

## General Terms and Conditions of TeleConsult Austria GmbH (November 2016)

### 1. Scope of Application

- 1.1. These general terms and conditions of TeleConsult Austria GmbH shall apply to legal transactions between business enterprises, i.e. the delivery of goods as well as, accordingly, the rendering of services.
- 1.2. In principle, TeleConsult Austria GmbH concludes contracts on its own terms and conditions. Deviating terms and conditions (e.g. terms and conditions of purchase) shall only be applicable if TeleConsult Austria GmbH explicitly consents to the same in writing. This shall also apply to future transactions even if no explicit reference is made to them.

### 2. Offer

- 2.1. Offers of TeleConsult Austria GmbH shall be subject to change and shall be deemed offers without engagement.
- 2.2. All tendering documents and project documents must neither be reproduced nor made accessible to third parties without TeleConsult Austria GmbH consent. They may be reclaimed at any time and shall be returned to TeleConsult Austria GmbH immediately if the order is placed with someone else.
- 2.3. TeleConsult Austria GmbH explicitly reserves the right to make price changes and technical changes. TeleConsult Austria GmbH shall not be liable for errors or printing errors.

### 3. Conclusion of contract

- 3.1. The contract shall be deemed concluded upon written confirmation by TeleConsult Austria GmbH of the order or delivery after receipt of the order.
- 3.2. The information contained in catalogues, brochures and the like as well as any other written or oral statements shall only be relevant if explicitly referred to in the confirmation of the order.
- 3.3. Subsequent modifications of or amendments or additions to the contract must be confirmed in writing by TeleConsult Austria GmbH in order to be valid.

### 4. Prices

- 4.1. Prices shall be quoted ex works and/or ex warehouse TeleConsult Austria GmbH, excluding loading, value-added tax, take-back and proper recycling and disposal of waste electrical and electronic equipment for commercial purposes as defined by the Ordinance Regulating the Handling of Waste Electrical Equipment (Elektroaltgeräteverordnung). If, in connection with delivery, fees, taxes or other charges are levied, they shall be borne by the purchaser. If delivery to a certain place has been agreed upon, transport costs as well as the costs of any transport insurance required by the purchaser, if any, shall be borne by the purchaser and charged separately. Delivery does not, however, include unloading and distribution. Packaging material shall only be taken back upon explicit agreement.
- 4.2. If an order deviates from the offer, TeleConsult Austria GmbH reserves the right to change the price accordingly.
- 4.3. In case of repair orders TeleConsult Austria GmbH shall render the services it deems appropriate and charge them on the basis of the costs incurred and time spent. This shall also apply to services and additional services, the appropriateness of which is discovered only in the course of execution of the order. In such an event no special notification to purchaser shall be required.
- 4.4. Discounts shall not be granted unless they are explicitly agreed in writing.

### 5. Delivery

- 5.1. The delivery period shall commence at the latest of the following dates:
  - a) date of order confirmation by TeleConsult Austria GmbH;
  - b) date of fulfilment of all technical, commercial and other prerequisites which purchaser is obliged to fulfil;
  - c) date on which TeleConsult Austria GmbH receives an advance payment or collateral security that is to be provided before delivery of the goods.
- 5.2. Official permits, working allowances, site access and any other authorisations by third parties necessary for execution of delivery, installation or operation of the same shall be obtained by the purchaser.
- 5.3. TeleConsult Austria GmbH shall be entitled to carry out and charge partial deliveries or advance deliveries. If delivery on call has been agreed upon, the goods shall be deemed called off not later than one year after placing of the order.

- 5.4. In case of unforeseeable circumstances or circumstances beyond the parties control, such as all cases of force majeure, which impede observation of the agreed delivery period, the same shall in any case be extended for the duration of these circumstances; these circumstances include armed conflicts, official interventions and bans, delay in transport and/or customs clearance, transport damage, shortage of energy and raw material, labour conflicts as well as loss of an important supplier who can only be replaced with difficulty. The circumstances mentioned above shall also entitle TeleConsult Austria GmbH to extend the delivery period if they occur at suppliers or other subcontractors.

### 6. Passing of risk and place of performance

- 6.1. Benefits and risk shall pass to purchaser upon dispatch of the shipment ex works or ex warehouse, independent of the pricing agreed (as, for example, fob, CIF and the like). This shall also apply if delivery takes place in the course of assembly or if transport is carried out or organised and managed by TeleConsult Austria GmbH.
- 6.2. In the case of services the place of performance shall be the place where the service is rendered. The risk of a service or an agreed partial service shall pass to purchaser at the time it is rendered.

### 7. Payment

- 7.1. If no payment conditions have been agreed, half of the price shall be due upon receipt of the order confirmation and the rest upon delivery.
- 7.2. In case of partial invoicing the respective partial payments shall be due upon receipt of the respective invoice. This shall also apply to invoice amounts that exceed the original final sum because of subsequent deliveries or other agreements, independent of the payment conditions agreed for the main delivery.
- 7.3. Payments shall be effected without any discount free at the domicile of TeleConsult Austria GmbH in the agreed currency. If cheques or bills are accepted, this shall be on account of payment only. Any and all related interest and charges (such as, for example, collection charges and discount charges) shall be borne by the purchaser.
- 7.4. Purchaser shall not be entitled to withhold or set off payments on grounds of warranty claims or other counterclaims.
- 7.5. A payment shall be deemed effected at the date at which TeleConsult Austria GmbH is able to dispose of the same.
- 7.6. If purchaser is in default of an agreed payment or other performance arising out of this transaction or any other transactions, TeleConsult Austria GmbH may, without prejudice to its other rights,
  - a) postpone fulfilment of its own obligations until such payment or other performance, and reasonably extend the delivery period,
  - b) ask for immediate payment of all outstanding claims under this transaction or any transactions and charge default interest according to Austrian Unternehmensgesetzbuch §352 UGB (actually 8 percent per annum on top of the current interest base rate of the Austrian National Bank [OeNB]) on these amounts as of the respective due date unless TeleConsult Austria GmbH proves cost exceeding these amounts.
  - c) In any case TeleConsult Austria GmbH shall be entitled to invoice costs arising prior to court proceedings, in particular reminder charges, collection charges and lawyer's fees.
- 7.7. Discounts or bonuses granted shall be subject to the condition of full payment in time.

### 8. Retention of title

- 8.1. TeleConsult Austria GmbH retains title to all goods delivered by it until full payment of the invoice amounts plus interest and costs.
- 8.2. As security for TeleConsult Austria GmbH purchase price claim purchaser herewith assigns to TeleConsult Austria GmbH his account receivable under a resale of the goods that are subject to retention of title, even if the same were processed, transformed or combined with other commodities, and undertakes to notify the third-party buyer of the assignment of security or make a respective note of this assignment for security in his books or on his invoices. Upon request the purchaser has to notify the assigned claim and the debtor to TeleConsult Austria GmbH, and to make available any and all information and documents necessary for his collection of the account receivable and to inform the third-party debtor about the assignment. If the delivered goods are attached or otherwise levied upon, purchaser shall be obliged to refer to TeleConsult Austria GmbH title and to immediately inform TeleConsult Austria GmbH.

## 9. Warranty and liability for defects

- 9.1. If the agreed payment conditions are complied with, TeleConsult Austria GmbH shall, subject to the following provisions, repair every defect which exists at the time of delivery whether due to a construction error, material defect or workmanship defect and that impairs the functionality. No warranty claims may be deduced from information contained in catalogues, brochures, advertising material or oral statements which were not included in the contract.
- 9.2. The warranty period shall be 12 months unless special warranty periods have been agreed for individual delivery items. This shall also apply to delivery items and service items which are inseparably connected with a building or ground. The warranty period shall commence at the time the risk passes to purchaser according to paragraph 6.
- 9.3. A warranty claim shall be subject to the condition that purchaser has immediately given notice in writing of the defects which have occurred and that such notice reaches TeleConsult Austria GmbH. Purchaser shall immediately prove the existence of a defect, in particular provide TeleConsult Austria GmbH with the respective documents and data available to him. In case of a defect subject to warranty according to subparagraph 9.1 TeleConsult Austria GmbH shall have the right to choose between a reasonable price reduction or subsequent improvement. Alternatively, TeleConsult Austria GmbH shall have the right to correct the defect through replacement.
- 9.4. If TeleConsult Austria GmbH produces goods on the basis of construction data, drawings, models or other specifications of the purchaser, TeleConsult Austria GmbH liability shall be limited to non-compliance with purchaser's specifications.
- 9.5. Defects arising out of an arrangement or assembly that was not carried out by TeleConsult Austria GmbH, out of insufficient setting, non-compliance with installation requirements and conditions of use, overstressing of the parts beyond the performance stated by TeleConsult Austria GmbH, negligent or incorrect handling or use of inappropriate factory supplies shall be excluded from warranty; this shall also apply to defects which may be attributed to material provided by the purchaser. TeleConsult Austria GmbH shall not be liable either for damage which may be attributed to acts of third parties, atmospheric discharges, over-voltage or chemical influences. Warranty shall not cover replacement of parts which are subject to wear and tear. TeleConsult Austria GmbH shall not assume any warranty for the sale of used goods.
- 9.6. Warranty shall lapse immediately if purchaser himself or any third party who was not explicitly authorised by TeleConsult Austria GmbH changes or repairs the items delivered without TeleConsult Austria GmbH written consent.
- 9.7. The provisions of subparagraphs 9.1 to 9.6 shall apply accordingly also to all cases of liability for defects for other statutory reasons.
- 9.8. TeleConsult Austria GmbH warrants to the purchaser that each reconditioned, refurbished and/or repaired part shall be free of defects as mentioned above until the end of the original warranty period according to subparagraph 9.2.

## 10. Rescission of contract

- 10.1. Purchaser shall be entitled to rescind the contract only in the event that a delay in delivery may be attributed to TeleConsult Austria GmbH gross negligence and only if a reasonable grace period which was granted has expired. Rescission of contract shall be made by registered letter.
- 10.2. Independent of its other rights TeleConsult Austria GmbH shall be entitled to rescind the contract
- if delivery or commencement or continuing of the service is delayed for reasons for which the purchaser is responsible or is further delayed although a grace period was granted,
  - if doubts with respect to purchaser's solvency or creditworthiness arise and if the purchaser upon request of TeleConsult Austria GmbH neither effects an advance payment nor provides adequate collateral security prior to delivery, or
  - if due to the circumstances listed under subparagraph 5.4 the delivery period is extended by more than half of the originally agreed delivery period and at least amounts to 6 months.
- 10.3. Rescission of contract may also be declared with respect to any outstanding part of the delivery or service for the above reasons.
- 10.4. In case insolvency proceedings are opened over the assets of either contracting party or a petition for opening of insolvency proceedings is dismissed for lack of assets to cover the cost, the other contracting party shall be entitled to rescind the contract without having to grant a grace period.
- 10.5. Notwithstanding TeleConsult Austria GmbH claims for damages, including costs arising prior to court proceedings, in the case of a rescission of contract deliveries made or services rendered in whole or in part shall be accounted for and paid according to contract.

This shall also apply if a delivery or service has not been accepted by the purchaser yet as well as to preparatory actions of TeleConsult Austria GmbH. Instead, TeleConsult Austria GmbH shall also be entitled to demand that goods already delivered shall be returned.

- 10.6. Any other consequences of rescission of contract shall be excluded.
- 10.7. The assertion of claims on the ground of *laesio enormis*, error or lapse of purpose (frustration of contract) by the purchaser is excluded.

## 11. Liability

- 11.1. Unless any mandatory statutory regulations provide for a more strict liability, TeleConsult Austria GmbH shall only be liable for damages within the scope of the statutory provisions if it is proven that TeleConsult Austria GmbH acted with wilful intent or gross negligence. Liability for slight negligence, compensation for consequential damages or damages for pure economic loss, loss of profits, loss of savings and interest or damages arising from third-party claims *vis-à-vis* purchaser shall be excluded.
- 11.2. TeleConsult Austria GmbH shall not be liable for damages in case of non-compliance with instructions for assembly, commissioning and operation (such as are contained in instructions for use) or non-compliance with licensing requirements.
- 11.3. Purchaser shall be solely responsible for proper and professional use of TeleConsult Austria GmbH products as well as for processing and installation of the same.
- 11.4. Purchaser warrants that he holds all permits and authorisations necessary for distribution and/or installation and/or operation.
- 11.5. Purchaser acknowledges the fact that TeleConsult Austria GmbH products only support existing "safe" navigational aids (e.g. radar, etc.). In case of improper use any liability shall be excluded.

## 12. Assertion of claims

- 12.1. Unless statutory provisions or provisions separately agreed in an individual case provide for shorter periods, all claims of purchaser shall have to be asserted within three years of passing of risk; otherwise they shall be forfeited.

## 13. Software

- 13.1. The use of software supplied and not produced by TeleConsult Austria GmbH is subject to the conditions of the software producer.
- 13.2. Software delivered by TeleConsult Austria GmbH for operation shall exclusively be used for this purpose. Any reproduction, even for one's own purposes, shall be prohibited. Passing on of software to third parties in whatsoever way or for whatsoever purpose without TeleConsult Austria GmbH prior consent is prohibited.

## 14. Intellectual, industrial and commercial property

- 14.1. If TeleConsult Austria GmbH produces goods, software or other services on the basis of construction data, drawings, models or other specifications of purchaser, purchaser shall indemnify and hold TeleConsult Austria GmbH harmless in case of an infringement of property rights, if any.
- 14.2. Execution documents, such as, for example, plans, plots and other technical documentation as well as samples, catalogues, brochures, illustrations, software and the like shall always remain intellectual property of TeleConsult Austria GmbH and shall be subject to the respective statutory provisions with respect to reproduction, imitation, competition, etc. Subparagraph 2.2 shall also apply to execution documents.

## 15. General

- 15.1. Severability clause  
If individual provisions of the contract or of these provisions are ineffective, the effectiveness of the remaining provisions shall not be affected thereby. The ineffective provision shall be replaced by a valid one which comes as close as possible to the intended purpose.
- 15.2. Miscellaneous  
The fact that TeleConsult Austria GmbH does not exercise a right to which it is entitled shall not constitute a waiver of the said right.

## 16. Place of jurisdiction and law

- 16.1. For settlement of all disputes arising out of the contract including those regarding existence or non-existence of the same the court having jurisdiction over the subject-matter at the head office of TeleConsult Austria GmbH shall have exclusive jurisdiction. The contract shall be subject to Austrian law excluding the rules of conflict. Application of the UNCITRAL Convention of the United Nations on Contracts on the International Sale of Goods is excluded.