

**GENERAL TERMS AND CONDITIONS  
FOR CONTRACTUAL DELIVERIES AND SERVICES BY  
SCHUBERT ELEKTROANLAGEN GESELLSCHAFT M.B.H.**

**Version: May 2018**

The following terms and conditions apply exclusively to the deliveries and services to be provided by Schubert Elektroanlagen Gesellschaft m.b.H. (hereinafter "AN"). If subject of the contract is a software product the general provisions of the FEEI (accessible at [www.feei.at/services](http://www.feei.at/services)) are applicable.

The documents have to be seen in the following hierarchy:

1. The individual offer
2. This General Terms and Conditions

In technical terms, we agree to provide services in accordance with the technical regulations contained in ÖNORMEN/ÖVE, which are continuously available at <http://www.schubert.tech/en/general-terms-and-conditions/>; we will apply separate charges for any additional costs arising from technical requirements in force in international locales or legal or official provisions.

The terms and conditions of the contractual partners shall take effect neither by reference nor by implied consent.

With respect to the rest, the following shall apply:

#### **1. Official permits**

All official permits shall be obtained by the client (hereinafter "AG") prior to the start of the provision of services.

#### **2. Provision of documents**

Unless explicitly agreed otherwise, AG shall provide and promptly submit to AN all tender and implementation documents, plans, drawings, designs, calculations, technical descriptions, official permits, official requirements, conditions and so forth in order that they may be reviewed prior to the start of implementation and that the necessary arrangements may be met; AN shall otherwise be entitled to reimbursement of additional costs and/or extension of the performance deadline. The same shall hold true for laws, norms, provisions and so forth applicable to locations outside Austria where services are to be provided.

Documents in general – for example, performance specifications and planning documents of all types (service specifications, project descriptions, plans for regulation or implementation, detailed plans, project execution plans, schematics, etc.) – fall within the

responsibility of AG unless specifically agreed to be within the scope of service of AN.

#### **3. Rescission of the contract**

AN is entitled to rescind the contract in writing with immediate effect:

- upon the loss of services already provided;
- in the event of AG's insolvency unless precluded by binding law;
- in the event of AG's default of payment, in which case AN shall rescind the contract subject to a grace period of 14 days for full payment of the outstanding amount;
- should circumstances arise that make proper fulfillment of the contract manifestly impossible, in particular the cessation of AG's required co-operation, the existence of an impediment with an anticipated length of at least three months, and AG's breach of contract where, prior to the rescission declaration, AN has granted AG a reasonable time period for producing the contractual object;
- in the existence of another serious basis for terminating the contract.

In the event of a contract rescission, all services rendered under the contract are to be assumed by AG and invoiced by AN, with compensation paid by AG to AN. Should fault for the rescission lie with AG, it shall compensate AN for the contractually agreed-upon cost of the services not rendered, less the savings by AN as a consequence of the contractual rescission.

#### **4. Disputes**

In the event of disputes over the rendering of services, AG shall not be entitled to suspend its services; in particular, AG shall not, as a consequence of the retention, have the right to retain payments of partial, discounted or partial final invoices.

#### **5. Start and end of services, milestones**

The start, end and milestones of the services shall conform to the payment schedule specifically agreed to by the contractual partners.

## 6. Default, contractual penalties

Default shall be deemed to exist if a service is not performed at the appropriate time, in the appropriate location or in the agreed-upon manner. Should AG default with a payment, AN may either insist on fulfillment in accordance with the contract or declare rescission through written determination of a reasonable grace period.

Milestones shall only be considered binding when expressly agreed to in the payment plan. Contractual penalties for default must be expressly agreed to in writing between the contractual partners. Contractual penalties shall be dependent on the existence of a default situation in which AN is at fault. AG shall bear the burden of determining default in an impartial manner, while AN is required to provide freely admissible evidence.

The total contractual penalty is limited to a maximum (thus also for cumulative contractual penalties for missing multiple deadlines or infringing on other penalized provisions of the contract) of 5% of the original net contract value, subject to judicial mitigation. The calculation of the contractual penalty shall be based on already begun calendar days.

## 7. Subcontractors

AG shall be kept informed regarding the hiring and replacement of subcontractors.

## 8. Ancillary services

Ancillary services are relatively minor services that, in the customary practice at the headquarters of AN, even if not performed, would be performed without separate compensation, but only insofar as they are indispensable to the complete, proper and professional execution of services and are directly connected with it.

Costs of packaging and transport shall not be deemed to be ancillary services but shall be agreed upon separately.

AG must additionally bear the cost of customs duties and all fees, taxes, charges, identification documents and visas, work permits, certificates, etc. as well as value-added tax levied at the place of performance. As necessary, AG shall assume responsibility for required permits as well as all approvals of any sort by private parties.

To the extent that software/licenses are essential to the service, these shall include only those one-time usage rights explicitly laid out in the scope of services.

Ancillary services do not include

- the supply and delivery of water, electricity and gas to AN's usage locations. Water, electricity and gas at the building site are to be supplied by AG.
- contributions by AN of materials, tools and components at the structure and the assembly site in the event that one of the requirements described in item 11 has not been met by AG.

- additional costs arising in the event that AN's services may not be rendered at ground level but instead would require negotiating an additional floor, unless such an occurrence is recognized in the documentation made available by AG to AN;
- creation of a broom-clean installation site prior to the installation and assembly of control cabinets;
- multiple deliveries due to the impossibility of a single delivery by means of consolidated transport for reasons not attributable to AN;
- interruptions in the assembly process for reasons not attributable to AN; additional costs arising from said interruptions (additional trips, downtimes, overtime, etc.) shall be compensated separately;
- interruptions to startup for reasons not attributable to AN; additional costs arising from said interruptions (additional trips, downtimes, overtime, etc.) shall be compensated separately;
- temporary storage of materials, tools and building components in a temporary storage facility, should such storage be required due to schedule variances not attributable to AN; In such case the temporary storage has to be provided by the AG at its own costs. If the temporary storage is done by AN, AN will pass all costs to the AG.
- security and guarding of AN's works, materials, tools and building components, in the event that the storage of these objects cannot take place in a storage facility provided and secured by AG or at an already prepared, weatherproof and lockable control room (for example, no storage facility provided by AG; AG storage facility located at great distance from the assembly site, etc.)

## 9. Interaction in the construction area, coordination

AG shall bear responsibility for coordinating the interactions of its employees. A corresponding interaction and information responsibility shall fall to AN.

## 10. Records on service progress

All incidents related to the provision of services must be recorded in writing. Detailed expectations in this regard shall be determined amicably at the site, and this shall apply as well to the requirement, manner of supervision and specifications for linkage between the construction book and daily construction log.

#### **11. Work stations, access routes, storage facilities, assembly; lodging; transportation and travel costs**

Work stations, possible storage locations, access routes and so forth that are required at the construction site for the fulfillment of the contract are to be provided by AG at no cost, as is the case with water, electricity and gas. All additional costs arising from a storage facility located more than 200 meters from the installation site shall be separately charged to AG. AG shall bear the risk associated with the installation unless otherwise expressly agreed.

Access routes must be to a stable and adequate state, and AG shall provide properly mounted crane pads. The access route all the way to the installation/assembly site must be sealed and capable of handling road-going trucks of up to 40 tons. In the event that additional measures (creation of construction routes, fortification of bridges and so forth) are necessary, AG shall provide these. AG shall provide a forklift or equivalent device for unloading/discharging and transfer.

A passageway must exist between the truck unloading station and the control cabinet installation site – in other words, on-site navigability without the need for disassembly and a minimum clearance of 1600mm width by 2500mm height for the doors.

The control cabinet installation site must be broom-clean, dustproof and waterproof as well as lockable. All actions preparatory to AN's delivery of services must, in the event of other impediments to AN, be concluded prior to the installation of AN's system components (for example, control cabinets and systems, transformers, diesel-powered emergency electrical aggregates, etc.).

Included in the price are two project consultations at the place of performance, each lasting up to one working day, including the cost of travel, lodging and meals. Should AG prefer to have more or longer project consultations, the cost of time spent on-site as well as travel, lodging and meals shall be compensated based on the actual costs incurred.

Lodging for assembly and startup employees shall be provided by AG. This lodging must correspond to a European three-star standard and must be located within a half-hour's distance from the construction site.

#### **12. Test operation and startup**

Specific written agreement must be reached regarding a test operation as well as the detailed startup conditions.

#### **13. Remuneration and financial reporting: partial and discounted invoices, final invoice; administrative costs**

In principle, the prices offered by AN are variable based on the applicable price adjustment index for the services provided.

The account must be balanced unless otherwise expressly agreed, based on the measurements to be created.

Administrative services shall be remunerated insofar as they were expressly ordered by AG or were appropriate to the achievement of performance goals and it was not possible for AG to issue the order beforehand.

Submission of partial or discounted invoices, partial final invoices or detailed arrangements for rendering a final account shall conform to the agreement between the contractual partners with respect to the payment plan. Unless otherwise determined, AN is entitled, at intermediate stages, to submit partial final invoices (the last of these to be submitted following conclusion of the services) or, in the absence of intermediate stages, discounted invoices based on progress in providing the services, as well as a final invoice at handover.

Invoices must correspond to legal provisions, must be created in a format that allows AG to examine them at reasonable expense and, unless a lump-sum fee has been agreed to, must include the documentation and evidence necessary for examination.

#### **14. Payment targets**

The payment targets shall conform to the payment plan agreed upon between the contractual partners. Unless otherwise determined, all invoices are payable within 30 days; during this period, AG shall accomplish the review of properly submitted invoices.

#### **15. Service deviations and their consequences**

AG is entitled to modify the scope of services insofar as necessary for the achievement of the performance objectives and acceptable to AN. The scope of services is satisfied by the agreed-upon remuneration, but the performance objectives are not. In the event of threat of a disruption to the provision of services, for example through an impediment, or if such a disruption has already occurred, then each contractual partner shall make every reasonable effort to avoid the disruption or minimize its consequences to the extent possible, provided that no additional costs are involved.

In the case of service modifications or disruptions to the provision of services not attributable to AN, AN is entitled to claim additional compensation and/or adjustment to the performance deadline.

In the event of a service modification order by AG, AN is not required to justify its necessity; AN shall otherwise submit a service modification offer to AG and await its approval unless the need for the service modification, the additional compensation and/or the adjustment to the performance deadline is readily apparent to AG.

For adjustment to the performance deadline, all affected dates shall be shifted accordingly; agreed-upon contractual penalties shall then be valid for the new dates and no longer for the earlier dates.

Modifications in quantity without service deviation shall entitle AN to a new calculation where the stated quantity in a position is over 10% higher. In the event that the contracted amount falls more than 5% through reduction or omission of services, AN shall then be subject to compensation by AG for the resulting disadvantage.

## 16. Retention of title

In the event that the performance object or parts of it remains movable in its nature even after fulfillment of the performance, AN shall continue to retain its title until the complete fulfillment by AG of all its financial obligations with the exception, where necessary, of agreed-upon retention of the performance object or parts of it. AN is entitled to indicate this through appropriate labeling, and AG must tolerate this labeling. Should property law in force at the place of performance not provide for retention of title, AN's earliest equivalent guarantee of this shall be deemed to be agreed upon.

## 17. Guarantee

AG's guarantee for the services to be provided by AN and the fulfillment of the obligations by AN, whether through deposit or retention, whether by cash sum, withholding or presentation of bank guarantee, shall be expressly agreed to in writing by the contractual partners.

AN is entitled to require a guarantee by AG for the outstanding payment up to 20% of the agreed-upon compensation.

## 18. Handover

A formal handover shall take place, if expressly agreed to in writing by the contractual partners, upon conclusion of the contract and if the procedure to be followed has been set. There shall otherwise be no formal handover.

Following receipt of the request for handover by AN, AG shall accomplish the handover within 30 days; otherwise the (likewise formal) handover shall be deemed to occur upon expiration of the contract. In any case, the handover shall be deemed to have occurred when AG begins its intended use or, at the point where completed parts of AN's service are concerned, then with regard to these parts.

Risk is transferred upon handover of the service to AG, or if by handover of parts of the service, then with regard to these parts. For delivery services, risk transfer is deemed to occur "ex-works".

AG is entitled to refuse handover only in the existence of defects that seriously impair the use of the service, otherwise the handover shall take place with defects.

Upon handover of the service with defects, AG is entitled to retention as well as compensation up to the amount of the anticipated costs of the correction of the defect through substitution, in which case this retention shall be redeemable by AN through another guarantee.

In the event of unjustified refusal of handover by AG, AN is entitled to prevent the further use of system parts already in operation through decommissioning.

## 19. Warranty

AN warrants that its services have the characteristics stipulated in the contract or normally required at AN

headquarters and that they can be used in accordance with the nature of the business or the current agreement.

Unless the contractual partners have expressly agreed otherwise in writing, the warranty period shall be 12 months following handover but maximally 18 months following AN's communication of its readiness for delivery. In the case of handover of parts, then with regard to these parts. Any defects shall be promptly corrected by AG.

AN's liability for compensation instead of warranty is absolutely limited to three years following the expiration of the general warranty period.

AG may require amelioration of a defect or – at AN's discretion – exchange or price reduction. Conversion is only permitted in the case of substantially harmful and unrectifiable defects.

Upon written request directed by AG to AN no later than two months prior to the expiration of the warranty period, a final acceptance will be implemented unless the contractual partners have expressly agreed otherwise in writing.

## 20. Compensation

AN shall be liable to AG for damage culpably caused to AG only in cases of intent or blatantly gross negligence; in the case of simple negligence, liability for loss of earnings is excluded. Relevant material and financial losses are limited as follows:

- for a contract value of up to EUR 250,000 with maximally EUR 12,500;
- for higher contract values with 5% of the net contract value but no higher than EUR 750,000.

Damage arising from a possible contractual penalty may only be compensated in cases of intent or blatantly gross negligence, whereby the contractual penalty shall be charged. AG is required to assume the burden of proving the fault.

## 21. Data-Protection guidelines

The Data protection guidelines of Schubert Elektroanlagen and information according to the Global Data Protection Regulation (GDPR) and the Austrian Data-Protection Law can be found at our website: [www.schubert.tech/en/data-privacy/](http://www.schubert.tech/en/data-privacy/)

## 22. Applicable law and jurisdiction

Material Austrian law shall apply to the contractual relationship between the contractual partners, excluding conflict-related rules and regulations of Austrian international private law and with the exception of the United Nations convention on international sale of goods. For consumer issues, the jurisdiction shall be the registered head office of the consumer. Apart from that, the jurisdiction is AN's registered head office