

# General Terms and Conditions of Purchase ("GTCP") of ORS comm GmbH & Co KG

(translation from the German original)

January 2020

## Chapter I Introductory Provisions

### 1. General

- 1.1 The following General Terms and Conditions of Purchase (hereinafter "**GTCP**") shall apply to all orders and offers as well as business transactions for goods to be delivered and services to be provided ("**Deliveries and Services**", or also only "**Services**") of ORS comm GmbH & Co KG, Hugo-Portisch-Gasse 1, 1136 Wien (hereinafter "**ORS comm**"), unless otherwise agreed in writing (hereinafter collectively referred to as "**Orders**"). With submitting an offer, the acceptance or performance of the Order, the GTCP become binding for a contractor of such Orders (hereinafter "**Contractor**"). In the event of permanent business relations, the GTCP of ORS comm shall also apply without express reference or reference to them.
- 1.2 The GTCP (including the listed appendices, if applicable) shall also form an integral part of any order form or special service contract which may be agreed separately in writing between the Contractor and ORS comm. The scope of Services applicable in each individual case shall be specified between the Contractor and ORS comm with the Order. The GTCP and the Order, including any documents referenced therein, together form the contract (the "**Contract**"). The GTCP also apply without restriction to all additional Services or other adaptations or changes to an Order.
- 1.3 Where applicable, the mutual rights and obligations arise from the following documents in the order listed below: the Order together with its enclosures, an individually concluded agreement together with its enclosures, a data processing agreement in accordance with Art 28 GDPR, if applicable, these GTCP, other GTC of ORS comm, other documents to which reference is made in the Order or an individually concluded agreement and which are not attached as an enclosure, relevant and recognised technical standards and guidelines as the minimum standard to be observed in any case. In the event of contradictions between these principles or other ambiguities regarding the primacy of application or the interpretation of these principles and individual provisions thereof, the order stated shall apply.
- 1.4 ORS comm reserves the right to modify or amend the GTCP at any time. The amended terms and conditions shall not apply to current contracts unless the parties agree in writing to the application of the new GTCP to existing contractual relationships, whereby text form and therefore e-mail form shall suffice. Any contract extensions are subject to the GTCP in the version valid at the time of extension.
- 1.5 General terms and conditions or other conditions of the Contractor shall not become part of the Contract without express agreement in the Contract. This applies in particular to any pre-printed

or otherwise referenced terms and conditions of the Contractor on the Contractor's order or order forms.

- 1.6 The version of the GTCP valid at the time the Contract is concluded shall be authoritative in each case. ORS comm concludes to these GTCP only.

## **Chapter II Performance Object**

### **2. General**

- 2.1 The Contractor is obliged to offer the Deliveries and Services fully functional and in accordance with the latest state-of-the-art in the market. The offer must include all components and other Services insofar as they are necessary for the functional suitability of the Deliveries and Services and for achieving the performance target described in the Order. The Contractor shall guarantee the completeness of the offer with regard to all Deliveries and Services, including Services of other manufacturers. The Contractor assures the fulfilment of the promised properties and specifications.

### **3. Guarantee of Completeness**

- 3.1 The description of the Services to be rendered in accordance with the Contract between ORS comm and the Contractor, including annexes, shall be complied with, but does not constitute an exhaustive list of the scope of Services to be rendered. Rather, the Contractor is obliged within the meaning of its warning obligation according to section 12 of this GTCP to deliver, implement and assemble the Services to be rendered completely functional, free of defects and in accordance with all official regulations and technical specifications to be complied with as well as necessary to achieve the performance target according to the Order, complete and functional, even where the Order or other performance description may be incomplete or inadequate. The Contractor can therefore not appeal the fact that individual Services or partial Services which are necessary to achieve the Deliveries and Services are not expressly mentioned in the Contract or in other contractual bases. The Contract therefore covers all the Services required to achieve the Deliveries and Services ordered by ORS comm under the Contract, regardless of their specific reference in the Contract or in the other contractual bases. To this extent, the Contractor shall assume a guarantee of completeness to render the agreed Deliveries and Services in full at the agreed net total price in accordance with section 13.

### **4. Services of ORS comm**

- 4.1 Any installation and positioning requirements to be created by ORS comm, the necessary provision of resources (hardware, software, premises, etc.) and other obligations to cooperate shall be finally notified to ORS comm by the Contractor prior to ordering. The use of premises, areas or other facilities of ORS comm by the Contractor shall require a separate written user contract with ORS comm. The mere fact that contractual Services are performed in the premises or at the grounds of ORS comm does not mean that resources must be provided. Resources provided by ORS comm may only be used by the Contractor and its employees and/or subcontractors to perform the contractual Services and may not be disclosed to third parties (e.g. passwords).

- 4.2 Obligations to cooperate by ORS comm and/or services of third parties commissioned by ORS comm shall be specified in the Contract. Insofar as these services are defined on the basis of information provided by the Contractor, they shall only be owed by ORS comm to the extent that they are absolutely necessary for the defined scope of delivery/service and there are no safety concerns (risk of personal injury and/or material damage) preventing their provision.
- 4.3 If services by ORS comm and/or third parties commissioned by ORS comm are required as a result of defective, late or incomplete performance or information provided by the Contractor or as a result of other modifications, repairs, warranty or guarantee cases and the like for which ORS comm is not responsible, these shall be borne by the Contractor. The Contractor shall therefore indemnify and hold ORS comm harmless for all costs and other disadvantages arising therefrom.
- 4.4 In the case the Contractor partially or completely waives a contractually agreed cooperation/service by ORS comm and provides these itself, it shall not be entitled to any compensation therefor, in particular no reimbursement of costs.
- 4.5 The use of all documents, hardware, software, equipment, aids and other services provided by ORS comm to the Contractor for the performance of the Services shall be at the risk of the Contractor. ORS comm shall therefore not be held responsible for any misconduct on the part of the operating personnel, even if ORS comm's personnel assigned for this purpose perform any operation/installation. The use shall be timely notified and planned by the Contractor in such a way that no overtime work is incurred for ORS comm's employees.

#### **Chapter IV Performance of Services**

##### **5. General Performance Obligations**

- 5.1 The Contractor provides the Deliveries and Services properly, in accordance with the principles of proper professional practice, in accordance with the current state of the art and in accordance with recognised technical and quality standards at the time of the conclusion of the Contract in such a way that the functionality and availability of the Deliveries and Services is ensured in accordance with the Contract.
- 5.2 The Contractor shall inform itself about the safety, accident prevention and regulatory provisions (in particular the General Technical Terms and Conditions (GTTC), regulations concerning electrical safety, procedures for work by external companies on ORS transmitters, ORF house rules; available under <https://www.ors.at/de/agb/>.) applicable at the place of performance (in particular in premises or facilities of ORS comm or third parties used by it or its customers). The Contractor shall comply with these and ensure that these are taken note of and complied with by its employees and subcontractors commissioned by it.
- 5.3 The Contractor shall familiarise itself and confirm the specified safety requirements set by ORS comm with regard to information security, IT security and data protection prior commencing with the performance of the Services. These confirmed documents shall then become part of the respective contracts. The requirements shall be regularly updated by ORS comm; the Contractor shall be obliged to inform itself of these updates and to implement the amended requirements. In

addition, the Contractor is obliged, at the request of ORS comm, to provide proof of compliance with the above requirements.

- 5.4 The provision of materials, tools, machines and other aids shall be at the risk and expense of the Contractor only. Even if ORS comm provides storage areas or storage rooms for this purpose, ORS comm does not assume any liability for the items brought in. The Contractor shall evaluate the suitability of any aids (e.g. ladder) and materials provided by ORS comm prior to their use; the Contractor is solely responsible for the use of such items; it also bears the risk.
- 5.5 The Contractor shall leave the place of performance of the Service and other premises used by it clean and free of any objects brought in by it. If unavoidable or reusable packaging materials or other waste accumulate during the performance of the Service, the Contractor shall dispose of them at its own risk and expense in accordance with the applicable legal provisions.
- 5.6 The Contractor shall ensure by diligent selection of the deployed employees (also in the case of exchange and/or training of employees) that they possess the personal suitability and expertise to perform the Services in the agreed quality.
- 5.7 The Contractor's main obligation is to document the contractual Services rendered in a comprehensible technical manner and to provide ORS comm with sufficient and precise information on the status of the Services upon request. ORS comm may at any time require the submission of results at the draft stage and as an interim result, without releasing the Contractor from its obligation under this section 5.

## **6. (Safety) Requirements for Deliveries and Services**

- 6.1 All deliveries and Services must have the properties specified in the Order or promised to ORS comm, in case of doubt customary properties.
- 6.2 All applicable safety regulations and all other relevant European and national legal provisions (directives, laws, regulations), in particular relevant OVE, OVE/EN, ÖVE/ÖNORMEN, IEC, EN standards, national provisions and industry standards, must be complied with, taking into account the state of the art. The Contractor expressly assures that it complies with the requirements of the EU Registration, Evaluation, Authorisation and Restriction of Chemicals REACH (Regulation (EC) No. 1907/2006) in its currently valid version. Furthermore, the Contractor expressly warrants not to deliver any products containing substances in accordance with Annexes 1 to 9 of REACH. If the delivered products contain substances which are listed on the so-called "Candidate List of Substances of very high concern" pursuant to REACH, the Contractor is obliged to notify this immediately. The Contractor provides safety data sheets containing the information required under Article 32 REACH.
- 6.3 As manufacturer, the Contractor warrants that the delivered products are designed and manufactured in accordance with the essential protection and safety requirements, that it carries out a conformity assessment procedure or has one carried out, draws up the technical documentation, issues an EU declaration of conformity, affixes the CE marking, ensures conformity in series production, marks the product with a type, batch or serial number or, if this is not possible, affixes it to the packaging or accompanying documentation and attaches the instruction handbook and

safety information in German. Insofar as required by law or generally accepted standards, the delivered products must therefore display a CE conformity mark, ÖVE test mark, or an equivalent safety mark recognised by the EU. To verify these criteria, all relevant documents (e.g. EU declaration of conformity, test reports on health and safety protection, technical construction files and operating instructions with safety information) must be provided in German language within a period of 10 working days upon request by ORS comm.

- 6.4 If the products delivered do not display any of the safety symbols listed above, or if ORS comm has doubts as to the EU conformity of components, the Contractor is obliged to have these tested at its own expense by a state-authorized testing institute in Austria or the country of origin, if this country is a member of the Agreement on the European Economic Area (EEA), in accordance with the relevant regulations. In this case, the Contractor is obliged to provide confirmation of the inspection.
- 6.5 Packaging used must be licensed in accordance with the Packaging Regulation 2014 (*Verpackungsverordnung*, BGBl. II No. 184/2014) in its current version. The Contractor has to declare in a legally binding manner that it itself or an upstream manufacturer or distributor participates in an approved collection or recycling system within the meaning of the above mentioned regulation (e.g. existence of an ARA licence). As a matter of principle, any waste produced by the Contractor during the performance of Services by the Contractor has to be properly disposed of by the Contractor at the Contractor's expense and risk.
- 6.6 At the request of ORS comm, the Contractor is obliged to prove the origin of the delivered products and to provide all documents and evidence required for this purpose.

## **7. Examination of Documents and Instructions of ORS comm**

- 7.1 The Contractor has to revise the documents and documentation provided by ORS comm for the performance of the Services for correctness, completeness and suitability (cf. also "warning obligations" below section 12.1) prior to use. The Contractor is therefore solely responsible for the use of such documents; any reference to incorrect or incomplete documents by the Contractor is irrelevant. The same applies to materials provided or other objects, services provided by other contractors, regardless of whether these were called in by ORS comm or the Contractor, and in any event if, in the Contractor's opinion, circumstances exist which prevent performance in accordance with the Contract.
- 7.2 When performing the Services, the Contractor has always to observe the instructions of ORS comm. However, the Contractor is obliged to review the legality, expediency, correctness and technical feasibility of instructions and to notify ORS comm in writing of any objections to them without delay, but no later than within 5 working days, and at the same time to make a proposal for the improvement or correction of the instructions.
- 7.3 An infringement of these obligations leads to the Contractor's obligation to provide warranty and compensation within the meaning of section 15 and 16 for a deficient performance resulting therefrom, and the Contractor cannot – not even partially – release itself from this by the fact that the defect or loss resulting therefrom (loss caused by defects and consequential loss caused by defects) was caused by the Services provided in accordance with section 4.

7.4 The Contractor shall remain solely responsible for the flawless performance of the Services under the Contract even if ORS comm has approved or signed the plans, drawings, calculations and other execution documents submitted by the Contractor or has provided them with any other notice confirming inspection; this does not relieve the Contractor of its warning obligation or of its liability for the performance of the Services in accordance with the Contract (even in part).

## 8. Dates, Delay and Penalty

8.1 The delivery and performance period commences on the day the Order is placed, as long as the commencement was not expressly agreed otherwise in the Contract. If no delivery and performance period has been agreed on, delivery shall be made immediately.

8.2 The delivery dates and delivery periods stated in the Order are binding and fixed dates. Fixed date means that the Delivery or Service must be complete and ready for use at the place of destination on the specified delivery date. For compliance with the fixed date in the case of deliveries of goods, the delivery of the flawless goods to ORS comm during normal business hours with the necessary shipping documents to the place specified in the Order (hereinafter "**Place of Destination**") is decisive (cf. section 8.3). If a delivery with assembly has been agreed, the delivery of the flawless Service after proper performance of the assembly is decisive for compliance with the fixed date. Insofar as acceptance is provided for by law or contractually agreed, the time of acceptance is decisive. Early Deliveries or Services and partial Deliveries or partial Services require the prior written consent of ORS comm.

8.3 Unless otherwise agreed, the delivery of the Service shall take place DDP Incoterms 2010 to ORS comm or to the location designated by ORS comm. Unless otherwise agreed, the delivery note in duplicate, packing slips, cleaning certificates and test certificates in accordance with the agreed specifications and other necessary documents have to be attached to the Service. Insofar as known, the order number, gross and net weight, number of packages and type of packaging (one-way/reusable), date of completion, Place of Destination (unloading point) and consignee must be stated in full in all shipping documents and - in the case of packaged goods - on the outer packaging.

8.4 If the supplier exceeds the delivery dates or performance deadlines, ORS comm is entitled to charge a penalty to the following principles if the Contractor does not provide the required Delivery or Service completely and properly within a grace period of 7 calendar days. The penalty shall be payable retroactively, which means from the agreed fixed date or the occurrence of a default in performance. From the 1st calendar week onwards, the penalty shall amount to 1% of the total net price according to section 13 per calendar week commenced, but at least EUR 1,000.00 per calendar week. The penalty is limited to 10 % of the total net price per incident, which obliges to pay a penalty.

8.5 An exceeded deadline also exists in the case if the Contractor does not properly make the Deliveries and Services available for inspection or acceptance, if ORS comm refuses the release or acceptance due to an error of the error class 1 to 3 in accordance with section 9.4, if the Contractor does not comply with a grace period, or if the acceptance test is interrupted within the framework of a experimentally life operation for reasons for which the Contractor is responsible.

8.6 The penalty claim is not subject to the right of judicial moderation and is independent of any actual

damage incurred by ORS comm. This shall not affect ORS comm's right to demand compensation for any additional damage caused by the default and/or delay in delivery, or otherwise assert the legal remedies available derived from the Contract (e.g. termination of the Contract or withdrawal from the Contract in accordance with § 918 Austrian Civil Code).

- 8.7 ORS comm reserves the right to refuse acceptance of the delivery at the expense of the Contractor or to invoice any expenditure accordingly in the event of over/under-deliveries of ordered quantities as well as in the event of premature delivery of the Deliveries and Services.
- 8.8 The Contractor has to notify ORS comm immediately of any noticeable failure to meet the fixed deadline, stating the reasons and the expected duration of the delay. The unconditional acceptance of a late delivery shall not constitute a waiver by ORS comm of its rights with respect to a late delivery.

## **9. Acceptance of the Performance and Error Classes**

- 9.1 The mere acceptance of Deliveries and Services, their temporary use or payments made shall neither constitute acceptance nor a waiver of the rights to which ORS comm is entitled.
- 9.2 The provision of a Service or Delivery and its acceptance, to the extent that the parties have agreed to such a provision, shall be in accordance with the description of the Delivery or Service in the purchase Order and in accordance with any time schedule and other enclosures to the Contract. After proper provision of the Services and Deliveries by the Contractor, the inspection for completeness and possibly visible errors as well as the release shall take place within a reasonable deadline after provision.
- 9.3 If a final acceptance has been agreed on, all Deliveries and Services rendered in accordance with the Contract and any project and service description shall be made available by the Contractor on this date. After proper provision of such a complete work for acceptance, ORS comm shall, unless otherwise agreed, carry out an acceptance test within the framework of an experimentally life operation for a period of 4 weeks, during which it shall be checked whether all Deliveries and Services provided comply with the requirements and promised functions. The Contractor may participate in the acceptance test free of charge. Unless otherwise agreed, the acceptance period shall be 6 weeks. The acceptance test shall be carried out within this period, whereby the date shall be announced later by ORS comm.
- 9.4 Acceptance may be refused or declared with reservation by ORS comm according to the errors that have occurred and that are categorised in error classes. The error classes are as follows:
- 9.4.1 Error class 1: Operation or use of the Delivery or Service or any of its essential functions is not possible.
- 9.4.2 Error class 2: Operation or use of the Delivery or Service is severely impaired, a circumvention of the error is not possible or only with unreasonably high effort.
- 9.4.3 Error class 3: The operation or use of the Delivery or Service is impaired, a circumvention of the error is possible by means of a technical or organisational substitute solution.
- 9.4.4 Error class 4: Operation or use of the Delivery or Service is possible with slight impairment.

- 9.5 In the event of acceptance of the Delivery or Service after a complaint of errors, the Contractor is obliged to remedy these errors within a reasonable period of grace to be agreed upon with ORS comm. If no error occurs in the course of the acceptance test, or if errors complained of have been rectified to the satisfaction of ORS comm, full acceptance shall be declared in writing to the Contractor. The date of this written statement shall determine the commencement of the warranty period; however, this written statement shall not exclude ORS comm from any claims arising from errors not mentioned in the protocol.

## **Section VI Other Obligations of the Contractor**

### **10. Spare Parts/Wear Parts**

- 10.1 To the extent that an appropriate supply of spare and wear parts is also necessary for the intended use of the ordered Deliveries and Services in ORS comm's operation, the Contractor shall upon request submit to ORS comm an appropriate offer for spare and wear parts and at least for the duration of the warranty period and up to 1 year after expiry thereof an sufficient offer for spare and wear parts. The price for the spare and wear parts for this period shall be the price valid at the time of the Order; thereafter the parties shall renegotiate the prices for the spare and wear parts.
- 10.2 Upon request by ORS comm, the Contractor has to provide ORS comm with the specifications required for ordering for the spare and wear parts, the designations by their manufacturer and, finally, their company and address, and, if required, with corresponding drawings, and shall grant ORS comm the rights to the drawings listed in section 20.1 free of charge and irrevocably.

### **11. Subcontractors**

- 11.1 The commissioning to a subcontractor by the Contractor requires the prior written consent of ORS comm. The Contractor must prove the necessary suitability of the subcontractor. The complete transfer of the Contract or an Order is prohibited in any case.
- 11.2 If ORS comm gives its consent, the Contractor has to ensure that all subcontracts awarded under the contractual relationship with ORS comm are such that the Contractor fully complies with its obligations to ORS comm. In any case, the Contractor remains solely responsible for the performance of the contractual relationship with ORS comm and the compliance with all obligations arising from these GTCP towards ORS comm.

### **12. Warning Obligations of the Contractor**

- 12.1 The Contractor is obliged to examine the contractual bases, final planning documents, technical documentation and all other documents provided by ORS comm or other participating companies as well as the order-related instructions of ORS comm continuously during performance of the Services for their suitability to perform the Services owed pursuant to Chapter II of the GTCP. If the Contractor recognises that these are inadequate or contradictory with regard to the feasibility



of the performance at certain points, the Contractor has to notify ORS comm of this in writing with a sufficiently precise description of the problem. Any expenses incurred for this inspection shall be included in the agreed total net price.

- 12.2 So far as a damage or a defect in the Services is due to the fact that the contractual basis, final planning documents, technical documentation and all other documents provided by ORS comm or other participating companies, as well as the order-related instructions of ORS comm are unsuitable for the provision of the Services pursuant to Chapter II of the GTCP, the Contractor is held liable in any case for this defect and any damage attributable thereto in the event of default of such notification. Furthermore, to this extent no objection can be raised to the sole or contributory fault of ORS comm.
- 12.3 So far as the Contractor is no longer capable of performing the Services assumed properly, it immediately notifies ORS comm in writing of the reasons for the hindrance and at what point the Service can be resumed. This does not affect ORS comm's claims in the event of default or defective performance. The mere knowledge of ORS comm of the notification referred to herein is not to be deemed as consent to the delay notified by the Contractor and the corresponding postponement of the agreed deadlines from the project plan.
- 12.4 Any warnings and notifications by the Contractor in accordance with the above provisions have to be made in writing via e-mail to ORS comm, describing the risk and at the same time submitting proposals for the prevention of the risk.

## **Section VII General Contract Conditions**

### **13. Remuneration**

- 13.1 The prices agreed in the Order apply. These prices are fixed prices and net prices within the meaning of § 11 Value Added Tax Act (*Umsatzsteuergesetz*). These fixed prices include, as far as applicable, a setup fee, the maintenance fee and all other expenses necessary for the technically flawless functioning of the owed Services within the meaning of the completeness guarantee according to section 3, even if these are not expressly mentioned in the Contract or the appendices thereto.
- 13.2 These fixed prices in accordance with section 13.1 cover all Services to be rendered by the Contractor under this Contract. In particular, all costs, fees and charges, as well as expenses of the Contractor, its employees or sub-contractors (e.g. overnight costs, travel time, etc.) in connection with the provision of the Services are included in the net total price.
- 13.3 By concluding the Contract, the Contractor declares that, due to the contractual bases handed over to it, the Deliveries and Services required by it have been fully calculated in terms of performance, type and scope. The Contractor is not entitled to demand price increases if the calculation bases change for whatever reason, or if the assumptions made by it prove to be incorrect or if any transmission errors have occurred. In particular, therefore, cost increases at the Contractor, regardless of the nature, shall not lead to a change in the agreed remuneration. The Contractor

is also not entitled to assert any claims arising from cancelled Services.

- 13.4 If the Contractor lowers any list prices for the Services to ORS comm, even only for parts thereof, between conclusion of the Contract and delivery, these price reductions shall apply to the Contract with ORS comm.

#### **14. Terms of Payment, Assignment**

- 14.1 Invoices and calculation bases have to be sent in digital form (pdf-file without digital signature and without password) with the invoice address "ORS comm GmbH & Co KG, Hugo-Portisch-Gasse 1, A-1136 Wien" to the e-mail address [invoice@orf.at](mailto:invoice@orf.at) and all Services rendered up to the reporting date have to be listed separately by position, stating the individual price. However, foreign invoices with foreign VAT are only accepted if sent in the original form by post to "ORS comm GmbH & Co KG, Hugo-Portisch-Gasse 1, A-1136 Wien, c/o Scanpoint GmbH, ORF-Rechnungsstelle, Business Center 799, 1000 Wien". The invoice has to state the Services performed, including the value added tax identification number of ORS comm (ATU 661 427 56), the delivery note number, the account of a bank domiciled in the EEA, the data stated on the Order, such as the purchaser, order number, order item and the specified activity units. Each invoice must have the content prescribed by the Austrian Value Added Tax Act.
- 14.2 Invoicing by third parties or the assignment of claims against ORS comm is only permitted with the prior written consent of ORS comm.
- 14.3 The final (total) invoice has to show, in addition to the specifications under section 14.1, the total amount, increases and reductions of the original order value and the value added tax, if applicable by law, as well as all partial payments already made. With the final (total) invoice, the Contractor asserts all claims arising from the Order. The unconditional acceptance of the amount from the final invoice excludes additional claims by the Contractor.
- 14.4 The due date for payment of the invoices is given when all the aforementioned conditions have been fulfilled and after expiry of a payment period of 30 calendar days with a 3 % cash discount and/or 60 days from receipt of the invoice. If ORS comm has paid any invoices after rightfully deducting any cash discounts, such justified cash discounts shall remain unaffected by the fact of whether and to what extent the agreed terms of payment and/or cash discount periods are observed in connection with any subsequent payments. If the payment day is a public holiday (bank holiday), the transfer is made on the following working day. The timeliness of the payment depends on the issue of the transfer order to the Contractor's bank. Payment periods begin to run when the Service has been provided and approved by ORS comm and ORS comm has received a correct (in accordance with the Contract and within the law) invoice. If ORS comm requests necessary documents for reviewing the invoice no later than fourteen days before the end of the payment period, the payment period shall be extended so that ORS comm has at least seven days after receipt of the documents to review them. Payments are due only after expiration of these seven days and expiration of the payment deadline. ORS comm shall be in default only after prior reminder by the Contractor. Payments will not be deemed a waiver of asserting defects and claims for damages.

- 14.5 ORS comm reserves the right to offset due payments in whole or in part initially against the coverage of damages for which the Contractor is liable or against penalties. In addition, ORS comm reserves the right to retain a 3% non-interest bearing retention for a period of 2 years from the contractually compliant performance of the Service.
- 14.6 The Contractor is not entitled to any claims due to delayed payment exceeding the statutory default interest and the statutory compensation for operating costs.
- 14.7 The Contractor confirms that it is an entrepreneur within the meaning of the Value Added Tax Act and shall inform ORS comm of its valid VAT number when entering into the business relationship. Should its VAT status or VAT number change in the course of the business relationship, it shall immediately notify ORS comm in writing.
- 14.8 The Contractor confirms that it shall transport or dispatch the items of a delivery or that it shall arrange the transport and that the transport or dispatch of the items to ORS comm shall commence at the place specified in the Contract as the Contractor's address. If this is not the case (e.g. delivery from another warehouse, delivery by subcontractors), the Contractor shall - in any event before invoicing - notify ORS comm immediately (via e-mail to [steuern@orf.at](mailto:steuern@orf.at) with the ORS order number) and, on request, submit further documents which are suitable for verifying the delivery route of the items and their transport commissioning (e.g. consignment note, documents concerning the assignment of the carrier).
- 14.9 A foreign Contractor confirms that it does not have a permanent establishment in Austria or that these Services cannot be allocated to this permanent establishment.
- 14.10 A Contractor who is not subject to unlimited tax liability in Austria shall provide ORS comm with an original residence certificate in accordance with the DBA Exemption Regulation (*DBA-Entlastungsverordnung*) and confirmed by the foreign tax authority before payment is due. If ORS comm does not receive an original appropriate and confirmed certificate by the foreign tax office before the due date of payment, or if the certificate does not entitle ORS comm to pay withholding tax-free on the basis of statutory regulations, ORS comm is entitled to deduct the statutory withholding tax from the amount of compensation and pay it to the Austrian tax authority. The withholding tax is borne by the Contractor. The Contractor receives a tax certificate for the withholding tax. This tax deduction does not lead to a default.
- 14.11 If, in connection with the agreed Services, claims are asserted against ORS comm by the tax authorities which are based on an incorrect declaration content of the Contractor or its residence certificate or on false invoicing, the Contractor undertakes to indemnify and hold ORS comm harmless immediately against these claims. Indemnification also includes the costs of reasonable legal defence and ancillary fees.

## 15. Warranty

- 15.1 The Contractor guarantees to render its Services in accordance with this Contract on the basis of the state of the art known to experts and making the best possible use of the state of the art. Furthermore, the Contractor warrants that the Deliveries and Services have the contractually stipulated and usually required qualities and are free from defects and that all defects which occur

within the warranty period shall be immediately remedied by it and comply with the generally accepted rules of technology; the Contractor also warrants compliance with all general and special standards applicable in Austria or equivalent relevant to the provision of the Service.

- 15.2 ORS comm reserves the right to decide at its discretion whether improvement, replacement of the article, price reduction or – unless the defect is not minor - conversion is required. If ORS comm demands improvement, the Contractor shall immediately remedy any defects occurring during the warranty period at its own risk and expense. At the request of ORS comm, the Contractor shall replace defective parts of the performance immediately at its own risk and expense against flawless ones. The Contractor shall ensure that there are no disruptions to the operational and business processes at ORS comm. In urgent cases, ORS comm shall also be entitled, after notifying the Contractor, to remedy defects itself without setting a grace period at the Contractor's expense or to have them remedied by third parties without this affecting its claims due to these defects; if there is imminent danger, ORS comm may proceed in this manner without notifying the Contractor.
- 15.3 The warranty period commences on the day of delivery of the contractual performance or, if agreed, on the day of acceptance and ends 2 years after this day. If the Contractor offers a longer warranty period, this is decisive.
- 15.4 An out-of-the-court complaint of a defect by ORS comm extends the deadline for the judicial assertion of all claims in connection with the complained defect by one year in each case.
- 15.5 In the case of hidden defects, the warranty period does not commence until they can be detected. If the involvement of an expert is necessary to determine the existence of a defect, the costs incurred for this shall be borne by the Contractor regardless of fault.
- 15.6 The Contractor waives the objection of non-notification or invalid notification of defects in accordance with § 377 Austrian Commercial Code (*Unternehmensgesetzbuch*).

## **16. Liability and Product Liability**

- 16.1 The Contractor is liable for all damages resulting from the defective performance of the Contractor's obligations and has to indemnify and hold ORS comm harmless in this respect. The Contractor is also be liable for all acts and omissions of its employees, assistants or other persons commissioned and consulted by it. In all other respects, the statutory liability regulations according to the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*) apply.
- 16.2 If claims are asserted against ORS comm by third parties due to defects, product defects or damages arising from or in connection with the Services, ORS comm shall be entitled in any case, regardless of the nature of the damages or the legal basis, to fully regress against the Contractor. The Contractor has to fully indemnify and hold ORS comm harmless in this respect and reimburse ORS comm for all court fees and attorneys' fees incurred in this respect. The Contractor is liable to the same extent and for as long as ORS comm is liable to customers and other third parties.
- 16.3 The Contractor undertakes to supply all documents, drawings, instructions and other documentation required for the intended use of the products delivered by it completely and unrequested. Upon request by ORS comm, the Contractor is also obliged to name the respective manufacturer,

importer or pre-supplier with regard to the products delivered by it immediately, but at the latest within 2 weeks, and to hand over appropriate evidence in full. In the event of legal disputes in product liability cases, the Contractor has to support ORS comm to the best of its ability and reimburse ORS comm for the appropriate costs of such legal disputes.

- 16.4 Should the Contractor become aware of circumstances that could lead to product liability claims, it is obliged to report these to ORS comm immediately and to compensate ORS comm for all expenses and damages that ORS comm incurs in connection with any recall actions of the defective products or that ORS comm has to replace for third parties.
- 16.5 The Contractor is obliged to take out a product liability insurance at its own expense for the usually insurable liability risks for an appropriate order amount. Furthermore, the Contractor takes out a business liability insurance policy with an appropriate limit of liability for financial losses, personal injuries and damage to property at its own expense. The conclusion of the business liability insurance and the product liability insurance is to be proven to ORS comm unsolicited by sending a copy of the insurance policy at the latest before the commencement of performance of Services. Payments by ORS comm shall only be made after the insurance policies have been submitted. The Contractor is obliged to maintain the insurance policies until acceptance of the Deliveries or Services, which has to be proven by submission of an insurance confirmation at the request of ORS comm.

## 17. Transfer of Ownership and Tools

- 17.1 ORS comm shall become the owner of the deliveries upon their arrival at the Place of Destination without any further explanation or action being required. A simple retention of title at credit purchase shall be accepted by ORS comm if the Contractor proves that the retention of title is necessary for the purpose of commercial credit insurance. Any further retention of title is not be recognised. The Contractor is obliged to immediately disclose to ORS comm the rights of third parties to the deliveries or parts thereof.
- 17.2 ORS comm retains ownership of the tools and materials (collectively "**Tools**") provided to the Contractor for the manufacture or inspection of the products ordered by ORS comm. Tools owned by ORS comm or shall become property of them shall be loaned to the Contractor until revoked at any time. The Contractor is obliged to handle the Tools owned by ORS comm with care.
- 17.3 Insofar as the Contractor undertakes to manufacture Tools, the Tools shall become the property of ORS comm after completion and payment of the manufacturing costs in the amount of at least 80%. The Tools have to be marked by the Contractor as the property of ORS comm and may only be used for the manufacture of products ordered by ORS comm.
- 17.4 The contractor is obliged to insure the Tools at replacement value against fire, water and theft at its own expense. At the same time, the Contractor hereby assigns all claims for compensation under this insurance. The Contractor is obliged to maintain the insurance until acceptance of the Deliveries or Services, which has to be proven by submission of an insurance confirmation at the request of ORS comm.
- 17.5 If Tools are the property of the Contractor, it has to bear the costs itself. If the Contractor culpably fails to do so, ORS comm is entitled to claim damages.

- 17.6 The contracting parties agree that the Contractor cannot assert any rights of retention - for whatever reason - on these Tools. Upon completion of delivery, the Contractor has to return the Tools to ORS comm immediately upon request.

## **18. Duration and Termination of the Contract**

- 18.1 The Contract ends upon expiry of the delivery or term stated in the Order, without the need for a separate termination. Insofar as no delivery or term has been agreed, the Contract shall be deemed concluded for an indefinite period.
- 18.2 ORS comm shall be entitled to terminate the Contract in writing - even with regard to individual components and individual parts of the Services - at any time without stating reasons and subject to a notice period of 2 months. The Contractor is entitled to terminate the Contract, if it is concluded for an indefinite period of time or for a period of more than 4 years, at the end of each month and subject to a notice period of 6 months.

## **19. Withdrawal from the Contract and Extraordinary Termination**

- 19.1 ORS comm may withdraw from the Contract or from individual Orders at any time until the contractual Service has been accepted. If the Service consists of partial services, ORS comm may withdraw at any time with regard to partial services not yet accepted. For the (partial) Services covered by the withdrawal, the Contractor is only be entitled to the remuneration to be determined in accordance with section 13 if these partial services are usable by ORS comm; further claims are excluded.
- 19.2 ORS comm is entitled, without prejudice to other rights and remedies under or in connection with a Contract, to terminate extraordinarily the contractual relationship, even in part in respect of individual Orders, with immediate effect by means of written notice of termination, in particular for the reasons set out below:
- 19.2.1 if a change of control takes place in the Contractor's company, whereby the Contractor is obliged to notify ORS comm in good time of any forthcoming change of control,
- 19.2.2 if the legal requirements for ORS comm to provide the Services in accordance with the Contract cease to apply; or
- 19.2.3 if there are reasons – technical, economic or operational nature - in the sphere of the Contractor which make it impossible or unreasonable for ORS comm to continue to provide the Services properly.

## **20. Rights of Use and Infringement of Intellectual Property Rights**

- 20.1 The Contractor grants ORS comm the appropriate, non-exclusive, spatially, temporally and content-related unrestricted, irrevocable and transferable rights of use to the plans, drawings and other documentation of the Deliveries and Services to be provided by it, as well as any compo-

nents supplied and the execution method, so that an unrestricted use of the Deliveries and Services (including commissioning, repair, maintenance, new production in the event of replacement by third parties) is guaranteed.

- 20.2 The Contractor warrants that the plans, drawings and other documentation provided by it for the Deliveries and Services to be rendered, as well as the components delivered and the execution method as a whole, do not infringe any property rights of third parties, e.g. patent rights or copyrights, trade secrets or business secrets.
- 20.3 If the use of the Deliveries or Services or parts thereof is prohibited by a court decision, or if in the opinion of the Contractor there is a threat of legal action for infringement of property rights or (supplementary) ancillary copyrights, the Contractor has to undertake the following at the discretion of ORS comm:
- 20.4 The Contractor may
- 20.4.1 modify the Delivery or Service in such a way that no rights are infringed anymore, as far as these are equal to the originally agreed Service and Delivery, or
- 20.4.2 provide ORS comm with the right to continue to use the Service or Delivery, where appropriate by acquiring the necessary legal rights of use, whereby the Contractor has to exempt ORS comm from any obligations arising in this regard, or
- 20.4.3 replace the Service or Delivery by another which does not infringe any rights and which meets the requirements of ORS comm or is equivalent to the replaced Service or Delivery.
- 20.5 If the aforementioned alternatives cannot be implemented or can only be implemented by ORS comm under unreasonable burdens, ORS comm has the immediate right of withdrawal. At the same time, the Contractor is obliged to repay the remuneration already received from ORS comm on a pro rata basis to the extent that the Service created or delivery made is not usable by ORS comm. In addition, the damage incurred by ORS comm due to the fact that the Services and Deliveries must now be provided in other ways has to be compensated.

## **Section VIII Final Provisions**

### **21. Confidentiality**

- 21.1 The Contractor undertakes to keep all information and data, communications, documents, trade and business secrets, know-how etc ("**Confidential Information**") disclosed, transferred or consigned in the course of a contract, whether in writing, orally or by way of electronic data processing, or in any other way made known, confidential and undisclosed.
- 21.2 The Contractor undertakes to use this Confidential Information exclusively for the fulfilment of the Contract, not to communicate these on to third parties neither in its entirety nor in parts or in extracts, not to make it accessible to third parties in any other form, not to process it in any other

way, and in particular not to use it for its own purposes or in any other way and exploit it.

- 21.3 The Contractor has to take all reasonable precautions to prevent unauthorised use of Confidential Information and/or to prevent third parties from accessing such Confidential Information. At the request of ORS comm, the Contractor is also obliged to sign a separate confidentiality agreement.
- 21.4 The Contractor must demonstrably oblige all persons who may have access to such Confidential Information under this Contract to observe all confidentiality obligations imposed on the Contractor, even after the termination of the activities of such persons for the Contractor's company or after the termination of the contractual relationship between ORS comm and the Contractor.
- 21.5 If third parties are commissioned by the Contractor to perform the Contract as subcontractor ("*Erfüllungsgehilfen*"), the written consent of ORS comm has to be required in advance and the confidentiality obligations have to be demonstrably contractually assigned to the subcontractors. If the Contractor fails to transfer the confidentiality obligations, the Contractor is liable for all damages.
- 21.6 The Contractor is obliged to immediately return to ORS comm, destroy or irretrievably delete the Confidential Information, including copies in paper form and electronic form and all documents in which reference is made to the Confidential Information, at any time, even after termination of the Contract, upon request of ORS comm. At the request of ORS comm, the deletion or destruction has to be confirmed by the Contractor in writing at any time in each individual case and documented by evidence.
- 21.7 If the Contractor, one of its employees or other subcontractors violates these confidentiality obligations, ORS comm is entitled to demand a contractual penalty of 10% of the total price, but at least EUR 15,000.00, irrespective of the amount of the damage. In the event of a breach of confidentiality obligations, ORS comm has also the right to terminate the Contract immediately without notice. ORS comm expressly reserves the right to assert further claims for damages in any case.

## **22. Data Protection**

- 22.1 The Contractor guarantees the security and therefore confidentiality, integrity and availability of data in accordance with Art 5 para 1 lit f GDPR, Art 28 para 3 lit c and Art 32 GDPR, as far as data of ORS comm should come to its knowledge in the course of the Contract. Hence, the Contractor guarantees to take appropriate technical and organisational measures to protect against accidental or unlawful destruction, loss, unlawful use or access by unauthorised persons, and guarantees that the processing is carried out in accordance with the applicable legal provisions and that the protection of personal data is guaranteed, and in particular that a level of security is ensured which is appropriate to the risks arising from the processing and the nature of the data. ORS comm expressly reserves the right to examine these technical and organisational measures at the Contractor's premises prior to the conclusion of the Contract and also thereafter itself or by third parties and, if necessary, to demand corresponding changes/adjustments.
- 22.2 The Contractor confirms that it is aware of the relevant applicable data protection regulations, in particular the GDPR and the Austrian Data Protection Act, and that it complies with them and has designed the internal organisation (including technical and organisational measures) in such a



way that the respective legal requirements are met. In particular, the Contractor is obliged, in the course of data processing, to maintain the confidentiality of any data that comes to its knowledge, besides special statutory confidentiality obligations, in accordance with the provisions of this Contract. The Contractor also has to oblige all persons who may gain knowledge of data to maintain confidentiality within the meaning of Art 28 para 3 lit b GDPR and § 6 Austrian Data Protection Act (*Datenschutzgesetz*) before commencing activities under this Contract. The confidentiality obligation remains in force even after the termination of the activities of these persons and after leaving the Contractor.

- 22.3 The Contractor is liable to ORS comm for all material damage, financial loss and personal injury caused by it or by the actions and omissions of its employees or assistants, or by persons otherwise commissioned and delegated by it, including loss of profit. In particular, the Contractor is liable for all disadvantages incurred by ORS comm due to violation of one of the provisions of this Contract or the applicable data protection regulations.
- 22.4 This does not affect ORS comm's right to demand a contractual penalty of 10% of the total price, but at least EUR 15,000.00, irrespective of the amount of the damage and the fault, in the event of a breach of data protection obligations as well as a breach of the obligation to contractually impose data protection obligations. In the event of a breach of confidentiality, ORS comm also has the right to terminate the Contract immediately without notice. ORS comm expressly reserves the right to assert further claims for damages in any case.
- 22.5 These provisions shall remain in force even after termination of the contractual relationship.
- 22.6 To the extent that ORS comm commissions the Contractor to process personal data as a processor within the meaning of Art 4 no 8 GDPR, the Contractor undertakes, at the same time as signing the Contract at the request of ORS comm, to conclude with ORS comm a processor agreement within the meaning of Art 28 para 3 GDPR submitted to it, as well as to make other additional declarations and provide documents and proofs within the meaning of Art 28 GDPR, also directly towards the data protection controller (e.g. if ORS comm itself acts as a contractor towards a customer who is responsible for data protection and commissions the Contractor).

### **23. Right of Review of ORS comm**

- 23.1 ORS comm is entitled to verify compliance with the provisions of a contract and these GTCP by the Contractor and any subcontractors or to have such verification carried out by an independent auditor. Upon reasonable advance notice, ORS comm is also entitled to verify compliance with the terms and conditions of this Contract at any of the Contractor's premises and locations relevant to the services in question.

### **24. Publications and Reference**

- 24.1 The Contractor is only entitled, with prior written consent, to refer to ORS comm with name, brand and/or company logo as well as an existing or already terminated business relationship on advertising media, in particular electronic and non-electronic advertising media (e.g. company and product brochures), print media (e.g. newspapers, magazines), electronic media, online media

and in particular on its own website, social media pages and via news services, or also on advertising events, in particular trade fairs and product presentations.

## **25. Applicable Law**

- 25.1 The GTCP shall be governed by the laws of Austria excluding the private international law rules and the UN Convention on Contracts for the International Sale of Goods. The application of the Austrian International Private Law Act and other conflict of laws is expressly excluded.

## **26. Place of Jurisdiction**

- 26.1 Both parties agree that the Commercial Court of Vienna (*Handelsgericht Wien*) shall have exclusive jurisdiction for all disputes which may arise out of or in connection with these GTCP, a contract or the Orders, especially also with regard to the question of the conclusion and validity.

## **27. Severability Clause**

- 27.1 Should any provision of the GTCP or the Contract be or become invalid or unenforceable in whole or in part, this shall not affect the validity or enforceability of the remaining provisions. The invalid or unenforceable provision shall be replaced by a valid or enforceable provision which comes as close as possible in its economic content to the invalid or unenforceable provision; the same shall apply mutatis mutandis to gaps in the GTCP or a Contract.

## **28. Legal Succession, Transferability**

- 28.1 The GTCP bind each of the parties and their legal successors in accordance with the provisions of the GTCP. The Contractor is not entitled to assign or otherwise transfer, including by universal succession, the Contract or the rights and obligations arising under the Contract between the parties under this Contract to any third party without the prior written consent of ORS comm. However, ORS comm is entitled, without the Contractor's consent, to transfer the Services and the contractual relationship with the Contractor and the rights and obligations arising therefrom to other companies affiliated with ORS comm pursuant to § 189a para 1 no 8 in connection with § 244 Austrian Commercial Code. If ORS comm wishes to transfer the Services and the agreement to a third party, the Contractor has to be informed of this in advance and may object in writing to the transfer within 14 working days of sending this information for good cause, which must be so serious that it would justify extraordinary termination.

## **29. Contract Language**

- 29.1 These GTCP were originally established in German language. Hence, all versions in other languages are only translations therefrom, why the German version shall in all events prevail and be paramount in the event of any differences, questions or disputes concerning the meaning, form, validity, or interpretation of the GTCP.

### **30. Notifications**

- 30.1 All notices and statements under these GTCP, including those otherwise made under the Contract, shall be made in writing and shall be made by an authorised representative of the respective party. It is clarified that in writing does not mean signature within the meaning of § 886 Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*) and therefore the text form (e.g. e-mail) is sufficient, unless the written form is agreed in detail or required by law. In the case of delivery by e-mail, the notification shall be deemed to have been received on the day on which it was sent if it was sent on a working day during normal business hours and the sender did not receive an error message.
- 30.2 Any change of address, e-mail address or other contact information of any party to which notices are to be delivered shall be effective in relation to the other party upon receipt of such notice.