

# General Terms of Business (GTB) of GIS Aqua Austria GmbH



January 2016

## 1. Scope

- 1.1. These terms of business apply between us (the company GIS Aqua Austria GmbH) and natural and legal persons (the Customer for short) for the present legal transaction, in addition to towards corporate customers for all future transactions, even when reference is not expressly made to the same in each individual case, particularly in the event of future supplementary or subsequent orders.
- 1.2. Our General Terms of Business in the current version respectively applicable at the time of contract conclusion and retrievable on our homepage ([www.gisaqua.com](http://www.gisaqua.com)) shall apply towards corporate customers.
- 1.3. We contract exclusively on the basis of our General Terms of Business.
- 1.4. The customer's terms of corporate and/or amendments to our General Terms of Business require our express approval - in writing towards corporate customers.
- 1.5. The customer's terms of business will also not be recognised if we do not expressly contest the latter after reception by us.

## 2. Offer/contract conclusion:

- 2.1. Our offers are non-binding.
- 2.2. Commitments, undertakings and guarantees on our part or agreements differing from these General Terms of Business in connection with the contract conclusion shall only become binding towards corporate customers by our written confirmation.
- 2.3. Information about our products and services quoted in catalogues, price lists, brochures, displays on exhibition stands, newsletters, promotional mails or other media (information material) which is not attributable to us must be submitted to us - insofar as the customer bases the latter's decision to commission on this. In this case, we may take a position on its accuracy. If the customer violates this obligation, such indications shall be non-binding, insofar as the latter have not been declared expressly - towards corporate customers in writing - contents of the contract.
- 2.4. Quotations are non-binding.
- 2.5. Quotations are in return for payment. The attention of consumers is drawn to the payment obligation before drafting of the quotation. If commissioning is performed with all the services included in the quotation, the charge for the quotation will be credited to the invoice in question.
- 2.6. The language of the contract and of fulfilment of the contract is German.

## 3. Prices:

- 3.1. Price indications are not to be understood as flat rates as a matter of principle.
- 3.2. A claim for appropriate remuneration exists for services prescribed by the customer which are not covered in the original assignment.
- 3.3. The customer must arrange professional and environment-friendly disposal of waste material. If we are separately commissioned with this service, the latter is to be additionally remunerated by the customer to the extent agreed and appropriately remunerated in the absence of any agreement on remuneration.
- 3.4. We are entitled of our own accord and also obliged on request by the customer to adapt the contractually agreed remunerations if modifications to an extent of at least 2% with regard to
  - a) the labour costs as a result of law, ordinance, collective agreement, company-specific agreements or
  - b) other cost factors for provision of service such as material costs owing to recommendations of the Joint Committees or changes in the national and/or international market prices for raw materials and modifications in exchange rates, etc. have occurred since contract conclusion. The adaptation is made to the extent in which the actual manufacturing costs at the time of contract conclusion change in relation to those at the time of actual provision of service, insofar as we are not behind schedule.

3.5. The remuneration in case of continuous obligations is agreed as value-secured according to the consumer price index 2005 and an adaptation of the remuneration is performed as a result. The month in which the contract was concluded is taken as the starting basis.

3.6. Towards consumers as customers, an adaptation of the remuneration in case of modification of costs is performed according to item 3.3 and in case of continuous obligations according to item only with individual contractual negotiation when the service is to be provided within two months following contract conclusion.

3.7. In case of charging according to length dimensions, the greatest length is taken as the basis, both in case of angled cut and notched profiles and curved profiles, handrails and the like and likewise in case of staircase railings, balcony railings and protective railings, fences and the like. In the event of charging of a square measure, the smallest rectangle circumscribing the executed surface is taken as the basis. Charging according to weight is performed by weighing. If weighing is not possible, the commercial weight is decisive. For section steel and profiles, the commercial weight and for sheet steel and band steel, 80 N/m<sup>2</sup> are to be applied per mm of material thickness; the rolling tolerance is included respectively. A 4 per cent surcharge is added to the dimensions thus determined for the joining means used for screwed, welded and riveted constructions;

## 4. Goods made available:

- 4.1. If equipment or other materials are made available by the customer, we are entitled to invoice to the customer a surcharge of 2% of the value of the equipment made available and/or the material.
- 4.2. Such equipment and other materials made available by the customer are not subject to warranty.

## 5. Payment:

- 5.1. One third of the remuneration is due on contract conclusion, one third on beginning of the service and the remainder after service completion.
- 5.2. Entitlement to a discount requires an express, towards corporate customers, written, agreement.
- 5.3. Towards consumers as customers, we are entitled in case of indebted default of payment, to calculate interest amounting to 8 percentage points above the prime rate.
- 5.4. We reserve the right to assert further damages caused by delay, but before consumers as customers however only if this is negotiated in the individual case.
- 5.5. If the corporate customer incurs default of payment within the context of other contractual relationships existing with us, we shall be entitled to suspend fulfilment of our obligations arising from this contract until fulfilment by the customer.
- 5.6. We shall also be entitled in this case to immediately call in all claims for services already provided arising from the current business relationship with the customer. This applies towards consumers as customers only in the event that an overdue service has been due for at least six weeks and with the threat of this consequence, we have reminded the customer without effect, after granting a period of grace of at least two weeks.
- 5.7. The customer shall only be entitled to offset insofar as counterclaims are established by court or have been expressly agreed to in writing. Consumers as customers shall also be entitled to offset insofar as counterclaims are legally related to the payment commitments on the part of the customer and in case of insolvency of our company.
- 5.8. If the payment deadline is exceeded, reimbursement granted (discounts, deductions, etc.) shall be forfeited and shall be added to the invoice.
- 5.9. For reminders necessary and appropriate for collection, the customer undertakes to pay in case of indebted default of payment collection fees per reminder amounting to € 25.- insofar as

this is appropriately proportionate to the claim asserted.

## 6. Credit assessment:

6.1. The customer declares to expressly consent to the latter's data being transferred exclusively for the purpose of creditor protection to the nationally privileged creditor protection associations AKV EUROPA Alpenländischer Kreditorenverband für Kreditschutz und Betriebswirtschaft, Creditreform Wirtschaftsauskunftei Kubicki KG and Kreditschutzverband von 1870 (KSV).

## 7. Customer's duties to cooperate:

- 7.1. Our obligation to provide service begins at the earliest as soon as the customer has created all structural, technical and legal prerequisites for execution transcribed in the contract or in information provided to the customer prior to contract conclusion or which the customer must know based on relevant specialist knowledge or experience.
- 7.2. In particular, the customer must make available without being asked to do so before the beginning of provision of service the necessary information concerning the position of concealed runs of electricity, gas and water lines or similar devices, escape routes, other obstacles of a structural nature, boundaries, other possible interferences and sources of risk in addition to the necessary static data and any possible planned modifications in this connection. Assignment-related details regarding the necessary data can be inquired from us.
- 7.3. If the customer fails to fulfil this duty to cooperate, our service shall not be inadequate - exclusively with regard to the incomplete performance owing to incorrect customer data.
- 7.4. The customer must arrange the necessary third party authorisations in addition to notifications and authorisations by authorities at the customer's own expense. We draw attention to these as part of contract conclusion, insofar as the customer has not dispensed therewith or the corporate customer should have such knowledge owing to training or experience.
- 7.5. The power and volumes of water necessary for service provision including trial operation are to be provided by the customer at the latter's costs.
- 7.6. The customer is to provide us free of charge lockable rooms to be occupied by the workers and for storage of tools and materials for the period of service provision.
- 7.7. As an internationally certified company, a prerequisite in all our business activities is the duty to cooperate on the part of our customers in fulfilling the standardisation requirements of standards ISO 9001:2008, EN ISO 14001, BS OSHAS18001 and SA 8000.

## 8. Service provision:

- 8.1. Objectively justified slight modifications in our service provision which are reasonable for the customer shall be considered approved beforehand. This right only exists towards consumers if negotiated in the individual case.
- 8.2. Objectively justified partial deliveries and partial services (e.g. plant size, construction progress, etc.) are permissible and can be invoiced separately.

## 9. Performance periods and deadlines:

- 9.1. Periods and deadlines shall be postponed in case of force majeure, industrial dispute, delay on the part of our suppliers which is unforeseeable and for which we are not responsible or other similar events outside our sphere of influence, within a time frame during which the corresponding event persists. The customer's right to withdraw from the contract in case of delays that render binding to the contract unreasonable shall remain unaffected.
- 9.2. If the start of service provision or execution is delayed or interrupted as a result of circumstances for which the customer

is responsible, particularly owing to violation of the duties to cooperate according to item 7 of these General Terms of Business, performance periods shall be extended accordingly and agreed completion deadlines shall be postponed accordingly.

9.3. Delivery and completion deadlines shall only be binding towards corporate customers if compliance therewith has been confirmed in writing.

9.4. In case of delay in performance of the contract on our part, the customer shall be entitled to a right to withdraw from the contract after granting an appropriate period of grace. Granting of the period of grace is to be performed in writing (by letter with acknowledgement of receipt from corporate customers), with a simultaneous threat of withdrawal.

#### **10. Note on limitation of scope of service:**

10.1 Within the context of installation and repair work, damage

a) to already existing stocks may occur as a result of undetectable conditions or material defects

b) during chiselling work in free-standing masonry. We shall only be liable for such damage if culpably caused by us.

10.2. In case of anodised and coated materials, discrepancies in the colour shades cannot be ruled out.

10.3. Protective coatings last three months.

#### **11. Temporary repair:**

11.1. Only very limited durability according to the circumstances exists in case of temporary repairs.

#### **12. Assumption of risk:**

12.1 The customer shall bear the risk for materials and equipment supplied by us and stored or installed at the place of performance. Losses and damage for which the customer is responsible shall be down to the latter.

#### **13. Default of acceptance:**

13.1. If the customer defaults in acceptance for more than 2 weeks (refusal of acceptance, delay in preliminary work or other) and the customer has failed to ensure elimination of the circumstances attributable to the customer that delay or prevent service provision in spite of granting of an appropriate period of grace, with a valid contract, we may otherwise dispose of the equipment and materials specified for service provision, insofar as we subsequently provide the same within a period appropriate to the respective circumstances in case of continuation of the service provision.

13.2. In case of default of acceptance on the part of the customer, we shall likewise be entitled in case of insistence on performance of the contract to store the goods on our premises, for which we shall be entitled to a warehouse charge amounting to 5 % of the order value.

13.3. Our right to demand payment of the remuneration for services provided and withdraw from the contract after an appropriate period of grace shall remain unaffected.

13.4. In the event of justified withdrawal from the contract, we may demand from the customer flat rate compensation for damages amounting to 10% of the order value plus VAT without proof of the actual damage. The obligation to pay compensation for damages by a corporate customer shall be regardless of fault.

13.5. Assertion of a higher loss is permissible. This right only exists towards consumers if negotiated in the individual case.

#### **14. Reservation of proprietary rights**

14.1. The goods supplied, installed or otherwise transferred by us remain our property until full and final payment.

14.2. Resale shall only be permissible if this has been announced in good time beforehand indicating the name and address of the purchaser and we agree to the sale.

14.3. In the event of our approval, the purchase price claim shall already be considered assigned to us.

14.4. If the customer defaults in payment, we shall be entitled after granting an appropriate period of grace to demand return of the goods subject to reservation of proprietary rights. We may only exercise this right towards consumers as customers if at least one overdue service on the part of the consumer has been due for at least six weeks and

we have reminded the latter without effect, threatening this legal consequence and granting a period of grace of at least two weeks.

#### **15. Third party property rights**

15.1. If the customer contributes intellectual creations or documents and third party property rights are asserted with regard to such creations, we shall be entitled to cease manufacture of the delivery item at the client's risk until clarification of the third party rights, in order to claim reimbursement of the necessary and appropriate costs outlaid by us, unless the unjustifiable nature of the claims is obvious.

15.2. The customer shall indemnify us and hold us harmless in this respect.

15.3. We shall be entitled to demand appropriate advances on costs for any legal costs from corporate customers.

#### **16. Our intellectual property:**

16.1. Plans, drawings, quotations and other documents made available by us or resulting from our contribution shall remain our intellectual property.

16.2. Use of such documents other than for the intended use, particularly disclosure, reproduction, publication and making available including copying only in excerpts requires our express consent.

16.3. The customer furthermore undertakes to maintain secrecy over the knowledge received by way of the business relationship before third parties.

16.4. If objects which were not owed as part of the service provision were issued to the customer within the context of initiating, concluding and performing the contract, these are to be returned to us within 14 days.

#### **17. Warranty:**

17.1. The warranty period for our services towards corporate customers shall be one year as and from transfer.

17.2. The moment of transfer, in the absence of any deviation from the agreement (e.g. formal acceptance) shall be the time of completion, at the latest if the customer has accepted the service under the customer's authority to dispose or has refused the transfer without giving reasons.

17.3. Elimination of a defect asserted by the customer shall not constitute any recognition of this defect asserted by the customer.

17.4. The corporate customer must allow us at least two attempts at defect elimination.

17.5. If the customer's assertions of defects prove unjustified, the customer shall undertake to reimburse us expenditure accruing to us for establishing freedom from defects or for troubleshooting.

17.6. The corporate customer must always prove that the defect was already present at the time of transfer.

17.7. Defects in the delivery item which the corporate customer has detected or should have detected by inspection following delivery in the ordinary course of business are to be reported to us immediately in writing, 10 days at the latest after transfer. Hidden defects must likewise be reported within this appropriate period as and from discovery.

17.8. Any utilisation or processing of the defective service item, as a result of which further damage impends or investigation of the cause is rendered more difficult or prevented is to be immediately discontinued by the customer, insofar as this does not prove unreasonable.

17.9. If a notice of defects is not promptly drafted, the goods shall be considered approved.

17.10. The defective delivery or samples thereof, insofar as economically feasible, are to be returned to us by the corporate customer.

17.11. The customer has the duty to allow us to determine the defect without delay.

17.12. The warranty shall be excluded if the customer's technical installations, such as supply leads, wiring, etc. are not in a technically perfect and operational condition or are incompatible with the delivered objects, insofar as this circumstance is causally responsible for the defect.

#### **18. Liability**

18.1. We shall only be liable for culpably caused personal injury and material damage within the context of the existing civil liability insurance.

In case of slight negligence on our part, insofar as under item

18. Paragraph 1 applies, the compensation for damages shall be limited to 5 % of the order value, up to a maximum limit however of € 500,000.-.

18.2. Owing to violation of contractual or pre-contractual obligations, particularly owing to impossibility, delay, etc., we shall only be liable for financial losses in cases of deliberate intent or gross negligence.

18.3. This restriction shall also apply with regard to damage to an item that we have accepted for processing. Towards consumers, this shall only apply however if this has been separately contractually negotiated.

18.4. Claims for damages on the part of corporate customers are to be asserted by judicial process within six months in case of further expiry.

18.5. Further claims, particularly liability for indirect damages such as operational disruptions, loss of production, loss of profits, loss of interest, delay, loss of contract or other indirect consequential damages are expressly excluded.

18.6. Our liability is excluded for damage due to improper handling or storage, overstressing, failure to comply with operating and installation instructions, incorrect assembly, commissioning and maintenance by the customer or third parties not authorised by us, or natural wear and tear, insofar as this event was causally responsible for the damage. Likewise, exclusion of liability exists for omission of necessary maintenance, insofar as we have not contractually undertaken the duty of maintenance.

18.7. If and insofar as the customer is able to claim insurance coverage by insurance for damages concluded by the customer or to the customer's benefit (e.g. civil liability insurance, or fully comprehensive, transport, fire, business interruption and other) for damages for which we are liable, the customer shall undertake to make avail of the insurance coverage and our liability in this respect shall be limited to the disadvantages arising to the customer through availing of this insurance (e.g. higher insurance premium).

#### **19. Salvatorian clause:**

19.1. Should any individual parts of these General Terms of Business prove invalid, the validity of the remaining parts shall remain unaffected as a result.

19.2. We and likewise the corporate customer already jointly undertake - starting from the scope of view of bona fide contractual parties - to consent on a substituting regulation which most closely approximates the commercial result of the ineffective provision.

#### **20. General:**

The substantive law of Austria shall govern these conditions of purchase under express exclusion of United Nations Conventions on Contracts for the International Sales of Goods (CISG) and Austrian international private law IPRG and any dispute arising out of these shall be decided by competent court of the city of St. Pölten/Austria.