the compliance of the mould with the requirements set out in points 3.1 and 3.2.

6.2.2 Formal acceptance by the orderer is generally preceded by various process steps (unless otherwise defined in the order or its annexes), namely

- the completion and, if applicable the approval, of the design drawing(s)
- the initial sample (virtual preliminary acceptance)
- other preliminary tests by the orderer and connection with the injection moulding machine
- delivery of the injection moulding machine and the mould to the customer and the manufacture of products that are ready for series production and their testing by the orderer and the customer

6.2.3 The initial sample is generally produced by the supplier; however, if a special injection moulding machine is required, the initial sample is produced by the orderer. The initial sample must generally be produced four to six weeks prior to delivery of the injection moulding machine and the mould to the customer. This must be completed promptly to ensure that improvements and optimizations can still be carried out prior to delivery to the customer. Sampling presupposes that the products can be removed safely using an automated device when the injection moulding machine operates automatically.

6.2.4 The continuation of the individual process steps each time presupposes the successful completion of the previous process step; completion is not successful if defects, even minor defects, are present.

6.2.5 The costs and expenses of the individual steps for acceptance and acceptance itself, as well as the costs of the materials, shall be divided between the parties in accordance with the provisions set down in the order or its annexes. If no such specifications exist, the supplier shall bear the material costs and the costs for delayed or repeated process steps; otherwise, each party shall bear its own costs.

### **6.3 Requirements and consequences of acceptance**

6.3.1 Acceptance requires the successful completion of all process steps and proof of the contractual compliance of the mould and/or documents. The mould is deemed not compliant, if even minor defects are present. If the requirements for acceptance are met, the orderer must accept the mould in writing. If the orderer fails to declare compliance by the specified deadline, although the requirements have been met, the supplier can set an appropriate deadline for the submission of the declaration. The mould and/or the documents are deemed accepted if, after the deadline, the orderer has not declared acceptance and there are no grounds for refusing acceptance.

6.3.2 Acceptance (i) results in the obligation of the orderer to make payment (if applicable); (ii) results in the handover of the mould to the orderer's ownership; and (iii) marks the start of the warranty period (point 7.3).

- 6.3.3 Acceptance of the mould by the orderer does not imply any waiver on the part of the orderer to assert warranty claims and claims for the remedy of defect damage and consequential damage.

## **6.4 Passing of risk**

The risk as to price and performance shall pass to the orderer on formal acceptance. If the parties waive formal acceptance, the passing of the price and performance risk as well as transfer of title shall comply with the Incoterm to be applied.

## **7. Warranty**

### **7.1 Content**

- 7.1.1 The supplier guarantees (i) that the mould and the documents are free of defects, (ii) that the requirements laid down in the agreement with regard to cycle times, life cycle and availability levels are met and (iii) that the mould and the documents are in accordance with the agreement in all other respects and will remain in accordance with the agreement during the entire warranty period.

- 7.1.2 If point 7.1.1 is not observed, the mould is deemed not to be in accordance with the agreement/defect. This also includes extraordinary technical wear and tear of the mould or the breakage of the mould before reaching the agreed or normal service life.

### **7.2 Remedy**

- 7.2.1 Upon notice, the supplier shall either remedy the defect or replace the mould part affected by the defect with a spare part free of defect. This also applies to the documents *mutatis mutandis*.

- 7.2.2 If the remedy of the fault (or the replacement of the defective part) is not possible within a period of time deemed reasonable for the orderer, the supplier must at least develop a work-around (to achieve the intended aim of the orderer in another manner). If a work-around is not possible within the specified time, the supplier must at least provide the orderer with a temporary solution such as a temporary correction of the fault within the time limit set for remedy.

- 7.2.3 In case of existence of a remediable defect, the orderer has the right to remedy the defect or to replace the defective part without requesting the supplier to do so (by replacing the defective part) or to arrange for its remedy by a third party. This shall invariably apply if the supplier delays the remedy or the replacement.

- 7.2.4 If the remedy is not possible, economically unfeasible or if it is unreasonable for the orderer, the orderer may at its discretion either withdraw from the agreement; (ii) demand an appropriate reduction in price; or (iii) request the replacement of the defective mould with a new mould by the supplier. Such an impossibility shall exist also if the life cycle is not reached and an improvement in accordance with point 7.2.2 is rejected on technical or economic grounds. In place of manufacturing by the

supplier, the orderer can immediately commission a third party with the replacement.

- 7.2.5 The place of remedy shall be the place in which the customer keeps the mould. Any costs incurred in connection with the remedy of the defect, in particular costs for transport, travelling, work and material as well as the outlay to find the cause and to remove the defect shall be borne by the supplier.

### **7.3 Warranty period/presumption of defect**

- 7.3.1 The warranty period shall be twenty-four months. It shall begin with formal acceptance. If the defect consists in extraordinary technical wear and tear or the rupture of the mould before reaching the agreed life cycle, the latter shall be the relevant warranty period instead.
- 7.3.2 If formal acceptance is omitted by mutually consent, the warranty period shall expire twenty-eight months after the passing of risk.
- 7.3.3 If the defect occurs within twelve months of the start of the warranty period, it shall be presumed that the defect already existed at that time, unless proof is established to the contrary.

### **7.4 Examination and Notice of Non-Conformity**

The legal obligations of the orderer with respect to the examination of the delivery and the obligation to notify defects shall be hereby excluded, particularly with regard to § 377 of the Commercial Code (UGB).

## **8. Liability**

- 8.1 The supplier shall be fully liable towards the orderer for any damages and losses (including but not limited to loss of profits) directly or indirectly caused by unlawful, in particular defaulting and culpable behaviour. The supplier is responsible for the negligence of its subcontractors or its sub-suppliers in the same way as for its own negligence. If the applicable law provides for strict liability, in particular for defective products or for hazardous action, the supplier shall also be liable to the orderer without being guilty of negligence in keeping with these provisions. The agreement or enforcement of a contractual penalty does not prevent the orderer from asserting claims for additional damages.
- 8.2 The orderer's claims for damages shall have the same legal standing as recourse, if the orderer is held liable by a third party due to the mould and/or the documents. The prerequisites and the scope of recourse shall be determined by the applicable law.
- 8.3 The supplier shall keep the orderer indemnified against claims of the contracting partners of the orderer as well as of other third parties if the supplier is liable to the orderer in accordance with points 8.1 and 8.2 or if the orderer has a right of recourse against the supplier.

- 8.4 If the supplier violates a legal duty to maintain safety through the construction, manufacture or presentation of the mould or through inadequate inspection, the supplier shall be liable to the orderer for the damage incurred thereby. If the supplier recognises or should recognise when applying reasonable care that the mould or hence the concatenated system or the product is faulty or turns faulty thus causing a hazard for life, limb, health, property or environment, the supplier shall be obligated to issue a warning notice and recall the mould.

## **9. Intellectual property rights**

### **9.1 General**

- 9.1.1 The parties hereby agree that the use of the mould, its modification and its replacement are of material importance for the orderer.
- 9.1.2 The orderer therefore receives the rights listed in point 9.2, irrespective of whether or not and which inventions, works and developments are included in the mould, and irrespective of whether or not property rights exist for these in the form of patents or utility model rights.

### **9.2 Granting of rights**

- 9.2.1 The orderer shall be entitled (i) to use the moulds and its parts itself, to pass these on to third parties or to allow these to be used by third parties; (ii) to work, modify, replace or duplicate the mould and its parts itself or by third parties; (iii) to manufacture itself or by third parties products using processes applied by the mould.
- 9.2.2 The orderer can exercise the rights stated in 9.2.1 by using the technical information, drawings, 3D data of the identical parts and other documents utilised/used by the supplier for production and inspection. If the mould or processes applied by the mould are deemed inventions (within the meaning of patent / utility model law) or if they are not capable of being protected, but are deemed as know-how that requires confidentiality (or if this applies at least to parts of the mould or the process), the supplier shall grant the orderer a royalty-free and transferable right of use without any restriction on location and time.

### **9.3 Miscellaneous**

Point 9.2 does not prevent the supplier from making further use of its knowledge and any other property rights.

## **10. Rights of inspection of the orderer**

### **10.1 Content of the rights of inspection**

- 10.1.1 The supplier authorises the orderer to inspect the supplier during the performance of the order. In terms of time, the right of inspection begins with the planning and development of the mould and ends with (formal) acceptance. The exercising of the

right of inspection, its improper exercising or omission shall not release the supplier from its obligation for the manufacture and delivery of the mould in accordance with the agreement.

- 10.1.2 The right of inspection of the orderer includes, but is not restricted to (i) the review and release approval of the design drawings; (ii) access to the supplier's operating facilities and plants; (iii) the inspection of the supplier's records for planning, design, quality assurance and test results (including the inspection of manuals and documentation); (iv) the preparation of copies; (v) the interviewing of staff; and (vi) the taking of samples and models of the products.

## **10.2 Performance of inspections**

The inspection by the orderer can be carried out by the orderer, its contractors or by third parties commissioned by the orderer. The inspection must be carried out giving appropriate advance notice and during normal working hours. The inspection shall also include the subcontractors and sub-suppliers under point 2.3; the supplier must ensure this legally and effectively. If the orderer commissions third parties, these shall be bound by the obligation for non-disclosure (point 11).

## **11. Confidentiality**

### **11.1 Object**

- 11.1.1 All business and corporate secrets, and all other confidential information disclosed to the other party, lie within the scope of this obligation for non-disclosure, regardless of status and of storage medium (hereinafter referred to as "information").
- 11.1.2 Business or corporate secrets subject to non-disclosure are enterprise-related facts of a commercial or technical nature that are known to a specified and limited number of persons, and thus not available to others, or only available with considerable difficulty, and which the parties do not desire to disclose to persons outside of the group of persons privy to the information, it being understood that the Parties shall have an economic interest in the non-disclosure of such facts. Other information shall be classed as confidential if it is expressly designated as such.
- 11.1.3 This obligation for non-disclosure does not apply to information known to the other party, or accessible to the general public, at the time of the commencement of negotiations, or to such information as becomes known or accessible to the other party, or the general public, at a later time without negligence on the part of the other party to this contract. Each party shall bear the burden of proof for the existence of these circumstances.

### **11.2 Obligations**

- 11.2.1 The parties undertake to keep information confidential and not to disclose information to third parties. Each party undertakes to take all required and reasonable actions to fulfil the terms of this obligation for non-disclosure.

- 11.2.2 Additionally, information should only be made accessible to staff who require it for their work. Each party must ensure that any and all staff granted access to said information sign a non-disclosure agreement as governed by the present item.
- 11.2.3 The orderer shall not be bound by this obligation, if said party (only) exercises its rights in accordance with point 9.2.
- 11.2.4 This obligation shall apply for a period of five years following the performance and/or termination of the agreement.

### **11.3 Contractual penalty**

For each instance of an infringement against this obligation for non-disclosure, the violating party shall be obligated to pay a contractual penalty to the other party in the amount of €50,000.00. This contractual penalty shall not be subject to judicial mitigation, and does not affect statutory rights to raise further claims for damages.

## **12. Place of jurisdiction and applicable law**

### **12.1 Place of jurisdiction**

- 12.1.1 All disputes and differences of opinion arising from or in relation to this agreement, including a dispute regarding the conclusion of the agreement or its validity, shall be subject to the jurisdiction of the competent court of law in Linz, Republic of Austria.
- 12.1.2 Independent thereof, the orderer shall be permitted to bring action against the supplier at the competent court of law at its headquarters.

### **12.2 Applicable law**

United Nations Convention on Contracts for the International Sale of Goods, Vienna 1980 (CISG), and is to be construed in accordance therewith.

## **13. Miscellaneous**

### **13.1 General**

- 13.1.1 This agreement, its annexes and the terms and conditions set forth therein contain the entire content of the contractual arrangement made between the orderer and the supplier.
- 13.1.2 Amendments, supplements, additions and so on made to this agreement shall only be effective if made in writing. In addition, the deviation from this requirement shall also be subject to writing.

## **13.2 Conversion**

- 13.2.1 Should one or more provisions of this agreement or the annexes thereto be or become invalid or void, this shall not affect the validity of the remaining provisions.
- 13.2.2 The parties shall replace the invalid or void provision with a valid provision, which most closely reflects the economic purpose of this agreement. A similar method shall be used in the event that a gap is found in the agreement through such nullity or invalidity or otherwise.

## **13.3 Waiver**

The failure of either party to enforce at any time any of the provisions of this agreement or to exercise any option or remedy herein provided shall in no way be construed to be a waiver of such provisions or to affect in any way the validity of this agreement.