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General Terms of Contract  
for (Plant) Construction Works  
(in brief: GTC Construction)  
of simpli services GmbH & Co KG (briefly: simpli services or CL)

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### 1. Contract basis

- 1.1 The following documents constitute the agreement between simpli services and the contractor (briefly: CON).
- Order/order letter of simpli services
  - Records of any negotiations and/or final determinations by simpli services following any negotiations
  - The present General Terms of Contract for (Plant) Construction Works
  - For IT services: Special Terms and Conditions for IT Services of simpli services ("GTC IT")
  - Invitation to submit a quotation including specifications and any other documents/plans submitted by simpli services, in the respective most recent adjusted or specified version
  - General Technical Terms of simpli services as well as relevant specification sheets of simpli services
  - ÖNORM B 2110, edition 2013-03-15, sections 5 to 12.
  - Final quotation of the CON including all enclosures in line with clarifications/specifications, if any
- 1.2 In case of conflicts, the above-stated documents shall apply in the order of their enumeration, so that the order/order letter of simpli services takes precedence over all other documents and the final quotation of the CON is subordinate to all remaining documents. In case that, in its final quotation, the CON explicitly points out a change with respect to the requirements / terms in writing and that said change is legally admissible (does not necessarily result in the quotation being rejected), the CON shall be entitled to request that said change is included in the order letter of simpli services. If the CON fails to make such a request within 4 weeks after receipt of the order letter or signs the order letter in the sense of a counter-confirmation without objecting to this item, said "changes in the final quotation" shall not apply.
- 1.3 Any deviating sales and delivery terms of the CON shall not apply and will not be acknowledged by simpli services. By submitting a quotation, the CON acknowledges the present contract basis, in particular the present GTC Construction. They shall also apply without restriction to all follow-up/additional orders.
- 1.4 The ÖNORM B 2110 standard and all EN-standards, international standards and ÖNORMs setting out the technical state of the art may be ordered from ON Österreichisches Normungsinstitut, 1021 Vienna, Heinestraße 38.

- 1.5 Contracts shall exclusively be established upon a written order being transmitted by simpli services; with the imperative of writtenness being fulfilled by fax transmission. The imperative of writtenness shall also be complied with by simple e-mail message without electronic signature in case of a net contract value of up to EUR 1,500.00, and beyond that by e-mail with simple digital signature of a state-approved certificate provider (e.g. A-Trust). Verbal orders/orders by telephone as well as supplements, amendments and deviations of any kind whatsoever shall only be binding upon simpli services if the latter confirms them in writing within the meaning of this paragraph. Any amendments to this agreement must be made in writing. The same shall apply to any deviation from the written form requirement.
- 1.6 Order confirmations on the part of the CON shall be given on organisational grounds exclusively and will not entail any amendment of the contract. Subsequent amendments of the contract transmitted with the order shall be invalid, unless simpli services subsequently and explicitly confirms anything to the contrary in writing.

## 2. Representation of the contracting parties

Supplementing item 5.2 of ÖNORM A 2110:

- 2.1 To the extent that simpli services designates a site supervisor vis-à-vis the CON, the person charged with site supervision shall be authorised to give instructions to the CON, its staff, subcontractors and suppliers, who must follow such instructions immediately. Instructions to other persons shall only be followed if they are confirmed in writing by the person in charge of site supervision. Unless any other provisions have explicitly been made in writing in individual instances, the site supervisor shall not be entitled, however, to modify the construction contract concerned. Nor shall the site supervisor be entitled to place additional or follow-up orders. However, matters concerning the execution of construction work including functional and material testing and acceptance shall be clarified with the person in charge of site supervision; simpli services shall be informed accordingly.
- 2.2 Notifications of all kinds in connection with the execution of construction work/of the order shall only be valid if they were sent to the notified fax number or electronic address of the site supervisor and are demonstrably received at said address.

- 2.3 If the contractor is a working group, joint venture or consortium (ARGE), simpli services shall designate an authorised representative who is entitled to make and take legally binding statements on behalf and by order of all members of the joint venture.

### 3. Rescission of the contract

Supplementing and amending item 5.8 and 7.4.5 of ÖNORM B 2110:

simpli services may withdraw from the contract in full or in part at any time. In that case, the CON shall only be entitled to compensation for the services already provided as well as for those services that are being provided to it at the time of rescission of the contract, including the material used or procured already; any claims beyond that, of any kind whatsoever (e.g. claims for damages/compensation of prejudice) on the part of the CON shall be excluded. Items 5.8.3.3 and 7.4.5 of ÖNORM B 2110 shall not apply.

### 4. Performance/execution of construction work

Supplementing items 6.2.4, 6.2.5, 6.2.6 and 6.2.8 of ÖNORM B 2110:

- 4.1 The CON shall consent to the appointment of planning and site coordinators (cf. *Bauarbeitenkoordinationsgesetz*/construction works coordination act) effected by simpli services within 14 days after placement of the order/appointment of planning/site coordinators, unless the CON notifies any reservations regarding the authority of the persons so designated in writing with the same period. If the CON fails to give such consent, simpli services shall be entitled to rescind the present construction contract on important grounds which the CON is liable for, granting a period of grace of 7 days.
- 4.2 The appointment of site supervisors and/or planning and site coordinators (cf. construction works coordination act) takes place in the interest of simpli services and to fulfil legal/official obligations exclusively. No obligation on the part of simpli services in favour of the CON shall derive therefrom. The person charged with site supervision has no obligation towards the CON to identify any errors on the part of the CON and/or to draw attention to them. simpli services cannot be blamed for (contributory negligence) due to failure to draw the attention of the planning and site coordinators and/or the site supervisor to errors/defects of the services provided by CON. simpli services shall not assume any liability whatsoever for instructions/warnings of the CON by the planning and site coordinators and/or the site supervisor to observe the legal provisions/official orders and/or general rules of

engineering. The CON shall notify any justified concerns regarding instructions given by the planning and site coordinators and/or the person charged with site supervision directly to simpli services in writing. Items 6.2.6.3 of ÖNORM B 2110 shall not apply.

- 4.3 The CON shall permit simpli services and/or other persons designated by simpli services (also other contractors) to install the required scaffolding and/or use the existing scaffolding without extra compensation, unless this is possible without any significant impairment of the CON's works. Upon request by simpli services/the persons designated by simpli services, the CON shall install the required scaffolding at their expense and/or leave the existing one as it is, shall permit them to use its equipment - if reasonable -, and to tap into electrical and water connections. The intended disassembly of such shareable facilities must be notified to simpli services in writing sufficiently in advance.
- 4.4 The CON shall allow other contractors to inspect the drawings and other documents, if so required by site supervision/simpli services.
- 4.5 For the purpose of controlling/coordinating the construction works, project and site consultation meetings shall be held on site weekly (as a rule), which the site supervisors and occasionally also a representative of the Client will attend. The CON shall be obliged to participate in such meetings, for which a period of approx. 2 hours should be scheduled on average. The minutes will be circulated by site supervision to all participants by e-mail. The costs associated with participation in these meetings are compensated by the prices quoted. The CON shall reimburse simpli services for any extra costs caused by any failure to attend said meetings.
- 4.6 The contribution of materials, tools, machines and other equipment by the CON shall exclusively take place at the latter's risk and expense. simpli services is not obliged to monitor the site. simpli services shall not assume any liability for the objects contributed, even if it provides store rooms or storage space to the CON. The risk of destruction of/damage to the materials/tools/machines/equipment provided by the CON shall be borne by the CON exclusively.
- 4.7 The CON must leave the place of performance and any other premises of simpli services that it uses cleaned and cleared of the objects provided by it. Any waste, packaging materials and the like accumulating during performance or on site shall be disposed of at the expense and risk of the CON in line with applicable legal provisions. If this obligation is not met, simpli services shall be entitled to execution

by substitution without granting any period of grace. The associated costs shall be considered as structural damage and may be deducted from the respective structural damage retention and/or from the performance escrow and/or guarantee retention and are covered by securities.

- 4.8 To perform its contractual services, the CON shall deploy appropriate staff in each case and strictly observe the obligations resulting from conventions no. 29, 87, 94, 95, 98, 100, 105, 111 and 138 of the ILO, Fed. Law Gazette 1950/228, 1952/20, 1954/39, 1958/81, 1961/86, 1973/111 and Fed. Law Gazette (BGBI) III 2001/200. To the extent that staff members are designated or authorised to accept and forward instructions, they must also be fluent in written and spoken German. If works must be carried out in Austria, the CON shall observe the regulations applicable under labour and social law and ensure that all payroll charges including social insurance contributions are paid in full and in time.
- 4.9 The CON must document, and provide written evidence to simpli services at any time upon request, that it provides its services in line with the qualities/volumes/deadlines required by simpli services, complying with official orders, to the extent they are known to the CON (e.g. building permit of simpli services) and in line with the generally recognised rules of engineering. In that sense, the CON shall be obliged to notify simpli services of the place of production, extraction site, source of supply and the like before using the material and if applicable to submit expert reports regarding the quality criteria to be met as required by simpli services. Upon request - at its own expense/risk - the CON shall provide evidence of the fact that the materials/substances comply with the requirements made (e.g. submission of expert report of official or state-accredited materials testing laboratories). Any expert reports submitted must be drawn up in German or submitted together with a certified translation into German. The same applies to layout drawings, instructions for use and operating instructions and the like. If simpli services orders any extra quality and functional test, the CON shall provide the required material gratuitously. The costs of this additional quality and function test shall be borne by the CON if the test result is negative; if the result is positive, simpli services shall bear such costs.

## 5. Compensation - quoted prices

Supplementing item 6.3 of ÖNORM B 2110:

- 5.1 The prices quoted shall compensate all services to be performed under the respective service level agreement (specifications in particular), including any ancillary services

and known difficulties. All prices are free site ("DDP" - delivered duty paid – according to Incoterms 2010).

5.2 The prices quoted shall include in particular:

- Wages (incl. all social charges, taxes, supplements provided for under labour law, as well as any other charges and taxes resulting from laws, regulations, agreements or contracts);
- Supplements, as well as transportation expenses, daily expense allowances and accommodation costs;
- Supplements and other costs resulting from weather-induced difficulties;
- Transport of personnel, material and equipment: journeys from the CON's headquarters or any other place to the place of performance etc., including the time spent travelling, shall not be remunerated separately by the CL - unless explicitly mentioned - and must accordingly be calculated into the unit prices.
- Provision of replacement in case of absences;
- Participation in any coordination meetings, if requested;
- Quality control;
- All other costs resulting from observance of the contractual provisions and the required service (cf. specifications, for instance), even if they are not separately listed herein.
- Preparation, provision and review of the final planning documents.
- Participation in the building blackboard.
- Obtaining all official permits and consents of third parties required to carry out the works.
- Determination of the exact situation of installations.
- All safety precautions.
- The lighting of the building site.
- Protection of the works against the weather.
- Supervision on site and the required documentation.
- Construction waste separation within the meaning of the waste management act (*Abfallwirtschaftsgesetz*).
- All insurance premiums.
- Clearing and cleaning operations.
- Any kind of daywork on site or centrally (?)
- All safety precautions.
- Provision of all utilities required for performance.
- The difficulties caused by wiring systems.



- Drainage of precipitation and other water, as well as of natural water courses in the area of the site.
  - Removal of all residual and packaging materials, equipment and facilities.
  - Restoration of the original condition of the workstations and storage areas, access routes, sidings and the like provided by simpli services and/or by third parties.
  - All weather-related difficulties, e.g. frost, snowfall or other atmospheric influences obstructing the work on site, that had to be expected at the time of submitting the quotation with a view to the service tendered and to the performance period (see also deadline for award of the contract). The weather conditions occurring at the building site over the last 10 years during the performance period tendered shall be considered.
  - Documentation (wiring schemes, cable layout plans) in physical and electronically processable form.
- 5.3 In addition to information about the respective services contained in the specifications, the preparatory work, the required material and equipment (incl. maintenance, care, cleaning and repairs), as well as the procedure until complete performance in line with the recognised state of the art, as well as compliance with legal and official regulations must be included in calculating the individual items.
- 5.4 The expenses required to keep to the contractually determined deadlines/dates, such as in particular overtime pay, costs of multi-shift operation, and expenses caused by external circumstances, weather conditions and the like, will not be remunerated separately, if they had to be expected already when submitting the quotation (e.g. may be taken from the tender documents or the quotation including calculation documents), or if the CON is responsible for otherwise imminent default.
- 5.5 The CON shall not be entitled to assert any additional claims whatsoever based on a lack of knowledge of the situation. It is the responsibility of the CON to fully clarify all the facts relevant for pricing.
- 5.6 The CON shall not be entitled to verify its calculation. Calculation errors are the exclusive risk of the CON. They shall not entitle the latter to avoidance for mistake.
- 5.7 If any discount is expressed as a percentage, said percentage shall refer to the quantity actually implemented and also to adjusted as well as newly agreed prices, to performance modifications and to additional services.

5.8 The prices quoted in each case shall be fixed prices for the year following the end of the deadline for the submission of quotations. Subsequently, the prices including any rebates offered (both rebates expressed as percentages and absolute amounts) shall be variable. Prices will be adjusted on the basis of the price level of the month when the quotation was submitted and of the index figures (=basic number) determined for this purpose. The first adjustment shall be effected at the beginning of the second year following the end of the quotation deadline on the basis of the price level applicable in the last month of the quotation period. Subsequent price adjustments shall take place at the beginning of another new year in each case, on the basis of the price level of the respective penultimate month (e.g. November 2012 for price adjustment 01/01/2013). The price level relevant for the price adjustment concerned, i.e. the basic number and the respective actual index value, is determined on the basis of the 2010 consumer price index published monthly by Statistik Austria – unless anything to the contrary is explicitly determined in the tender documents. The index figure newly calculated in this way shall be deemed the new benchmark for all prices that will be invoiced as of the new year. All calculations shall be commercially rounded to one decimal place.

## 6. Contractual penalty

Supplementing and amending item 6.5.7 of ÖNORM B 2110:

- 6.1 In case of performance outside the deadline agreed, the CON shall pay a contractual penalty, for each part of a calendar week that it is in default, in the amount of 1.0% of the contract amount under civil law (including VAT), but not more than 10% of the contract amount under civil law, regardless of evidence of actual damage. Evidence of a lack of fault, if any, shall be provided by the CON.
- 6.2 If the deadlines/dates were amended after placement of the order, for any reason whatsoever (e.g. mutually agreed amendment of the construction schedule), the contractual penalties agreed in the original order shall also apply to the new deadlines/dates. If additional contracts / follow-up contracts are awarded, the contractual penalties agreed for the basic contract shall also apply to the deadlines/dates of such additional / follow-up contracts.
- 6.3 Regardless of any contractual penalty, the CON must compensate any loss exceeding the contractual penalty.

- 6.4 The above provision on contractual penalties for default shall also apply without restriction to so-called performance penalties and/or investment protection measures as defined in the specifications, e.g. to ensure technical support throughout the term of the contract. Item 9.4 shall apply analogously.

## 7. Deviation from contractual performance/daywork

Amending item 7.2 and 7.4.2 of ÖNORM B 2110:

- 7.1 All documents made available by simpli services, delayed placement of the order by simpli services, assemblies and materials provided by simpli services shall be attributed to the sphere of simpli services. The CON's duty to test and warn shall remain unaffected.

Supplementing item 7.2.1 of ÖNORM B 2110: The assumption - to be refuted by the CON - that the CON could have realised these "incidents" and/or the "lack of suitability" of the documents and instructions provided by simpli services shall apply. The CON shall be obliged to demonstrably make sure, before execution of the service, of the feasibility of the service concerned, taking into account the documents provided by simpli services and/or the instructions of simpli services, and to warn about their lack of suitability if necessary.

- 7.2 All circumstances that were known, or had to be known, to the CON at the time of submission of the quotation, as well as all dispositions of the CON as well as of the suppliers and subcontractors selected by the CON shall be attributed to the sphere of the CON. This also includes the weather conditions/natural disasters foreseeable for the site, based on the experience of the past 10 years. This also includes factory strikes, labour shortages and supply bottlenecks for the materials/finished goods to be procured by the CON.
- 7.3 Circumstances that cannot be attributed to any of the contracting parties, in particular Acts of God, war, political unrest, and general strikes, shall be considered as instances of force majeure. They justify adjustments of the time for performance, but no adjustment of the compensation. In that case, each contracting party shall be entitled to rescind the contract, provided that continuation of the contractual relationship is definitely unreasonable and the other contracting party is not prepared to replace the prejudice/extra cost caused by force majeure.

- 7.4 If the CON violates its duties to provide information in connection with deviations from contractual performance - potentially to be expected -, it shall lose its claim for price adjustment and/or reimbursement of the associated extra cost. Item 7.4.3 of ÖNORM B 2110 shall not apply. Item 7.2 of ÖNORM B 2110 shall not apply.
- 7.5 The CON shall immediately inform simpli services about any changes of volumes without deviations from contractual performance, as soon as such changes become evident to the CON. In said notification, the CON shall point out the resulting additional/reduced costs, providing appropriate calculatory justification. If the CON fails to provide such information in time, it shall lose its claim for compensation of the calculatory prejudice resulting from the change of quantities without deviation from contractual performance. Item 7.4.4 ÖNORM B 2110 is amended accordingly.
- 7.6 If certain (partial) services are omitted for reasons attributable to the sphere of simpli services, the remuneration agreed therefore shall also lapse. Item 7.4 ÖNORM B 2110 shall apply to reduced volumes due to changes of the agreed performance for reasons attributable to the sphere of simpli services. For the rest, any claims for compensation of prejudice, damages claims or other claims beyond that shall be excluded in case of part of the agreed performance being omitted or in case of reduced volumes.
- 7.7 Daywork must not be executed without special written order of the site supervisor and must be invoiced on the basis of the daywork reports confirmed by the latter. The monitoring of daywork by foremen, who are also responsible for other duties, shall not be remunerated separately.
- 7.8 Daywork shall be invoiced as normal hours on weekdays (except Saturday) from 6:00 a.m. to 6:00 p.m., with an overtime supplement of 50% between 6:00 p.m. and 8:00 p.m., as well as on Saturdays from 6:00 a.m. to 8:00 p.m., and with an overtime supplement of 100% between 8:00 p.m. and 6:00 a.m. as well as generally on Sundays and public holidays. Overtime supplements shall be charged as follows: The normal hourly rate must be reduced by one third. To the extent that an overtime supplement of 50% or 100% is due, the respective applicable percentage shall be calculated from the amount thus reduced, and the amount thus calculated added to the normal hourly rate.

## 8. Invoicing

Supplementing item 8.2 and 8.3 of ÖNORM B 2110:

- 8.1 Invoices and calculation bases have to be sent in digital form (pdf-file without digital signature and without password) with the invoice address “simpli services GmbH & Co KG, Storchengasse 1, A-1150 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 “simpli services GmbH & Co KG, Storchengasse 1, A-1150 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 simpli services (ATU 674 963 55), 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. Moreover, the daywork lists, counter-confirmations, wage slips and time sheets confirmed by the employees of simpli services shall be enclosed with the invoice. For each contract (order) a separate invoice shall be issued, unless any associated daywork or an additional order is invoiced.
- 8.2 The IBAN and BIC shall also be indicated on the invoices next to the account details. This shall apply in particular to the CONs who wish payment amounts to be transferred to a foreign account or who have their headquarters abroad. If said information is missing, the CON or other beneficiaries shall bear the expense and risk of any such foreign bank transfer.
- 8.3 In case that the CON assigns the monetary claim it has vis-à-vis simpli services, the former shall inform simpli services accordingly in writing without delay, by attaching a note in bold print to the invoice. If the CON fails to provide such notification, simpli services shall be entitled to pay the monetary claim to the CON with the effect of discharging its liability thereby.
- 8.4 Unless determined otherwise in individual instances, invoicing shall be effected on the basis of plan dimensions.

## 9. Terms of payment

As an amendment to item 8.4 of OENORM B 2110, the following shall apply:

- 9.1 Terms of payment shall commence when (partial) performance has been effected without defects (i.e. successfully completed acceptance [=positive performance check] and/or successfully completed trial operation and acceptance without defects [after elimination of remaining defects] and/or complete commissioning by simpli services) and simpli services has received an invoice that complies with the contract. If simpli services requests any documents required to check the invoice until fourteen days before the end of the term of payment, the latter shall be extended such that simpli services has at least seven days to check said invoice, after receipt of the relevant documents. Only upon expiry of this period of seven days and upon expiry of the term of payment will the payments fall due.
- 9.2 Invoices will be paid with a 3% cash discount within 30 days and/or net within 60 days. If simpli services 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. Payments will not be deemed a waiver of asserting defects and claims for damages.
- 9.3 The date of receipt of the invoice will not be counted. The place of payment is Vienna. The invoices shall be deemed to have been paid on the value date from the account of simpli services, provided the payment is received on the account of the CON.
- 9.4 simpli services shall be entitled to offset monetary claims which simpli services or 100% subsidiaries of simpli services have against the CON with monetary claims of the CON.
- 9.5 If the contractor is a working group/joint venture/consortium, simpli services shall be entitled to pay to each member of the working group with the effect of discharging its liability. simpli services shall be entitled to offset in full against its claim vis-à-vis any member of the working group. Item 9.4 shall apply analogously.

- 9.6 If simpli services is in default of its payment obligation, it shall pay interest on arrears in the legally prescribed amount. Any claims for damages of the CON from and in connection with said default of payment shall be excluded.

## 10. Security

Supplementing item 8.7 of ÖNORM B 2110:

- 10.1 All means to provide security (in particular bank guarantees) must be payable and actionable under Austrian law without indicating any reasons upon first request in Vienna within three banking days. The security must be issued by a person from the EEA and/or from Switzerland unconditionally and irrevocably and must not entail any costs/expenses for simpli services.
- 10.2 The performance escrow or guarantee retention and/or the security provided in this context may also be used to cover the claims for damages of simpli services.
- 10.3 Any other security required by simpli services (e.g. letters of comfort, guarantees and the like) shall be provided without delay upon first request - but in any case no later than upon placement of the order.

## 11. Receipt, acceptance, trial operation, risk of loss, warranty, damages, and insurance

- 11.1 Unless determined otherwise in individual instances, formal acceptance shall be effected. If simpli services does not stipulate any acceptance provisions beyond that in individual instances (e.g. specifications), simpli services shall be entitled to refuse acceptance of supplies/services, if they are incomplete (e.g. required documents/drawings/instructions are missing) and/or if they show defects that are not only minor with a view to the object of the contract and/or to the purpose intended by simpli services. Items 10.5 of ÖNORM B 2110 shall not apply.
- 11.2 As an amendment to item 6.2.8.9 and 6.2.8.10 of OENORM B 2110 the following shall apply: Trial operation shall be considered as failure-free and free from defects if no failures/defects occur during trial operation or if they only occur within the tolerances explicitly agreed (cf. e.g. specifications). Trial operation shall continue until all requirements with respect to failure-free operation or operation without defects are met. The same shall apply analogously to quality and function tests. The following are details of the acceptance procedure (= acceptance):

Acceptance of the plant by simpli services takes place as soon as evidence has been provided for the fact that the plant achieves the agreed guaranteed values for all functions. If on the date of acceptance, the plant does not completely meet the functions guaranteed according to the technical specifications or otherwise usually expected from this type of plant, the CON shall procure said plant at its own expense in such a way, that it achieves the values required. Subsequently, the CL will fix another date for acceptance.

If the CON fails to meet this obligation within a reasonable period (not more than three months), the CL may rescind the contract. The cost of each additional acceptance shall be borne by the CON exclusively.

To the extent that any third parties (e.g. TÜV, expert and the like) must be called in under applicable legal or other provisions, the CON shall also bear the costs associated therewith.

- 11.3 The provisions of item 12.1.1 (1) of OENORM B 2110 shall apply. Item 12.1.1 (2) of OENORM B 2110 is amended as a whole as follows: The risk shall only vest in simpli services upon acceptance of complete delivery/performance. If delivery/performance or parts thereof are destroyed/damaged before handover, the CON shall not have any claim for compensation of the delivery/performance so destroyed/damaged.
- 11.4 The warranty provisions of item 12.2 of OENORM B 2110 shall apply. In case of both manifest and hidden defects, the CON waives any objection of late notice of defects. In any case, the notice of defects shall be deemed to have been effected in time if it is raised within the warranty period. The cost of the experts charged by simpli services with supervising the elimination of defects shall be borne by the CON.
- 11.5 As an amendment to item 12.3.1 of OENORM B 2110 the following shall apply:

If one of the contracting parties has culpably caused the other party to suffer a loss by violating its contractual obligations, the injured party shall have a claim for damages as follows:

1. In case of wilful intent or gross negligence, a claim for compensation of the loss including lost profit;



2. If simpli services faces any third-party claims due to defective performance or delivery (e.g. violation of third-party proprietary rights), the CON shall fully indemnify simpli services, including the cost of appropriate legal defence;
  3. Without prejudice to the unrestricted liability mentioned above or to any regulations exceeding the same in individual instances, in case of slight negligence:
    - a. a claim for damages without limitation in case of rescission and/or personal injury, or
    - b. a claim for damages limited to the respective contract amount in all other instances.
  4. In case of any unscheduled interruption of broadcasting (radio or TV) culpably caused by the CON in the course of providing the service, the CON undertakes to pay a penalty in the amount of EUR 500.-- per minute of interruption per programme. Evidence of the fact that the broadcasting interruption was not caused culpably must be provided by the CON.
- 11.6 The provisions on liability in case of violation of proprietary rights as stipulated in item 12.5 of OENORM B 2110 shall apply with the following amendment to item 12.5.1 and 12.5.2: simpli services shall be liable – in full or in part – for violations of proprietary rights only to the extent that simpli services participates in such violations intentionally or through gross negligence. simpli services shall not be liable for merely omitting to point out any proprietary rights, unless it acts with gross negligence or wilful intent.
- 11.7 The CON shall procure (at its own expense) third-party liability insurance in the amount determined by simpli services in each case (in particular "request for submission of quotation") until acceptance of performance. Upon request by simpli services, the CON shall provide evidence of valid insurance cover at any time. If no specific provision has been made in individual instances, minimum third-party liability in the amount of EUR 1.5 million must be provided for. The third-party liability insurance shall cover all contractual activities of the CON, its subcontractors, sub-suppliers and employees. simpli services shall be entitled to rescission of the contract if no evidence of said insurance cover is provided in spite of granting a period of grace once.

## 12. Place of jurisdiction, applicable law

Supplementing item 5.9 of ÖNORM B 2110:

- 12.1 The materially competent court for the first municipal district of Vienna shall have exclusive jurisdiction over all disputes resulting from and in connection with this contract. Items 5.9.2 and 5.9.3 of ÖNORM B 2110 shall not apply.
- 12.2 Austrian substantive law shall apply exclusively. Any reference to the law of other countries (conflict of law rules) shall not apply. The UN-CISG shall not apply.

## 13. Other provisions

Objects of regulation supplementing OENORM B 2110:

- 13.1 Drawings, sketches, samples, models, moulds or other documents enclosed with the tender documents are the (intellectual) property of simpli services and must not be used for any other purpose than submission of the quotation and fulfilment of the respective order. Such objects must be treated confidentially and must neither be made accessible to any third parties nor used for any other purpose, including advertising; they shall be made available to the CON for use as specified for as long as this is required to perform the contract. They shall be delivered/returned to simpli services upon the latter's request immediately.
- 13.2 Drawings, sketches, documents, drafts, individual software components, individually prepared software modifications, macros, Web content, databases or other works which the CON produces individually by order of simpli services (individual works in brief) shall vest in simpli services upon handover to the latter. simpli services shall acquire the exclusive right to use, disseminate, reproduce and process said individual works without restrictions in material terms and in terms of place and time. Accordingly, simpli services acquires rights – unrestricted in material terms and in terms of place and time – to use, disseminate, reproduce and process individually ordered developments as well as requirement analyses and specification documents. When executing any orders for third parties, the CON shall refrain from copying or otherwise using the work results created during performance of this contract, either in full or in part. Said individual works shall be treated like trade and business secrets of simpli services. In case the CON uses standard works when preparing the individual works, the latter shall inform simpli services accordingly as soon as possible and provide corresponding evidence. In case of doubt, the specific services provided

to/rendered for simpli services shall be considered individual works. The CON shall be admitted to prove otherwise.

- 13.3 To the extent that the use of standard works (in particular standard software, standard know-how, standard databases, standard texts, macros) is provided for in the contract, the respective objects of performance (e.g. documents, data carriers) shall vest in simpli services upon handover to the latter. simpli services only acquires permission to use the works (*Werknutzungsbewilligung*) to the extent detailed in the object of performance (specifications) or the other contractual documents; at least, however, to use the same without restrictions in terms of place and time, such as in particular the right to use said standard works on all its current and future systems and in emergencies on any replacement system without restrictions – in case of leases for the duration of the contractual relationship – and to reproduce them as required (e.g. for backup and training purposes). In that sense, systems operated for companies that are directly and/or indirectly owned by simpli services or the owner of simpli services for the major part count among the systems of simpli services. In case that the CON becomes incapable to act, in factual or legal terms, (e.g. opening of insolvency proceedings), simpli services shall be entitled to process such standard works itself or through third parties.
- 13.4 The source code of individual works (incl. database scripts or Java scripts and the like) shall be delivered on a data carrier that can be read by simpli services, including the pertinent documentation (content and structure of the data carrier, programme and data flowcharts, testing procedures, test applications, troubleshooting). The CON will provide the source code of standard works within the CON's sphere of influence, including all modifications, on a data carrier that can be read by simpli services and shall translate the same into machine code and implement their installation at simpli services. In that sense, the CON shall provide simpli services with a compiler including adequate compiler instructions, to the extent that this is required and simpli services does not dispose of any such compiler. After installation, said data carrier containing the source code including pertinent documentation will be sealed by CON and deposited at the premises of simpli services. The data carrier must contain the software in the original programming language at the time of installation including all modifications carried out ever since, as well as the documentation, if available in machine-readable format. Documentation that is not available in machine-readable format shall be enclosed as a copy that is readable without any aids. In any case, however, an instantly readable list of objects deposited and instructions as to how the data carrier is read on the system of simpli services and how the object of the contract must be installed shall be enclosed. Said deposit or handover will be

repeated on the occasion of each delivery of a new version of the works (software) within two months after initial use of the respective new version. However, only once every six months, if several modifications take place within a period of six months. Each deposit shall be repeated every 12 months at the latest. If legal incapacity occurs on the part of the CON or if the latter ceases to develop or update the software in spite of a valid service agreement, simpli services shall be entitled to break the seals of the data carrier deposited and to hand over the object of the contract (source code) including documentation either to a competent company and charge the same with further troubleshooting and maintenance of the object of the contract or take care of this task itself.

- 13.5 The agreed price also compensates the value of all other proprietary rights, in particular of patents to the extent that their acquisition is required by simpli services for unrestricted use, for partial or complete renewal, and for the resale of the building/plant component. To the extent that usage permissions/licences are required, the CON shall procure the same. simpli services shall be entitled to use inventions made by the CON during performance of this contract and/or any patents pending gratuitously and without restrictions in terms of content, time and place. The CON shall indemnify simpli services in case of violation of third-party proprietary rights in connection with the construction of the relevant building/execution of the relevant construction works.
- 13.6 The CON undertakes to keep confidential all information obtained during execution of its order at simpli services or from other documents of simpli services, unless simpli services releases the CON from this obligation in writing in specific instances or unless such information is accessible to the public. If the CON uses any other persons to provide its services, it shall be obliged to impose the confidentiality obligation to such persons in writing and will provide corresponding evidence if necessary and upon first being requested to do so by simpli services. During the removal of paper, data carriers, printing cartridges and the like from the sphere of simpli services, the CON undertakes to transport and process or destroy them in such a way that the information contained thereon will not be disclosed to anyone and is no longer legible nor recoverable in any conceivable way after completion of such treatment. In case of culpable violation of these confidentiality obligations or the confidentiality obligations deriving from § 15 data privacy act, the CON shall pay a contractual penalty of EUR 36,000.-- which is subject to the right of reduction in court. The right of simpli services to assert any claims for damages exceeding this amount shall remain unaffected.

- 13.7 Should any of the provisions of this civil-law contract or other provisions of the contract be or become invalid, ineffective or unenforceable, the validity, effectiveness and enforceability of the remaining provisions shall remain unaffected. In case of the invalidity, ineffectiveness or unenforceability of any provision, the contracting parties will replace it by a provision approximating the economic purpose of the invalid, ineffective or unenforceable provision in the best possible way.
- 13.8 The CON confirms that it is an entrepreneur within the meaning of the *Umsatzsteuergesetz* (sales tax act) and will notify its valid UID number to simpli services upon taking up a business relationship. Should its sales tax status or its UID number change in the course of the business relationship, the CON shall immediately notify simpli services accordingly in writing.

The foreign contractor confirms that it does not dispose of any operating facility in Austria and/or that the supplies/services cannot be attributed to the same.

A CON that is not subject to unrestricted tax liability in Austria will provide simpli services with an original certificate of residence within the meaning of the *DBA-Entlastungsverordnung* (double taxation treaty / relief ordinance) said certificate being confirmed by the foreign fiscal authorities, before the respective payment falls due. If simpli services does not receive an appropriate original certificate confirmed by the foreign fiscal authorities or if, due to legal provisions, the certificate does not entitle simpli services to effect payment exempt from withholding tax, simpli services shall be entitled to withhold tax at a rate of 20% from the amount of compensation and forward the same to the Austrian fiscal authorities. The contractor will receive a tax certificate for the withholding tax. Said deduction of tax will not cause any default.

Should any claims of the fiscal authorities be asserted against simpli services in connection with the supplies/services agreed, which are based on any incorrect statements in the CON's tax return and/or its certificate of residence, the CON undertakes to immediately indemnify simpli services with respect to such claims. Indemnification also includes the cost of appropriate legal defence and ancillary charges.

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