

General Purchase Conditions of J. Christof (J. Christof Gesellschaft m.b.H. and its affiliates pursuant to section 189 a Austrian Commercial Code [UGB]) – July 2019

1. Applicability

- 1.1 The following terms and conditions (the **TCs**) shall exclusively apply to J. Christof's (each, J. Christof Gesellschaft m.b.H. and an affiliate a **Buyer**) inquiries and purchase orders with respect to Supply and/or Services. We shall not be bound by seller's (the **Seller** or **Contractor**) terms and conditions unless expressly accepted by us in writing. **Supply** and/or **Services** shall mean all the products, supplies and/or services to be provided by the Contractor as per the Order/Contract (the **Order/Contract**).
- 1.2 Contracts are based solely on our TCs; we do not accept deviating or conflicting provisions unless these have been given our explicit written approval. This also applies even if the Seller's written order confirmation contains other contract terms. In case there is no writing ruling, the mandatory law applies. This also to be viewed as an explicit contradiction to conflicting rules and/or Terms and Conditions of the Seller.
- 1.3 These TCs are deemed to be acknowledged by the Seller from the start of the performance of the Order/Contract at the latest.
- 1.4 Should any provision of these TCs be or become null and void, this shall not affect the validity of the remaining clauses.
- 1.5 In the event of a contradiction in the documents constituting the Order/Contract, the following order of precedence shall apply:
 - Wording of the purchase order (letter, facsimile or email);
 - Schedules to the Purchase Order;
 - Meeting minutes (if applicable)
 - Contract (or parts thereof) entered into in between the Buyer and the client (the **Client**), to the extent known to the Seller
 - These TCs including its Schedules.In case the priority of documents does not lead to clarity on the agreement between the parties, all open issues with respect to the scope of Supply and Services shall be decided upon what would best suit the purpose of the Contract. The Seller shall inform the Buyer in every case of lack of clarity with respect to the scope of Supply and Services and he shall initiate a mutual agreement about the same. The Seller shall promptly inform the Buyer about any known discrepancies or irregularities in the specifications. Headings are introduced for orientation purposes only and shall not be considered for the interpretation of the contents of the Contract.
- 1.6 These TCs do not affect any rights and/or remedies of the Buyer under applicable law.

2. Offers / Quotations

- 2.1 The Seller's quotations, plans and consultations are not binding for us and are free of charge. The Seller is bound by his offers and is obliged to obtain sufficient information about details affecting the subject of the inquiry or order. Purchase orders shall only be legally binding if issued on our order forms and legally signed.
- 2.2 Offers shall correspond to the inquiry and reflect the correct inquiry numbers. Any variations or inconsistencies shall be clearly identified as such.
- 2.3 Offers not in line with these TCs or referring to the terms and conditions of the Seller are herewith explicitly rejected.
- 2.4 By placing an offer the Seller declares and shall be liable therefor that all and any conditions for fulfilling its Supply and/or Services can be fulfilled. Seller is not released from any duties under its offer or under these TCs by the fact that any materials, documents or whatsoever provided by the Buyer were inaccurate, incomplete, unclear or incorrect. In case Seller is of the opinion that any such documents are incomplete or unclear it shall promptly inform Buyer accordingly together with a reasonable solution.
- 2.5 Offers without a term of acceptance can be accepted by the Buyer within 12 (twelve) weeks upon receipt.
- 2.6 The details given in our enquiries or orders, the enclosed drawings and designs together with samples, models, plates and other aids supplied by us remain our property and must not be put to any other use without our written consent; they must be returned to us unsolicited in case no contract is entered into.
- 2.7 Buyer is entitled to keep any and all quotations, plans, samples and the like as provided by Seller.

3. Award of Order

- 3.1 The invitation to offer does not bind the Buyer in any manner.
- 3.2 Purchase orders shall only be legally binding if issued on our order forms and legally signed. E-Mail or fax shall suffice. Preliminary verbal, telephone or fax orders must be confirmed in writing on our order form to become valid, unless our order transmitted via fax or electronically contains a note that no written confirmation will follow.
- 3.3 Seller shall accept the order immediately, however, at the latest within 5 (five) working days upon receipt in writing as otherwise the Buyer shall no longer be bound by it.
- 3.4 Variations and/or amendments to orders principally need to be agreed in writing.

- 3.5 Subcontracting shall not be permissible without the explicit consent of the Buyer. Exempt is any primary material or the like. In case of breach of this section Buyer is entitled to revoke the Order/Contract whilst any other remedies of the Buyer remain unaffected.
- 3.6 The meeting minutes (if applicable) form an integral part of the contract and shall in any event supersede these TCs.
- 3.7 The Seller shall have no right for the avoidance (*Anfechtung*) or adjustment (*Anpassung*) of the Order/Contract because of error (*Irrtum; including calculation error [Kalkulationsirrtum]*). The Seller expressly waives its right to the application of § 934 ABGB concerning "*Verkürzung über die Hälfte*" (*laesio enormis*) or other remedies.
- 3.8 Variations and/or amendments to Orders/Contracts principally need to be agreed in writing. The language of the entire correspondence shall be in German or English. The shipping documents, delivery notes, invoices, and all related documents must be issued in German or English.

4. Termination / Suspension

- 4.1 We are entitled to cancel the Order/Contract either partially or completely without any fault on the part of the Seller. In such case we shall be obliged to pay the Seller the contract price pro rata the Supplies and Services already provided and in addition, to pay the direct cost for Supplies and Services in progress for which proof can be furnished as well as for cancellation of orders placed with sub-contractors. Upon receiving notification of cancellation, Seller shall be obliged to keep the costs we are to refund as low as possible. All and any additional claims for whatever legal grounds (indirect damage, loss of profit, etc) are excluded.
- 4.2 Buyer is entitled to terminate the contract on grounds for, *inter alia* but not limited to, the following reasons:
- Doubts as to the liquidity of the Seller and in case no collateral is granted upon request;
 - Change of control in the Seller;
 - Transfer/assignment of rights of the Sellers hereunder or under the Order/Contract or collection of receivables against the Buyer by a third party;
 - Breach of these TCs or public law regulations by the Seller;
 - Seller entering into contracts with third parties to the detriment of Buyer, contradicting order public or a non-compete provision;
 - In case of breach of compliance provisions, Code of Conduct, etc by the Seller;
 - In case fulfillment of the Supply and/or Services becomes impossible due to reasons attributable to the Seller;
 - If bankruptcy, conciliation or similar proceedings are filed or initiated regarding the Seller's assets. We shall be free at any time to take over the materials purchased for our order, engineering services or parts on which work has been started at customary prices.
- 4.3 Seller is obliged to immediately inform Buyer on any events/circumstances mentioned above.
- 4.4 We have the right to request that the Seller suspend the work on the Order/Contract at any time. We have the right to (partially) terminate the Order/Contract at any time without giving notice. Further claims/remedies remain unaffected thereby.

5. Subcontracting

- 5.1 Buyer shall be entitled to (partially) transfer the Order/Contract to another affiliate within J. Christof. In such case Buyer shall still be separately and not jointly (*Haftung zur geteilten Hand*) liable for his liabilities under the Order/Contract.
- 5.2 The Seller shall inform the Buyer about intended subcontracting in due time. The Seller shall obtain written approval from the Buyer prior to awarding the subcontract in case the Seller intends to subcontract to companies not domiciled in member states of the EU, in Switzerland or in North America. The Seller shall indemnify the Buyer against any loss or damages which may occur due to noncompliance with the foregoing in particular but not limited to the following criteria:
- Quality
 - Delay risk
 - Compensation interests
 - Generally applicable standards and contractual standards
 - Subsupplier's specifications of the Customer
 - Customs, Import, Export etc
- 5.3 Without prejudice to other rights, the Buyer shall be entitled to rescind from the Order/Contract totally or partially in case of subcontracting without Buyer's approval. Approval of a subcontract by the Buyer shall have no effect on the contractual obligations of the Seller. The Seller shall remain fully responsible to the Buyer for the fulfilment of the Order/Contract. The Seller shall be fully liable for any act and omission of its subcontractors as it would be his own.

- 5.4 Seller shall bind the subcontractor by the same terms and conditions as stipulated in the Order/Contract and shall ensure the compliance with it. The Seller shall present to the Buyer the corresponding data and facts prior to commencing with the works, in case the Seller or its subcontractor deploys workers who are not originate from EU countries.
- 5.5 Seller shall be obliged to comply with the obligations stipulated in the Order/Contract regarding the conditions of the governmental export promoting institutions or financing institutions as Hermes, Kreditanstalt für Wiederaufbau (KfW), European Central Bank (ECB), Österreichische Kontrollbank (ÖKB) or other financing and/or insurance institutions requiring a minimum value add originating from a particular country or relevant certificates of origin and to prove that to the Buyer. The Buyer and the involved financing/insurance institutions shall have the right to conduct relevant audits of the Seller's compliance with the minimum original value add or may be provided with certificates of origin free of charge and at any given time. In case Seller's non-compliance with the aforementioned obligations lead to an exporter liability of the Buyer, the Seller shall indemnify the Buyer for any damages and loss due to this violation, such as but not limited to
- additional costs due to discontinuation of a publicly supported export credit for the entire financing period and
 - consequences due to the loss of coverage of the economic and political payment default risk.
- 5.6 Seller shall make inquiries regarding any subcontracting within the supply and service program of the companies of J. Christof with the respective affiliates. However, the fulfilment of time plans and other conditions stipulated in the order shall remain unaffected.
- 5.7 Seller shall not prevent its subcontractors from entering into contracts with the Buyer regarding other supply and services. In particular, exclusivity agreements with third parties preventing the Buyer from obtaining supply and/or services shall not be permissible.

6. Suspension

Buyer shall have the right to suspend totally or partially the Order/Contract at any time. Seller shall, for the time of suspension, only be entitled to consideration, in case suspension exceeds the agreed date of delivery by more than 50%. In such case the consideration is limited to the documented stand-still costs. In that event, the Seller shall be obliged to hand over a detailed notice about the resulting consequences and to offer to the Buyer a new time schedule with adjusted dates under best economic considerations for the Service and/or Supply. The Buyer shall have the right to suspend up to 3 months free of any claim for the Seller.

7. Delivery / Scope of Supply and Services

- 7.1 The Supply and Services specified in the Order shall be binding for both parties. Seller shall complete the specified Supply and Services. Therefore, all products and services or parts thereof, which are not explicitly mentioned in the Order, but which are necessary for the regular performance of the supplied products or services and of other products and units interacting with them, shall also be deemed to be part of the Scope of Supply and Services for the purpose of the Client contract, as far as the Seller is aware of the Client contract. Seller shall perform the Scope of Supply and Services as per the current state of the art and professional conduct valid in Austria at the time of its performance. The Contractor shall ensure that its products have the necessary quality (e.g. solidity) at any given date. This means, the products by themselves, with respect to time-related details regarding dates, periods and intervals (called time details in the following) and also in interaction with other products, shall work, function and shall be used in such a manner that the purpose of the Client contract can be achieved without any problem.
- 7.2 The Scope of Supply and Services of the Seller might become a part of a complex total plant to be installed. Therefore, any shortfall of the Seller's performance of his obligations will most likely cause problems within the total project organization, leading to additional costs, for instance in connection with postponement of deadlines in the network plan, third party claims, impairment of logistics, delay in the acceptance by the final Client, idle time etc. The impact on costs will be particularly severe in case the Client's scope of Supply is part of a total plant installed outside Austria. Therefore, Seller shall take special precautions for the diligent and timely performance of his obligations considering the aforementioned circumstances. Seller shall especially acquire all the information, which is to be taken into consideration for the proper performance of his obligations under the specific prevailing conditions of the route of transport and of the destination of its Scope of Supply and Services and for the integration of them into the total plant.
- 7.3 Buyer shall be entitled to modify or supplement the Scope of Supply and Services at any time. Seller shall carry out the modifications or the amendments to the Scope of Supply that become necessary during the execution or due to the request for modifications under the conditions stipulated in the Order/Contract. Within reasonable time, however latest within 14 days, the Contractor shall evaluate the modifications or the amendments for their possible impact, in particular for the effect on the technical execution and on the costs and shall inform the Buyer about the result in writing, in so far as the modifications are not already part of the agreed Supply and Services. The Contractor shall inform the Buyer without delay about any changes in the delivery or service time. If the Buyer decides for

- execution of modifications not included in the agreed Supply and Services, the Parties shall adjust the Order/Contract accordingly. Modifications of prices and deadlines shall always require Buyer's written approval.
- 7.4 In case it is obligatory or permissible by law to affix the CE-marking and/or proof of conformity on the products, the Contractor shall be obliged to affix the CE-marking and to submit to the Buyer the required proofs of conformity in the language stipulated for the documentation. If it is not possible to label the products with a test symbol, the Contractor shall prove compliance with above mentioned specifications upon Buyer's demand.
- 7.5 Seller shall only have the right to partial performance of its Supply and Services upon Buyer's prior written approval.
- 7.6 The parties agree that for the fulfilment of their mutual Order obligations, time is of the essence. The start date of performance of the Supply and Services, of submission of documentation and as-built drawings owed by the Contractor to the Buyer as well as the beginning and end of installation, of commissioning and trial run, shall be agreed in the Order. The Contractor shall procure all material early enough that Contractor can remedy any defects of the Supply and Services in due time. For documentation, the date of the Buyer's receipt stamp or the date of the Buyer's other confirmation of receipt shall be deemed as delivery date provided that the Contractor submitted complete and correct documentation according to the Order. For the Supply and Services, the earlier of the following events shall be deemed as the delivery date: the date of Contractor's entire fulfilment of his respective obligations free of defects according to the Order including the complete and correct documentation or the Buyer's formal taking over of the supply and services without reservations.
- 7.7 For assessment of the scope, the date of the Buyer's other confirmation of receipt shall be deemed as delivery date. In case of partial delivery Buyer is entitled to usage of the parts delivered; such usage not being deemed approval of the Supply and/or Services.
- 7.8 In case obligations of the Employer have an effect upon the agreed deadlines, the Contractor shall conduct all necessary actions in a verifiable way and in due time to enable compliance with such the deadlines. Otherwise the Contractor may not invoke Buyer's delay with his obligations in case Contractor's Supply and Services is delayed. In particular, the Contractor may only invoke Buyer's failure to provide documents in case Buyer fails to provide such documents within a reasonable time despite Contractor's notification of default. In such a case the deadlines shall be postponed by the duration of Buyer's delay and free of costs for the Buyer. The new deadlines extended by the time of Buyer's delay shall be deemed as the new deadlines subject to contractual penalties if any. In any case of delay or risk of delay Seller shall carry out its Supply and Services in a such flexible manner as to minimize the delay. In case of Seller's default the Buyer shall be entitled to all statutory rights. In particular, the Buyer shall have the right to claim damages in place of performance and to rescind the Order/Contract after expiry of a reasonable grace period. In case Buyer claims for damages, the Seller shall have the right to prove that the breach of contract is not attributable to him.
- 7.9 Seller shall inform the Buyer directly as soon as he knows that he will not be able to meet any agreed deadlines about the details of the delay by stating the reasons and the estimated duration in writing. Acceptance of late performance shall not be deemed as a waiver by the Buyer with respect to any rights hereunder or under statutory law.
- 7.10 In case of Seller's delay, the Buyer is under the obligation to provide any means and measures to minimize the delay. The costs in such respect to be solely borne by the Buyer.
- 7.11 In case of delay Buyer is entitled to rescind the contract with immediate effect after a 14 days grace period. In case a fixed delivery day was agreed, the Contract/Order shall be automatically deemed terminated in case the 14 days grace period is exceeded unless Buyer demands performance of the Contract/Order.
- 7.12 In case Seller fails to meet the deadlines, interim or final dates stipulated in the Order/Contract or in the contractual time schedule, the Seller, unless otherwise agreed, shall pay for the time of the actual delay the following contractual penalty always referring to the total Order/Contract value, until the Buyer proves that he incurred exceeding damages. The Buyer may set off such amounts against current invoices or rights for payment of Seller.
- Delayed supplies and services 1% per each week of delay, however not more than 5% of the total Order value/total Contract price;
 - Delayed documentation: 0.5% per each started week of delay, however not more than 3% of the total Order value/total Contract price.
- The dispatch note must be sent to us immediately on departure of each consignment.
- 7.13 A packing slip and dispatch note are to be packed with the consignment itself. The following information must be indicated on the dispatch note and on the package: our complete order number and item number, contents, consecutive number of the package, usual markings, gross and net weights as well as dimensions of the package. Labelling requirements must be observed.
- 7.14 The goods are to be properly packed in perfect condition for transport, using environmentally-friendly, recyclable material. All products shall be rated, packaged and labeled properly in accordance with the respective form of shipping and shall comply with Austrian and applicable legal standards. All documents (in accordance with Clause 9 hereof) shall be attached to the consignment. Packaging material is to be used in accordance with applicable rules taking into account Buyer's efficient usage.

8. Transfer of ownership / risk

- 8.1 In case, Buyers' acceptance of the Supplies or Services is expressly agreed, the transfer of risk for accidental loss or damage shall take place accordingly. In all other cases transfer of risk shall take place according to the agreed ICC INCOTERM 2010.

- 8.2 The transfer of ownership to the Employer shall take place at the earliest possible time but with delivery according to the ICC INCOTERM 2010 at the latest, unless otherwise agreed in the Contract/Order.

9. Quality and Documentation

- 9.1 Seller shall be obligated to prepare and supply all deliveries and services in accordance with the applicable national and international standards and the latest technological standards. Seller shall be obliged to provide the legally (mandatorily or contractually) required documents, certificates and the like also in the required language. Contractor shall provide the operating and maintenance manuals for its Supply and Services without charge.
- 9.2 Seller shall warrant the completeness and correctness of the documents and certificates so provided and shall fully indemnify and hold harmless Buyer in such respect.
- 9.3 Seller shall further be liable for complying with all legal and administrative rules, orders (especially with regards to safety and environmental protection) and with applicable laws. Upon Buyer's request such is evidenced by the Seller in writing.
- 9.4 Seller shall be under the obligation to provide the Services and Supply in compliance with all environmental laws and the latest technological standards. Seller shall observe (to the extent economically reasonable) an environmental friendly supply in accordance with environmental laws and the waste management laws (*Abfallwirtschaftsgesetz*). Such comprises environmental friendly and recyclable materials as well as low-emission, low-pollution, energy- and resource-saving solutions. Seller is obliged to provide and update a waste management concept and comply with such as well as provide proof in such respect. In case Seller is certified pursuant to ISO14001, the relevant processes on environment management are to be disclosed upon request by the Buyer.
- 9.5 For testing the Seller shall submit the required test documentation, in case of packing test the packing lists. Incomplete or incorrect test documentation may lead to repetition of testing. At the beginning of the test, the Seller shall provide the test documentation to the Buyer's inspector in the defined number of copies or the documents shall be sent to Buyer within an agreed period. In case the Buyer expressly waives the test, Seller shall submit the test documentation to the Buyer immediately or as agreed, however prior to the delivery. The test documentation shall be prepared according to separate part/item numbers, and shall be presented clear and properly -arranged and meaningful with a list of contents etc. in dockets/files.

10. Taking Over

- 10.1 Quality tests, testing of materials, final test and inspections performed as well as taking over of documents or approval thereof by the Buyer or by persons contracted by the Employer shall not be deemed as taking over.
- 10.2 In the case commissioning and trial run are part of the Seller's obligations, taking over of the Supplies and Services shall take place after successful completion of commissioning and of the trial run, but, however, in any case taking over/acceptance of the Supplies and Services shall not be achieved before Seller has fulfilled all of its obligations under the Order/Contract, including handing over of complete documentation, the supplies and services are state of the art and particularly the Seller has proven in a successful performance test that its supplies and services comply with the guaranteed figures/values.
- 10.3 Partial taking over may be provided upon demand if those supplies and services are considered a separate unit.
- 10.4 The Buyer may deny Taking Over by reasons of substantial defects until they are fully remedied by Seller.
- 10.5 Taking over is to be performed formally. An informal taking over may not take place. Minutes of the taking over shall be taken in writing. Each party may ask for the participation of an external expert at its own cost. The parties shall mutually lay down their findings in the minutes which shall also contain reservations with respect to noted defects as well as Buyer's objections. Each party shall receive a copy of the minutes.
- 10.6 Formal taking over may take place in the absence of the Seller, if the parties agreed on the date and time of taking over or if the Seller invited the Buyer to taking over with a reasonable notice period and the Seller does participate. Despite Seller's absence, the Buyer shall inform the Seller about the outcome of the formal taking over procedure and provide him a copy of subject minutes.
- 10.7 The Buyer shall notify the Seller of reservations for known defects at the latest when performing the formal taking over.
- 10.8 Supply and Services are deemed taken over once confirmed in writing by Buyer.

11. Prices / Payment Conditions

- 11.1 The prices mentioned in the Offer shall be binding. The prices of the Offer shall be understood as fixed prices without VAT (value added tax) and shall include all Contractor's expenses in connection with the performance of the Supply and Services. In particular this includes all the costs for transport, insurance, packing, taxes, customs duties and tariffs applicable at the place of performance. The Buyer shall bear only costs that are expressly mentioned in the Offer as obligations of the Buyer. The conditions of the initial Offer shall be applicable for every modification and amendment of the Order as well as for Orders of spare parts and wear and tear parts. The price includes the costs of documentation, technical testing, painting, corrosion protection, marking, signing etc. In case of export, Contractor shall be responsible for all customs declaration and handling (customs handling with own papers including payment of all related costs and tariffs).
- 11.2 Seller shall submit all invoices to the Buyer in accordance with applicable laws. The invoices shall include all the references and documents required for identification, like order number, number of items etc. Seller shall be liable

for all consequences occurring due to non-compliance with the obligations stated before unless such consequences are not attributable to Seller. Seller domiciled in an EU country shall also state in the invoices the place of delivery of the goods in addition to the legally mandatory information for tax exemption.

- 11.3 Buyer shall make the agreed (instalments) payments on the agreed date of payment after receipt of invoice and after fulfillment of all conditions mentioned in the Order, in particular after the delivery of complete documentation. Unless otherwise agreed in writing, Buyer shall pay the contract price upon complete delivery of the goods and upon fulfillment of services, within 30 (thirty) days, in case of down payment within 45 (forty-five) days, and in case of (partial) account settlement within 90 (ninety) days, in each case after receipt of invoice.
- 11.5 Buyer's payment shall not be deemed as acknowledgement of the supplies and services with the terms of the Order and therefore the payment shall not be deemed as a waiver of any rights of the Buyer for fulfilment, remedy of defects, compensation for damages, contractual penalties etc.
- 11.6 Buyer shall release the final payment only upon presentation of a final invoice covering all the supplies and services as per the Order and all claims related thereto. Submission of the final invoice shall be deemed as the Seller's declaration to have asserted all the claims arising from or in connection with the respective business transaction and that the Seller has no further claims against Buyer.

12. Assignment / Set-Off

- 12.1 In case of defect(s) the Buyer is entitled to (partially) retain payment until removal of defects thereby not forfeiting any benefits such as discounts, deductibles and the like.
- 12.2 Without prejudice to the provisions of the UGB (Austrian Commercial Code) the Seller not be entitled to assign to a third party any right he may have against the Buyer or to have such rights enforced by a third party without prior written approval of the Buyer. The Seller shall only have the right to setoff counterclaims against the Buyer if and so far as such claims are undisputed and affirmed as final and absolute (res judicata) by a court of competent jurisdiction.
- 12.3 The Buyer is entitled to setoff any and all counterclaims against the Buyer and of its affiliates.
- 12.4 The Buyer shall be entitled to retain an agreed security for performance, defects liability, guarantee or for damages free of interest for a period exceeding the defects liability period by 45 days. The same shall be applicable in case of insolvency of the Contractor. According to the agreed payment conditions and to ensure the fulfilment of performance and guarantee obligations, the Contractor shall arrange and hand over to the Employer only bonds or guarantees by a first class European bank rated AAA.

13. Defects Liability / Warranty

- 13.1 Despite the characteristics explicitly specified or agreed in a different manner or generally to be expected, the Seller shall be liable for the completeness of his Supply and Services and for their suitability for the particular use, in particular for the suitability of its supplies and services for the circumstances prevalent. The Seller shall further be liable for complying with all legal and administrative rules, orders (especially with regards to safety and environmental protection) and with applicable norms, for enduring availability of its supplies and services.
- 13.2 By accepting or approving drawings or documentation Buyer does not waive any rights whatsoever.
- 13.3 The warranty period shall commence upon acceptance by Buyer of the complete delivery or service, which is in full compliance with the applicable contractual obligations. Partial deliveries/services as well as the start of operation or use of partial deliveries/services by Company shall not trigger the start of the warranty period.
- 13.4 The warranty period is time-barred by any claim letter
- 13.5 Buyer is under no obligation to inspect the goods delivered and/or the services rendered or to complain within a given period of time in order to preserve claims; the respective provisions of section 377 ff UGB are hereby excluded.
- 13.6 Without prejudice to any other rights of Buyer or to any of Seller's warranty obligations, The Buyer shall have the right, at his sole discretion, to demand from the Contractor to remedy a defect or to deliver a new good or to render the services again as a substitute for the flawed one. The Buyer explicitly reserves the right to claim damages, particularly in place of performance of the Contract. The Buyer shall have the right to remedy the defect or the flaw by himself or to have a third party remedy the defect or the flaw at the Contractor's cost in case the Buyer cannot reasonably anticipate the Seller's timely rectification and in case the Buyer reasonably assumes that he or the Final Customer will incur higher damages by reason of the Seller's late rectification than by reason of Seller's remedying the defect or having it remedied by third party. Moreover, the Buyer shall be entitled to remedy the defect or the flaw at the Seller's cost if the Seller does not rectify the defect or the flaw within a reasonably specified time as in Buyer's according notice.
- 13.7 The Buyer shall in its sole discretion determine the pace of acceptance as well as the modalities of any repairs.
- 13.8 All costs (including installation, transport, traveling, approvals etc) arising out of or in connection with any repairs shall be solely borne by the Seller
- 13.9 The warranty period ends 36 months after the date of acceptance by the Buyer, however, at least 24 months from complete fulfillment vis-à-vis the Final Customer. §933b ABGB shall apply in case Buyer granted warranties to Final Customer or another entrepreneur. The defects liability period shall get extended among others by the time the supplies cannot be used for reason of a defect as well as by the time the Parties discuss the nature or the extent of

- a defect. The Buyer may notify the Seller about a defect until 6 months after the expiration of the defects liability period. The Seller's rights and remedies with respect to any defect shall not become time-barred prior to such date.
- 13.10 Defects notified to Seller within the warranty period shall be deemed to have existed at the time of acceptance. Buyer shall notify Seller of any defects within the applicable warranty period. Buyer shall have no additional obligation to file a lawsuit within the applicable warranty period, but such lawsuit can be filed up to two (2) years following the expiration of such warranty period. Seller reserves the right to invoke warranty without limitation of time by means of defense.
- 13.11 At the Buyer's sole discretion the Seller shall remedy any defect by repair or replacement that emerge prior to or during the defects liability period at the place of operation of the defective supply, including any serial defect even if the defect has not become apparent at all parts of the supply. All necessary activities, costs and expenses to fully remedy the defect, like e.g. transportation, customs, duties, de-installation and reinstallation, etc. shall be performed and/or borne by the Seller.
- 13.12 In case creating, compiling and or delivery of software is part of Seller's Supplies and Services, the Seller shall be responsible for the whole system and its components having the most recent status of release (i.e. the system is in conformity with the latest update and debugged) or upgrade (i.e. a technical or functional amplification of the software system) at the time of Taking Over and if in case Taking Over is not the purpose of the Contract, at the time of delivery.

14. Liability

- 14.1 The Seller shall be liable for any non-performance or violation of his obligations and for the damages that arise therefrom. He shall further hold harmless and indemnify the Buyer from all claims of any third party based on any act or omission of the Seller or of any of its agents, employees or sub-contractors.
- 14.2 Seller is obliged to provide Buyer with all and any information, documents and the like required for any defense against a third party claim. Moreover, Seller shall join Buyer in case of an proceedings against him (*Nebenintervenient*).
- 14.3 As far as the Contractor is responsible for damages resulting from a defective product, he shall hold harmless and indemnify the Employer upon its first demand from any third party claims.
- 14.4 Seller shall get sufficient insurance coverage against any risk arising form the Supply and Services and upon demand he shall present to the Employer written proof of the respective insurance. In case such proof cannot be provided or Seller is reluctant to increase the insurance cover, Buyer at his sole discretion may terminate the Order/Contract with immediate effect or get sufficient insurance cover himself at the sole cost of the Seller.
- 14.5 Seller shall be liable that the Supply and Services performed by him or Seller's sub-contractors does not infringe any third party rights. In case a third party files a subject claim against the Buyer, the Seller shall hold harmless and indemnify the Buyer upon its first demand from and against any such claims or damages.
- 14.6 Seller shall be liable for negligence and intent.
- 14.7 Even if the Order/Contract includes the Seller's obligation to pay contractual penalties for defects, for non-achievement of specifically agreed performance parameters or of guarantees (e.g. performance guarantees), the Seller shall not be released from his obligations that his Supply and Services shall meet the intended purpose of use.
- 14.8 Seller declares that he is aware of the importance for Buyer that the Seller complies with his obligations with respect to the documentation of his Supply and Services and thus shall be liable in case of delay of handing over the documentation and for the documentation being incorrect or incomplete.
- 14.9 Seller shall be responsible that the services he renders with respect to engineering, to consulting, or to documentation are, correct and complete. Seller acknowledges that he is aware of all relevant parameters and requirements.
- 14.10 As far as the Seller is responsible for damages resulting from a defective product, he shall hold harmless and indemnify Buyer upon its first demand from any third party claims.
- 14.11 Any limitation of Seller's liability shall only be applicable and enforceable if particularly confirmed in writing by the Buyer.

15. Force Majeure

- 15.1 Force Majeure shall mean events or circumstances that have the effect of making it impossible or unlawful for the affected party to perform its obligations, in whole or in part, where such events or circumstances (i) are beyond the control of that party, (ii) were not attributable to that party, and (iii) could not have been prevented, overcome, or remedied by the asserting party in whole or in part through the exercise of due diligence. The parties shall be excused in full or partial from the timely fulfilment of the Order/Contract, in case of Force Majeure. The Parties shall only be entitled to raise an excuse based on a Force Majeure event if a party immediately provides (however, within 24 hours at the latest) a registered notice to the other stating details e.g. about the beginning and the expected ending of the event, the cause of it and that being proofed and officially certified by the respective government authority or chamber of commerce of the country where the Supply and Services are to be performed.
- 15.2 In the event of Force Majeure the Seller shall be obliged to make all efforts to remedy and to mitigate the delays and expected damages and to keep the Buyer continuously informed in this regards.
- 15.3 Deadlines and schedules, which cannot be adhered due to the Force Majeure, are extended by the duration of the effects of the event.

- 15.4 The Buyer shall have the right to withdraw totally or partially from the Contract in case the Force Majeure event lasts longer than 4 weeks.
- 15.5 The Buyer shall not be liable to the Seller for damages based on defaults in the fulfilment of Seller's contractual obligations attributable to a Force Majeure event.

16. Intellectual Property / Rights of Third Parties

- 16.1 The Seller is obligated to grant and provide Buyer with all and any intellectual property rights and the like useful and/or required for the use of the Supplies and/or Services.
- 16.2 The Seller shall ensure that performance and usage of its Supplies and Services does not anyhow infringe rights of third parties (brands, design, patents, territory protection etc.) and shall not be in violation of, without being limited to, existing boycott clauses, sanctions, embargos, blacklists etc. The Seller shall inform the Buyer promptly about any known or suspected infringement of third party rights or of the boycotts, sanctions, embargos, blacklists etc. The Seller shall indemnify and hold the Buyer and/or the Client harmless from any damages or claims of third parties due to its impairments or infringements of rights mentioned under this section. The Buyer shall ensure the unlimited and free usage of the Supplies and Services free of any encumbrances or titles to the Buyer and/or the Client or alternatively shall provide other substitutes without costs acceptable to the Buyer and to the Client.

17. Confidentiality / Data Protection

- 17.1 The Seller shall keep confidential the content of the Offer and Order/Contract, information about the business transaction itself and all information, drawings and documents that the Seller receives from the Buyer and shall merely and solely use them for the performance of the Order/Contract. Seller shall not disclose the Confidential Information to any third party not being involved in the performance of the Order/Contract or of the Client without Buyer's prior explicit and written approval. The Seller may particularly not use the confidential information for advertising or for any other purposes than for the performance of the Order/Contract and shall not take any photographs or other visual copies from the Buyer's sites and from the total plant or parts of it. The Seller shall further keep confidential all documentation and as-built documents he receives from the Buyer and he may only use them for the performance of the Order/Contract. The Seller may only pass confidential information on to such employees, sub-contractors, or specialists on a need to know basis for performing their obligations with respect to the Order/Contract. Such employees, sub-contractors, or experts shall agree on keeping confidential information confidential and use them only for the intended purpose according to the rules laid down in this clause, whereas Buyer shall have the right to enforce the rights out of such agreement on behalf of the Seller. The Seller shall confirm such confidentiality agreements with third parties in writing, if requested by the Buyer. In case of violation or breach of the confidentiality obligations Seller shall hold harmless from any damages and fully indemnify the Buyer, in particular but not limited against any claim raised by a third party (including the Client). The Seller may disclose information as far as the Seller, without violating its obligations hereunder, obtains knowledge of such information from other sources, such as from third parties without reservation as to confidentiality, or through its own independent efforts without any violation of any confidentiality obligation.
- 17.2 If the performance of the Order/Contract so requires confidential information may be disclosed by Seller to third parties. Such third parties, however, shall agree on keeping confidential information confidential and use them only for the intended purpose according to the rules laid down in this clause whilst Seller shall be liable therefor.
- 17.3 In case of breach of this confidentiality obligation Seller shall be under the obligation to pay to Buyer a penalty in an amount of EUR 100,000 for each breach. The Buyer is entitled to set-off such penalty against the purchase price.
- 17.4 In case of violation or breach of the confidentiality (by itself, its employees and/or sub-contractors) obligations Seller shall hold harmless from any damages and fully indemnify the Buyer).
- 17.5 The Seller shall comply with the legal requirements of the data protection including to procure the written commitment of the employees in the sense of the Austrian Data Protection Act (DSG). He shall also impose the obligations for data protection on all the persons entrusted by him with the execution of the Order/Contract. Both parties are entitled to gather, use and process any data received in connection with the business relationship and to forward such data to its affiliates pursuant to § 15 Austrian stock corporations act (AktG). The Buyer shall be informed thereof.

18. Code of Conduct

The Contractor herewith confirms that he has received and read a copy of J. Christof's Code of Conduct and he undertakes to comply with these rules. Buyer shall be entitled to terminate the Order/Contract in case of material breach by the Seller of the Code of Conduct. In such case the Seller shall defend and hold harmless Buyer against all damages and losses.

19. Solvency of the Seller / Power of Attorney

- 19.1 The Seller shall give information to the Buyer immediately and completely in the event of clearing or insolvency proceedings are filed against the Seller or its suppliers or in case of changes in the ownership or structure of shareholders of the Seller. If a clearing or insolvency procedure is filed against the Seller or in the event of a change in the ownership of the Seller, the Buyer shall have the right to promptly dispose of the deliveries and services stored with the Seller and/or its sub-contractor and/or shall have the right to withdraw promptly from the Contract totally or partially.

- 19.2 Person who give statements to the Employer on behalf of the Seller, shall be deemed to have unlimited power of attorney to do so.

20. Liens / Withholding Rights

The acquisition of liens, withholding rights or any other pledge or securities on the parts made available by the Buyer as also on the Supplies and Services or parts thereof shall be excluded. The Seller shall ensure to include a corresponding clause in all the contracts with its subcontractors.

21. Retention of Title – Provision of Materials – Tools – Security Interests

- 21.1 In case the Buyer makes available to the Seller goods or materials for manufacturing and/or further processing, the Employer reserves the property rights on those parts or materials. Manufacturing or processing on those goods or materials by the Contractor shall be carried out on behalf of the Employer. In case the reserved goods or materials of the Employer are manufactured, processed, combined or mixed with other objects not belonging to the Employer, then the Employer shall obtain a joint property on the new object in proportion to the value of the goods and materials of the Employer (purchase price plus VAT) to the other goods and materials used at the time of manufacturing. If the processing of properties takes place in such a way that the goods and materials of the Employer are to be considered as the main parts of the newly manufactured goods, then it shall be agreed upon that the Contractor transfers to the Employer the sole property on the newly manufactured goods,; in any case the Contractor shall keep possession of the property or joint property for and on behalf of the Employer. Unless the Employer's security interests stated before exceed 10 % of the Contractor's unpaid materials, the Employer shall be obliged to release those rights upon demand of the Contractor upon the Employer's discretion.
- 21.2 The Employer reserves himself the ownership on the tools; the Contractor shall be obliged to use the tools exclusively for the performance of the Scope of Supplies and Services. The Contractor shall be obliged to insure the tools belonging to the Employer at its own cost against damage from fire, water and theft at the value of new tools. The Contractor assigns to the Employer all compensation rights from that insurance; the Employer herewith accepts such assignment of rights. The Employer is obliged to carry out timely at its own cost any required services and inspections as well as all the maintenances and repairs on the tools. The Contractor shall promptly give notice to the Employer about any incidents or disturbances with the tools; in case of failure to do so Employer's claims for damages shall remain unaffected.
- 21.3 The Contractor shall transfer the title of the Deliveries and/or of the goods to be manufactured by him and/or of the necessary material for manufacturing such goods to the Employer upon and in the amount of the Employer effecting advance or partial payment. The Contractor guarantees that the Deliveries, goods and materials are free of any rights of any third party or of any lien to the benefit of a third party and that he has the full right and authority to transfer title of such Deliveries, goods and materials to the Employer. The Parties agree that the Contractor shall be deemed as manufacturer of all the parts and materials that are located at its premises. The Contractor shall possess all goods and base materials and all parts thereof provided by the Employer for and on behalf of the Employer. The Contractor shall safely and separately store and control the goods and materials for and on behalf of and free of charge for the Employer. The Contractor shall clearly label them as Employer's property and he shall hand them over to the Employer at any time upon the Employer effecting advance or partial payment. The Parties further agree that transfer of title shall be affected accordingly. In case the Deliveries and/or the goods to be manufactured by the Contractor and/or the base material for manufacturing them are located at the premises of any of Contractor's sub-contractors, the Contractor shall assign its related rights of recovery of the property to the Employer upon and in the amount of the Employer effecting advance or partial payment. The Contractor herewith accepts such assignment of rights.
- 21.4 Unless the Customer Contract stipulates an earlier time for the transfer of risk and ownership than stipulated in this TCs the conditions of the Customer Contract shall prevail between the Employer and the Contractor.
- 21.5 In case the Contractor shall process and/or manufacture the objects or materials made available to him by the Employer the relevant provisions of the UGB (Austrian Commercial Code) shall apply. Without prejudice to that, the Contractor shall be obliged to inspect the suitability of the given materials or parts at its own risk and to promptly inform the Employer about objections. In case of unsuitability of the material/part due to a failure of or incomplete specification of the Contractor, the Contractor shall be liable for the costs and damages occurring thereof. After the Taking Over, the Contractor shall not being entitled to rely on the defectiveness or unsuitability of the materials or parts provided by the Employer, unless such defect was not discoverable even after inspection. The Employer shall be obliged to assign all the claims for defects against its suppliers/manufacturers to the Contractor.

22. Applicable Law and Jurisdiction

- 22.1 This Contract shall be governed by and construed in accordance with the laws of Austria excluding its conflict of law provisions. The application of the United Nations Convention on Contracts for the International Sales of Goods (1980) shall be expressly excluded.
- 22.2 The competent court for the respective Buyer shall have jurisdiction in case of disputes arising out of or in connection with this TCs and/or the Contract. The Customer reserves the right of recourse to the civil court competent according to the applicable law of civil procedure for the Seller.



23. Language

In case of inconsistencies or discrepancies in between the German and the English version of these TCs the German version shall prevail. The Buyer reserves the rights to alter, modify or change the TCs at its sole discretion at any time.