

## General Terms and Conditions (GTC) Windisch Elektro Technik GmbH

### 1. Scope of application

1.1. These General Terms and Conditions (GTC) apply between us (Windisch Elektro Technik GmbH) and individual and legal persons (in short: customers, clients) for the concrete legal transaction, as well as for future transactions with business clients, even if there was no express reference thereof made in the individual case, especially in case of **future supplementary and follow-up orders**.

1.2. The version of these GTC valid at the time of contract formation applies towards business clients. The General Terms and Conditions can be downloaded from our website ([www.wiet.at](http://www.wiet.at))

1.3. We contract **solely** upon our General Terms and Conditions.

1.4. **The General Terms and Conditions of a customer** or any changes or amendments of our GTC become valid only if we expressly agree with these, in case of business clients in writing.

1.5. The General Terms and Conditions of a customer shall not apply even if we do not expressly reject these upon receiving them.

### 2. Offer/Formation of a contract

2.1. Our offers are **non-binding**.

2.2. **Commitments**, assurances and guarantees, or any contradictions or divergences from these GTC associated with the formation of a contract shall be towards business clients binding only upon our written confirmation.

2.3. Any information in catalogues, price-lists, leaflets, advertisements on fair stands, bulletins, advertisement newsletters or other media (**information material**) regarding our products and services that are not attributable to us must be presented to us if a customer takes this information material as a basis for his order. We can thereupon provide our statement regarding the correctness of this information. If a customer does not fulfill this obligation, any such information shall be non-binding, unless it was expressly incorporated into the contract, with respect to business clients in written form.

2.4. **Estimates of costs** are non-binding.

2.5. Estimates of costs are **against payment**. Customers will be made aware of these costs. If it comes to an assignment including all the services and the output of works as given in the estimate of costs, the costs of the estimate shall be credited to the respective invoice.

### 3. Prices

3.1. Price quotations are generally **not** to be understood as a **lump sum**.

3.2. We are entitled to a reasonable remuneration of those from a customer ordered services that are not covered in the original contract.

3.3. A professionally correct and environmentally compatible disposal of **waste material** lies upon the customer. If we are separately commissioned to deal with it, this will be reimbursed, in the absence of a cost agreement, appropriately to the agreed extent of work.

3.4. We have the right on our own, as well as are obligated upon a request of a customer to **adjust** the contractually agreed payments if there are changes of at least 10% in a) wage costs in consequence of a legal act, regulation, collective labor agreement, works council agreement, or b) other for a performance of the contracted works necessary cost factors such as material costs upon a recommendation of parity commissions or upon changes on the national or global market prices of raw materials, exchange rates developments etc. that have occurred since the formation of the contract. The adaptation is to be made in the same extent as is the difference of the actual production costs at the time of the formation of the contract to the production costs at the time of the actual performance of the services, provided we are not in delay.

3.5. A payment of continuing obligations shall be agreed upon as a value guaranteed according to the consumer price index 2005 and the payments shall thus be adjusted. As a starting point shall be taken the month of the formation of the contract.

3.6. An adjustment according to the point 3.3., as well as in case of continuing obligations according to the point 3.4 takes place towards consumer clients only in case of an individual contractual provision

and if the service performance is to be rendered in **two months** after the formation of the contract.

3.7. Curved pipelines will be **measured** in their outside curve. The length of castings and taps will be included in the measures, they will be, however, charged separately. The measures of a corrosion protection and of a coating will be counted as identical to the measures of the underlying pipes. Thermal insulations will be measured on its outside. Discontinuities smaller than 1 meter will be disregarded.

### 4. Supplied goods

4.1. If there is an equipment or other materials provided by the customer, we are entitled to charge a **surcharge** of 10% of the value of the provided equipment or materials.

4.2. The equipment or any other materials provided by the customer are **not subject to a guarantee**.

### 5. Payment

5.1. **One third** of the payment shall be due at the formation of the contract, one third at the beginning of the works and one third after the completion of the works.

5.2. An expressed, towards business clients written agreement is required in order to be entitled to a **discount deduction**.

5.3. We are entitled towards consumer clients to surcharge 8 percentage points over the basis rate in case of a fault-based **default of payment**.

5.4. An assertion of any other damage caused by delay remains reserved, however, regarding consumer clients only after a specific negotiation and agreement.

5.5. If there is a default of payment by a business client in the course of an existing contract, we are entitled to **stop the fulfilment** of our contractual obligations until the customer has fulfilled his payment obligations.

5.6. We are then also entitled to **demand payments** for all already performed services in all existing business relations with

the customer. This applies towards consumer clients only in the case if there has been a due payment since at least six weeks and we have urged the customer, warning him of this impending consequence and futilely setting a grace period of at least two weeks.

5.7. The customer is entitled to a **set-off warrant** only if his counterclaims have been judicially declared, or from our side recognized. Consumer clients are also entitled to a set-off warrant if their counterclaims are in a legal relation with the payment obligations of the customer as well as in case of insolvency on part of our company.

5.8. When breaching a term of payment all granted remunerations (e.g. discounts, reductions) shall forfeit and shall be added to the invoice.

5.9. The customer commits to pay a €5,00 fee for a delivery of a necessary and appropriate warning in case of a fault-based default of payment, when this is in an adequate relation to the outstanding claims.

## 6. Credit assessment

6.1. The customer declares his expressed consent with the transfer of his data solely for the purpose of the creditor protection to the state-privileged creditor protection association AKV EUROPA Alpenländischer Kreditorenverband für Kreditschutz und Betriebswirtschaft, Creditreform Wirtschaftsauskunftei Kubicki KG or Kreditschutzverband von 1870 (KSV).

## 7. Customer's cooperation duties

7.1. Our **obligation to perform the services begins** at the earliest after the customer has accomplished all the for the execution of works necessary construction, technical as well as legal **prerequisites** that are included in the contract, that the information had been presented to the customer prior to the formation of the contract, or the customer must have the understanding based on his relevant professional knowledge or experience.

7.2. The customer is specifically obliged to provide all the necessary **information** regarding **any hidden electricity, gas or water lines**, or any other similar fixtures, escape routes, other obstacles of constructional type, any other potential sources of problems, sources of danger as well as all the necessary static information and possible relevant planned changes unrequested. Order-related de-

tails regarding necessary information can be enquired from us.

7.3. If the customer does not fulfill his **obligation to cooperate**, then our services cannot be - in the consequence of insufficient or faulty information on part of the customer not given service capacity - seen as deficient.

7.4. The customer is obliged to secure on his own costs all the necessary third-party approvals, as well as **reports and approvals** on the part of the authorities (e.g. a power purchase registration). We shall point this out in the formation of the contract unless the customer forgoes this, or the business client is expected to have this knowledge due to his qualification or experience.

7.5. The for the performance of the services, including trial operations, necessary **power** and water are to be provided by the customer on his own costs.

7.6. The customer is obliged to provide us without charge with **lockable rooms** for the stay of the workers, as well as for the storage of equipment and materials for the time of the performance of services.

## 8. Performance of services

8.1. Minor relevant **changes of our services performance** which are reasonable for the customer, are understood as approved beforehand. This right applies towards consumer clients only if it has been agreed upon in the individual case.

8.2. Objectively justified **partial deliveries** and services (e.g. due to the plant size, construction progress and similar) are permitted and can be charged for.

## 9. Services deadlines and schedules

9.1. Deadlines and schedules shift in the case of **force majeure**, strikes, unforeseeable und not on our part faulted delays of our subcontractors, or other comparable events, which are beyond our control (e.g. bad weather conditions) for the time of the corresponding event. The right of the customer to withdraw from the contract is not affected in case of delays which make the contractual commitments unreasonable.

9.2. If the begin of the services or the performance of the services delays, or is interrupted **due to circumstances to be allocated to the customer**, especially due to breaches of the cooperation obligations according to point 7 of these

GTC, then the services deadlines shall be accordingly deferred, and the agreed completion dates postponed.

9.3. The delivery and completion dates towards business clients are just then binding when there is a written commitment to fulfil these.

9.4. Should there be a **delay** in our fulfilling of the contractual commitments, the customer is entitled to withdraw from the contract after setting an appropriate grace period. The setting of the grace period must be done in written form (for business clients by a registered letter) with simultaneous warning of the withdrawal.

## 10. Reference to restrictions of the service performance

10.1. As part of assembly and maintenance works it is possible that there occur damages a) on already existing (pipe-) lines, on equipment in consequence of unforeseeable (in particular construction) realities or material defects of already existing inventory b) during chasing works in seamless masonry. We are responsible for such damages only if these were caused through culpable conduct on our part.

## 11. Provisional repairs

11.1. There is only a very limited and to the circumstances appropriate liability for provisional repairs.

## 12. Risk assumption

12.1. The risk for **from us delivered and on the place of services stored** or assembled materials and equipment is borne by the customer. The losses and damages at fault of the client shall be at the customer's expense.

## 13. Default of acceptance

13.1. If the customer gets into a default of acceptance (a refusal to accept, a delay of preliminary works and similar) longer than two weeks and the customer has not, despite an appropriate grace period, seen to clear the in his fault lying circumstances which delay or inhibit the performance of the services, then we can use those for the service performance specified **equipment and materials otherwise**, provided that in case of the possible continuation of the works these shall be obtained within to the situation appropriate and reasonable period.

13.2. Furthermore, should there be a default of acceptance while insisting upon the fulfilling of the contract, we are authorized to **store** the equipment and materials at our facility, for which we are entitled to a storage charge of 5% of the stored value per month.

13.3. Thereof unaffected is our right to demand the due payment of the delivered services and to **withdraw from the contract** after a reasonable grace period.

13.4. In case of an entitled withdrawal from the contract we are permitted to demand without a verification of actual loss a generalized **compensation for damages** amounting to 20% of the contract's value plus 20% VAT. The obligation to pay a compensation for damages by a business client is independent of fault.

13.5. The enforcement of a **higher compensation** is permitted. This right applies towards consumer clients only when this has been agreed upon in the individual case.

#### 14. Reservation of title

14.1. Any from our side delivered, assembled, or otherwise handed over goods shall stay in our ownership until fully paid for.

14.2. A **resale** is permitted only in the case when we were informed about this in due time, including the name and the address of the buyer, and we have approved this resale.

14.3. In case of an approval, the purchase price claim is seen as already now **transferred** to us.

14.4. If the customer runs into default of payment, we are, after a reasonable grace period, entitled to demand surrender of the reserved title. We are entitled to use this right towards consumer clients only if there has been at least one outstanding payment of the consumer client since at least six weeks and, having set a grace period of at least two weeks, we have warned him, without any effect, under the threat of this legal consequence.

14.5. The customer must inform us without delay prior to the commencement of **bankruptcy** about his assets, as well as regarding the **seizure** of our reserved titles.

14.6. In order to secure our reservation of title we are entitled to access the site of

the reserved title, when not unreasonable for the customer, after an appropriate prior notice.

14.7. Necessary and for an adequate prosecution reasonable **costs** shall be borne by the customer.

14.8. Securing the reservation of title shall only then be a **withdrawal from the contract** when this has been expressly stated.

14.9. We are permitted towards business clients to **utilize** the retracted reserved titles directly and in the best possible manner.

#### 15. Property rights of third parties

15.1. If the customer provides intellectual creations or technical documents and if there are regarding these creations any protective claims of third parties, then we are entitled to stop the production of the delivery object on risk of the client until the rights of the third parties are clarified and to demand a compensation of our part incurred necessary and reasonable costs, unless the unjustification of the demands is obvious.

15.2. The customer keeps us in this regard **without any detriment or complaint**.

15.3. We are entitled to demand reasonable **advances on costs** for possible legal fees from business clients.

#### 16. Our intellectual property

16.1. Plans, drawings, cost estimates and other material which is provided by us, or which was created with our contribution remains our intellectual property.

16.2. The usage of such material outside of the designed usage, specifically any **passing on**, reproduction, publication or making available, including also partial copying, requires our expressed approval.

16.3. Furthermore, the customer commits itself to **non-disclosure** of from the business partnership obtained knowledge towards third parties.

#### 17. Warranty

17.1. The **warranty period** for our services towards business clients shall be one year from the date of the transfer.

17.2. The date of the **transfer** is in the absence of a deviating agreement (e.g. a formal transfer) the completion date, at the latest when the customer has taken over the control over the services, or when the customer has denied the takeover without stating any reasons.

17.3. **Remedies** of from the customer alleged defects do not amount to an acknowledgement of these alleged defects.

17.4. We shall be granted at least **two attempts** for corrective actions for any remedies of defects.

17.5. Should the defect allegations on the part of the customer be unwarranted, the customer is obliged to compensate us for the **costs** incurred in order to ascertain the flawlessness, or to remedy the defects.

17.6. A business client must always **prove** that the defect was already in existences at the time of the transfer.

17.7. Defects on a delivered item that were identified, or should have been identified, after the transfer by a business client in the normal course of business through an examination are **to be reported** to us in written form latest three days after the transfer. Hidden defects must also be reported in this appropriate time period after their identification.

17.8. Any usage or processing of the defected item that could cause any further damage, or that could complicate or impede identification of the cause is to be stopped immediately by the customer insofar as this is not unreasonable.

17.9. The item is taken as approved of if the **notice of defects** is not raised in due time.

17.10. The defect delivery, or its samples are, so far as this is economically reasonable, **to be returned** to us from business clients.

17.11. The return transport costs of the defect item shall be fully borne by the business client.

17.12. The customer is obliged to enable us to carry out an **immediate identification** of defects.

17.13. The warranty is excluded if the technical installations of the customer such as i.a. supply lines, wirings and the

like are not in a technically flawless and operational state or are not **compatible** with the delivered items when this is the root cause of the defect.

## 18. Liability

18.1. We are liable for any **financial losses** due to a violation of contractual or pre-contractual obligation, especially due to an impracticability, delay etc., only in cases of willful intent and gross negligence

18.2. Our liability towards business clients is **limited** to the liability limit of the at all events obtained liability insurance.

18.3. This limitation is valid also with regard to the damage on an item that we have **taken over for processing**. However, this is valid towards consumer clients only when this has been agreed upon in the individual case.

18.4. Compensation claims of business clients must be legally asserted within six months or otherwise forfeited.

18.5. The liability disclaimer includes also any claims against our employees, representatives or agents for damages caused to the customer by these - regardless of a contract on their part.

18.6. Our liability is excluded for damages caused by **inadequate handling** or storage, overstress, disregard of user- and installation instructions, incorrect assembly, putting into use, maintenance and servicing by the customer or not by us authorized third persons, or usual wear and tear provided that there is a direct link between this event and the damage. Alike, we are excluded from the liability in case of a failure to carry out necessary servicing, provided that we were not contractually obliged to take over the maintenance.

18.7. When and insofar as the customer can make use of **insurance benefits** for the damages for which we are liable through its own or in its favor arranged insurance (such as a liability insurance, a motor car insurance, a transportation, fire, operational interruption insurance and others), the customer commits itself to make use of these insurance benefits and our liability is in this respect limited to the detriments caused to the customer by making use of this insurance (such as an increased insurance rate).

## 19. Severability clause

19.1. The legal invalidity of one or more provisions of this GTC in no way affects the **validity** of the remaining provisions.

19.2. We, as well as the business client are already obliged to negotiate – based on the good faith of the contracting parties - a **substitute regulation** that approximates the economic results of the ineffective clause as closely as possible

## 20. General

20.1. **Austrian law** shall apply.

20.2. The UN law on the sales of goods is excluded.

20.3. **The place of fulfillment** is the headquarters of the company (8324 Kirchberg a.d.R.).

20.4. The court of jurisdiction for all the disputes resulting from contractual relationships or any future contracts between us and business clients shall be the local court.

20.5. Should there be discrepancies or contradictions between the English and the German language version of the present GTC, the German language version exclusively shall apply.