(7) DELIVERY TIME

Time is of the essence. Dates of delivery must be strictly observed. We shall not be obligated to accept delivery notices prior to the delivery date specified in the purchase order. In the event the supplier, contrary to the agreement, or at law, is not in a position to fulfill its obligations on the dates of delivery, we shall be entitled to cancel the purchase agreement immediately. In such a case, the supplier shall pay a penalty for the failure to perform; the penalty is to be calculated as 1% of the total value for each day of delay, with a maximum of 5% of the total value for each case of delay; the penalty accrues regardless of the supplier’s fault or negligence and irrespective of actual damages incurred by us. However, we shall not be deprived of our right to claim exceeding damages for delay in performance, which we may suffer in any way, irrespective of any foreseen penalty. In the event of the supplier’s default, we shall have the right to terminate the purchase agreement immediately. Furthermore, if we are not responsible for the delay, we shall be entitled to cancel the purchase agreement with immediate effect.

(8) DELIVERY

The delivery term set forth in the respective purchase order shall be construed in accordance with the relevant Incoterms, such as EXW, FCA, CIP, DAP, DDP, etc. In case of contracts for business transactions, our purchase terms shall be applicable even without special reference to the said.

(9) RIGHTS OF THIRD PARTIES

The supplier guarantees that the delivery item is free from any rights of third parties, in particular from intellectual property rights (industrial property rights, copyrights or associated property rights), and that the ownership of such property shall not become the property of us or our subcontractors if the delivery item is used by or on behalf of the supplier, as well as the supplier being responsible for any claims of third parties in this regard.

(10) INVOICING

The supplier shall submit invoices in duplicate. The invoices shall contain all order and delivery data, the delivery terms, details of the purchase order number (VAT Reg. No.) as well as the ARA license number, if and when applicable. In addition thereto, the invoices shall be categorized according to the purchase orders. If the supplier shall have to submit invoices on a settlement on a time and materials basis, the supplier shall attach the respective timesheets to the invoice. Invoices which infringe public-law provisions (in particular those rendered in the Austrian customs and tax acts) shall be considered not submitted.

(11) TERMS OF PAYMENT

Payment terms, including any discount periods, shall not start to run before receipt of the respective invoice. The payment shall not indicate the acknowledgement of the correctness of deliveries or services, and thus it does not operate as a waiver of any of our rights and remedies, we may have against the supplier. We shall have the right to offset any counterclaims arising from the purchase agreement against the supplier with any of its affiliated companies from the payment of any due amounts. The assignment of payment claims shall be permitted only with our previous written consent.

(12) QUALITY ASSURANCE / TERMS OF ACCEPTANCE

In case of defects, the purchaser shall not charge sub-suppliers. The price of the delivery item shall be considered not written, unless the previous written consent.

(13) PLACE OF PERFORMANCE, TRANSFER OF TITLE AND RISK

The risk as to price and performance as well as the title in the delivery item shall pass to us in accordance with the respective purchase order. If the purchase agreement provides for a formal acceptance, the aforementioned risks shall not pass prior to such acceptance. Unless otherwise agreed, the place of risk transfer shall also constitute the place of performance.

(14) LIABILITY

Any and all costs incurred in the course of the remedy, including but not limited to the costs for packaging, loading, transport and the procurement of export and import permits, unless otherwise agreed, the prices shall be inclusive of the removal and correct reparation and disposal in keeping with the manufacturer’s obligation of redemption and disposal, in particular of old electrical and electronic devices. Prices shall always be considered fixed prices. Escalator clauses and the like are not acceptable.

(15) INSURANCE

The supplier shall, at his own expense, provide and maintain with a reputable insurer (and provide written certificate(s) of insurance to us, if and upon requested) reasonable insurance coverage, including but not limited to commercial general liability insurance including coverage for product liability. The Supplier agrees to maintain insurance coverage for product liability in the minimum amount of EUR 30.000. If the supplier shall not have maintained the insurance coverage as required, we shall have the right to terminate the purchase agreement immediately. The certificate(s) of insurance will, if requested by us, designate us as “additional insured”.

(16) BUSINESS ETHICS

The business cooperation shall be strictly in compliance with the BME Code of Conduct published by the Bundesverband Materialwirtschaft, Einkauf und Logistik e.V. (BME) as amended (q.v. http://www.bundesverband-materialwirtschaft.de/sprache/). The supplier shall provide us with a certificate confirming its compliance with all relevant laws, regulations, directives, and similar rules with regard to the aforementioned Code of Conduct. Any breach by the supplier of any of his obligations set forth in this Section shall be regarded as a breach of contract, which shall entitle us to terminate the purchase agreement not yet fulfilled with immediate effect and claim for all damages and losses incurred by such breach.

(17) APPLICABLE LAW/JURISDICTION

Our legal relationship with the supplier shall be subject to substantive Austrian law to the exclusion of the conflict of law rules of Austrian international private law and the provisions of the United Nations Convention on Contracts for the International Sale of Goods. All disputes, disagreements or any claim arising out of or in connection with this or subsequent purchase agreements including any question regarding its existence or validity shall be exclusively referred to the competent court in Linz, Republic of Austria. Independently thereof, we shall be entitled to bring action against the supplier at the competent court of law at his place of long business.

(18) CONFIDENTIALITY

Unless otherwise agreed, the supplier shall keep in strict confidence all commercial and technical information obtained in the course of the business relationship for at least 5 years. The supplier shall use such information only to the extent necessary to fulfill its obligations under the respective purchase agreement.

(19) MISCELLANEOUS

Except where specifically stated to the contrary, all remedies available to us for breach of a purchase agreement, or at law, are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. The supplier acknowledges that any damages awarded or incurred in accordance with the provisions of the German law and the German text shall serve only for information. Therefore, in the event of any inconsistency between the German and the English version, only the German version of this GTC shall apply. Messages sent to the supplier shall only be considered as having been properly transmitted if they are written in German or in English language. Messages may be transmitted by facsimile or by electronic means. Messages which reach us on Saturdays, Sundays or one of our public holidays shall be considered to be received at the beginning of the following workday. If the communication is held to be invalid or unenforceable, such provision shall narrowly construed, if possible, or deemed otherwise ineffective and the remaining provisions shall not be affected.

CONDITIONS OF PURCHASE (as of 03/2017)

ENGEL AUSTRIA Gmbh, Ludwig-Engel-Straße 1, A-4311 Schwertberg
LUG Privat: NL 0461824221 ATU36793608, DVR: 0469530

http://www.engelglobal.com
ANNEX 1 – Special provisions for services

1. Elements of the offer

1.1. The Supplier’s offer must clarify the means and methods to be deployed in order to achieve the objective(s) in accordance with our specifications. This includes, but is not limited to defining the context, scope, schedule and completion deadlines, obligation to cooperate, compensation, contacts, and project managers for the service offered. The preparation of the offer and the effort associated therewith shall not be subject to change, even if it does not result in an order.

1.2. The results and or milestones to be delivered by the Supplier in the context of the service are to be listed individually, including the amount of employee days and/or hours, and the associated cost. In this, the various daily and/or hourly rates of employees shall be specified as well as the allocated days per person. In case of milestones/work packages, the Supplier shall preferably offer fixed prices or at least cost estimates for the achievement of each milestone/work package. As soon as it becomes apparent that a cost estimate is (or will most probably be) exceeded by more than 15%, the Supplier must provide a written notification at the earliest possible time; otherwise, the Supplier shall not be entitled to additional compensation. In the case of a fixed price agreement, the Supplier shall be entitled to additional compensation only if it has received an additional order from us in written form; this shall also apply in cases where such additional effort can be ascribed to our sphere (e.g. change requests).

2. Organisational aspects

2.1. Each party shall name a project manager who will be responsible for the organisational realisation of the project. Our project manager will also be the main point of contact for all technical matters; he is to receive regular written progress reports, will define milestones/work packages in coordination with the Supplier, and will authorise (partial) invoices.

2.2. The Supplier’s designated key employees for the services shall be determined in coordination with us. Designated employees shall not be exchanged without our prior written consent, which will not be unreasonably withheld.

2.3. Should one or several of the Supplier’s employees not possess the guaranteed or specified qualification, skills or suitability, we shall be entitled to (i) either cancel the individual contract or (ii) or to demand a replacement of the employee or employees. In the latter case, the Supplier shall immediately arrange to provide qualified personnel. Any cost incurred in connection with such replacement, including any possibly required introductory training, shall be borne by the Supplier.

2.4. The employees assigned by the Supplier are subject to the Supplier’s material and disciplinary right of direction. Nothing contained in a service agreement concluded hereunder is intended to create the relationship of employee and employer and/or principal and agent between the Supplier (or any of its officers, employees, partners or members) and us.

2.5. For the term of a service agreement, salary increases for the Supplier’s employees, if any, shall have no impact on the agreed upon cost rates. This shall also apply when several service agreements are concluded with the Supplier within the scope of one project, i.e. for the entire duration of the project. In the event of employee’s vacation or leave for any other reason, all necessary preparatory effort for replacement employees shall be borne by the Supplier.

2.6. The Supplier is obliged to inform us without delay if he and/or his employees are also working for our competitors.

3. Other obligations of the Supplier

3.1. The Supplier shall perform the assigned duties independently, and/or through its own, professionally qualified employees. The performance of the service is to be organised and implemented by the Supplier according to the latest state of technology, or through means made available by us, for example project software, etc. We will ensure that any working materials and other obligations on our part are provided in a timely fashion. The Supplier shall use best efforts to perform the services, including delivering any deliverables, in accordance with the terms of the respective service agreement concluded hereunder. The Supplier shall not subcontract or delegate any part of its obligations under a service agreement to a third party without our prior written consent. Any such consent shall not release the Supplier from any obligation or liability pursuant to the service agreement.

3.2. Time is of the essence. The Supplier must deliver the services according to the milestones and schedule as defined in the respective individual service agreement. The Supplier shall inform us of the start of the services and shall, upon request, provide access to the corresponding documentation. The services are to be documented according to our specifications. The documentation is to be provided to us no later than upon completion of the service.

4. Compensation and payment

4.1. Unless otherwise agreed, transportation costs with an employee’s own vehicle or a vehicle provided to the employee by the Supplier shall be reimbursed at a flat rate of € 0.30 for each kilometre travelled (the shortest route). Other travel expenses will be reimbursed based on actual costs incurred. Hotel reservations will be organised by us so as to take advantage of discounts with local hotel operators. Within Germany and Austria, travel times incurred in the context of a service are basically not considered as work periods subject to compensation by us.

4.2. Invoices must include the order date, the order number and the tax ID, and shall be sent to the address specified in the order. Invoiced items must correspond to order items. Advance payments are made only upon explicit agreement and if an abstract bank guarantee has been provided upfront. The regular working time is eight hours per day. For attendance of > 3.5 h up to 6 h, a half day’s rate can be applied, and for attendance of > 6.5 h up to 11 h a full day’s rate can be applied, provided that settlement according to the daily rate has been agreed upon.

4.3. For organisational reasons, a fixed amount will be shown in the SAP-order even if settlement on a time and material basis has been agreed upon. In such cases, settlement is always based on actual time spent according to the proof of performance signed by our project manager. A copy of the proof of performance is to be included with the invoice. If the proof of performance is not included, the invoice will be returned. Payment terms, including cash discount terms, shall not commence prior to the authorisation of the (partial) invoice through the project manager, for which a 10-day review period is agreed upon. The performance of the Supplier’s employee is to be documented with a correspondingly detailed statement of work confirmed by our project manager.

5. Grant of rights

5.1. Any documents, information and results in whatever medium generated in connection with the performance of services hereunder (the “Work”) shall be considered a work for hire to the fullest extent permitted by law and all worldwide right, title and interest therein, including copyrights and patents shall be our property as we specially commissioning the Work. In the event that any of the Work or portion thereof shall not be legally qualified as a work for hire, or are subsequently so held to not be a work for hire, the Supplier agrees to assign and hereby do assign, to us all right, title and interest in and to such Work or portions thereof, including copyrights and patents, any applicable extensions and renewals thereof and further including all rights to reproduce such work, to prepare derivative works to distribute copies of the work and to perform or display the work (also via the internet) without royalty or any other consideration. The Supplier understands and agrees that we are entitled, but not obligated, to refer to author / inventor or the Supplier by name as a source reference. By way of clarification, it is emphasised that nothing contained herein shall be construed to limit the Supplier in any way regarding the future use and exploitation of his pre-existing intellectual property.

5.2. Save as otherwise stated herein, the Supplier shall be free to use any general ideas, concepts, know-how and/or techniques utilized and/or developed in the course of performance or the services hereunder for any other purpose, including the use of such information in the development, manufacture, marketing, and maintenance of its products and services, subject only to the obligation not to disclose, publish or disseminate our confidential information and subject to any applicable intellectual property rights on our behalf.

6. Change Requests and Termination

6.1. We reserve the right to change the content of the service at any time; the Supplier can refuse such change request only in case of lack of (skilled) personnel or for technical reasons.

6.2. Either party may terminate a service contract in case that the other party is in default of any of its material obligations under the service agreement after providing fourteen (14) days’ written notice to the breaching party of its intent to terminate, stating the grounds therefore, unless the breaching party is able to satisfactorily cure such default within such fourteen (14) day period; provided, however, there shall be no cure period for a default that: (i) is the result of a wilful misconduct or that is a material violation of any laws, regulations, ordinances or policies applicable to the services; (ii) cannot reasonably be cured; or (iii) results in irreparable or continuing harm to the party seeking to terminate this Agreement.

6.3. We also reserve the right to terminate any individual service agreement with a notice period of two (2) weeks, unless a shorter notice period has been agreed upon. For services performed before the effective date of such termination, the Supplier may not demand compensation higher than corresponding to actual time spent (in the case of billing on a time and material basis), or in the case of billing according to fixed prices for the achievement of milestones work packages, if the respective milestone or work package has not been achieved due to the termination, to the partial fixed price based on the ratio of actual time spent to total time allocated to the achievement of the milestone/work package (however, under no circumstances more than the agreed upon fixed price).

7. Other provisions

7.1. Notwithstanding the foregoing, and with the exception of articles 4.1, 5.6, 7.8, 10, 11.12, and 13., the above purchasing terms shall apply to the order of services within the scope of this Annex 1 mutatis mutandis.