

## **General delivery terms and conditions**

### **Eisenbeiss GmbH**

**(Status 01 August 2020)**

#### **1 Validity of the general delivery terms and conditions**

1.1 For all business transactions conducted with Eisenbeiss GmbH, Lauriacumstraße 2, A-4470 Enns, FN 104370k (hereinafter: Eisenbeiss, we or us), only the following general delivery terms and conditions apply. Our contract partner is referred to hereinafter as the client or contract partner. These general delivery terms and conditions are binding for all current and future business transactions conducted with Eisenbeiss, even if they are not expressly referred to.

1.2 Contractual clauses that deviate or supplement these general delivery terms and conditions - in particular general purchasing terms and conditions of the contract partner - will only apply if they have been explicitly confirmed in writing by Eisenbeiss.

#### **2 Proposal / Signing the contract / Cost estimate**

##### **2.1 Proposal and signing the contract**

Proposals from Eisenbeiss are non-binding and valid for 30 days, providing they are not explicitly designated as binding. The contract partner's order applies only after Eisenbeiss has submitted an order acknowledgement or accepted the order as a result of providing services in which case a contract comes into effect.

Any approvals issued by the authorities or third parties that are needed to fulfil the contract are to be organised by the contract partner and inform Eisenbeiss accordingly and indemnify Eisenbeiss if necessary.

##### **2.2 Cost estimate**

A cost estimate is provided by Eisenbeiss to the best of their knowledge, although Eisenbeiss does not accept liability for correctness. If after the order has been placed there is a cost increase of more than 15 %, Eisenbeiss will inform the contract partner immediately. If it concerns unavoidable cost overruns of less than 15%, a separate notification is not necessary and these costs can be invoiced without further notice. If nothing else has been agreed, changes to the order or additional orders can be invoiced at reasonable provides.

#### **3 Scope of the order**

3.1 The scope of each order is contractually agreed on a case-to-case basis.

3.2 Eisenbeiss is permitted to sub-contract third parties wholly or in part to perform the tasks required to fulfil the order. Payment of these third parties is performed exclusively by Eisenbeiss. There is no basis for any kind of contractual relationship between the third party and the client.

3.3 No warranty is provided for objects of repair, materials, workpieces and equipment provided for the fulfilment of the order. The client shall be exclusively liable for their functionality, safety and characteristics.

Unless otherwise agreed, the installation, processing and treatment of the goods provided shall be invoiced separately.

3.4 The client is obliged during as well as up until three years after completion of the contract not to enter into a contractual or business relationship of any kind with persons or companies that have worked on behalf of Eisenbeiss to fulfil its contractual obligations. The client is not permitted to employ these people and companies, especially not for services that are the same or similar to the services offered by Eisenbeiss.

#### **4 Obligation of the client / Declaration of completeness**

4.1 The client must ensure that the organisational framework conditions for fulfilling the order at their business address enables the work required to rapidly advance the process undisturbed.

4.2 The client must ensure that without having to make a special request Eisenbeiss is presented with all the documentation required to perform and complete the order and will inform them of all procedures and circumstances that have an influence on the implementation of the contract. This also applies to all documentation, procedures and circumstances that come to light during our activities.

4.3 The client ensures that their employees and any legally required works council representatives are made aware of this before the activities of Eisenbeiss start.

#### **5 Secrecy / Data protection**

5.1 The client hereby undertakes irrevocably to keep confidential all operating and business secrets made available by Eisenbeiss in the course of a business relationship or as a result of any other contact to Eisenbeiss and must not make these available in any way whatsoever to third parties without prior permission from Eisenbeiss. In addition the client undertakes to use the information on a "need to know" basis and only for the purposes of the signed contract.

5.2 The obligation to maintain secrecy applies for 5 years after completion of the business relationship with Eisenbeiss or independently of a business relationship 3 years after Eisenbeiss submitted their proposal.

5.3 Eisenbeiss is released from the obligation to maintain secrecy with any assistants and agents they employ. However, the obligation to maintain secrecy is transferred in full to these persons.

#### **6 Payment**

6.1 After the agreed work has been completed, Eisenbeiss receives payment in accordance with the agreement between the two contract partners. Eisenbeiss is entitled to submit milestone invoices in accordance with work progress and demand advance payments in accordance with progress. Payment is due when our invoice is submitted.

6.2 Additional cash amounts, expenses, travel costs, etc. are to be paid by the client on submission of the invoice by Eisenbeiss.

6.3 If implementation of the agreed work is stopped for reasons that are the responsibility of the client, or are due to early termination of the contractual relationship by Eisenbeiss, then we retain the right to claim the

entire agreed payment minus the cost of the work not yet implemented. In the event of an hourly rate being agreed, payment is for the number of hours expected for completing all the work, minus the work not yet implemented. The cost of the work not yet implemented is agreed as a lump sum of 30 percent of each of the services that Eisenbeiss has not yet supplied up to the day the contractual relationship is ended.

6.4 If the client delays an agreed payment or other payment, Eisenbeiss can - without affecting any other rights - insist on fulfilment of the contract and submit an invoice for the entire outstanding purchase price of this and other business activities as well as invoicing interest on arrears from the relevant due date at 8% per annum above the base interest rate of the Austrian National Bank. Eisenbeiss can also withdraw from the contract without setting a grace period.

6.5 In the event of milestone payments not being paid, Eisenbeiss is freed from its obligation to provide further services. The validity of other claims resulting from non-payment remain unaffected as a result, however.

## **7 Place of fulfilment / Assumption of risk**

7.1 The place of fulfilment for all services of the contract partners is the registered headquarters of Eisenbeiss

7.2 Unless otherwise agreed in writing, the point in time that risk is transferred - both in cross-border transactions as well as in non-cross-border transactions - is determined by the relevant INCOTERMS clause. Unless agreed otherwise, the delivery terms FCA Eisenbeiss GmbH, Lauriacumstraße 2, A-4470 Enns apply in accordance with the current INCOTERMS.

7.3 For data, the risk of loss or change in data during download and delivery via internet is transferred to the contract partner as soon as the data leaves the Eisenbeiss network interface.

## **8 Transfer of ownership**

The goods supplied remain our property until full payment (including interest and fees) has been received. If our goods are processed, combined or mixed with other materials, Eisenbeiss automatically assumes joint ownership of the resulting products in proportion to the value created by our goods. The client is responsible for implementing the necessary measures at his location to ensure transfer of ownership.

## **9 Acceptance / Part delivery**

9.1 The contract partner is obliged to accept the goods and services made available by Eisenbeiss. If no special acceptance procedure is performed, the goods and services are deemed to have been accepted by the following points in time at the earliest:

- . if acceptance is confirmed by the client or the client's customer;
- . if the goods installed or services provided are started up to start operation by the client or the client's customer;
- . or 14 days at the latest after installation.

Services and additional services are deemed as accepted as soon as they have been completed.

9.2 In as far as Eisenbeiss goods and services are divisible, partial deliveries and partial acceptance are permissible.

## **10 Protection of intellectual property / industrial property rights**

10.1 The copyright for work supplied by Eisenbeiss, its employees and third parties engaged on its behalf (especially proposals, reports, analyses, evaluations, organisational plans, programs, specifications, drafts, calculations, drawings, data media, etc.) remain our property. These may be used by the client during and after completion of the contractual relationship exclusively for the purposes laid down in the contract. The client is not permitted to sell, duplicate and/or distribute the work (works) without our express permission. Under no circumstances does Eisenbeiss assume any liability whatsoever for unauthorised duplication/distribution or the work – especially for the correctness of the work – vis-à-vis third parties.

10.2 If the client does not comply with these terms, Eisenbeiss is entitled to immediately terminate the contractual relationship and claim special reimbursement as well as other legally justified claims, especially in terms of default and/or compensation .

10.3 The client is obliged not to make information received from Eisenbeiss the subject of an application for industrial property rights or to have one applied for by third parties. Intellectual property and developments suitable for protection by intellectual property rights which are created during fulfilment of the order belong to Eisenbeiss, irrespective of whose initiative they were created upon.

## **11 Default in delivery / Withdrawal / Default in acceptance**

11.1 The delivery periods and milestones will be maintained by Eisenbeiss as far as possible. These are to be regarded as forecast dates for delivering and handing over the goods and services to the contract partner.

11.2 Withdrawal from the contract as a consequence of delayed delivery is only possible if a reasonable grace period of at least 3 weeks is set. The withdrawal from the contract is to be made effective by recorded delivery letter. The right of withdrawal only applies to the delivery or part of the delivery affected by the delay.

11.3 Independently of its other rights, Eisenbeiss is permitted to withdraw from the contract if

- a) There is concern about the client's ability to pay and despite requests from Eisenbeiss the client does not pay in advance, nor are they able to provide security before delivery, or
- b) insolvency proceedings concerning the client's assets are opened or a request to open such proceedings is rejected due to insufficient financial means or the conditions for opening such proceedings or the rejection of such a request are evident or the client stops his payments.

The withdrawal can also be explained regarding one of the pending parts of the delivery of goods or services for the above reasons.

Without affecting Eisenbeiss's right to claim compensation, the deliveries or partial deliveries effected prior to withdrawal must be invoiced and paid for in accordance with the contract. The also applies if the delivery has not been accepted by the client as well as for preparation activities performed by Eisenbeiss.

11.4 If the client does not accept the delivery provided in accordance with the contract at the contractually agreed place or at the contractually agreed time, Eisenbeiss can either demand fulfilment or withdraw from the contract without setting a grace period and make use the delivered goods elsewhere. The goods can be stored at the expense and risk of the client. In the event of use, a contractual penalty to the amount of 25% of the invoice amount excl. VAT shall be deemed as agreed. Eisenbeiss is also entitled to a refund of all justified expenses which we incurred for the execution of the contract and which are not included in the payments received.

## **12 Warranty / Guarantee**

12.1 The warranty period for material defects and defects of title is 12 months from acceptance of the goods and services in accordance with clause 9 of these delivery terms. If the client starts using the goods before handover and/or acceptance, then the warranty period starts from the moment they start using the goods.

12.2 Any defects must be proven by the contract partner. Paragraph 924 of the ABGB (Austrian Civil Code) is excluded. Any defects are to be immediately and complete specified in writing by the contract partner. In the event of a warranty claim, Eisenbeiss is entitled to determine the type of warranty remedy (improvement, replacement, price reduction or conversion). Eisenbeiss is not liable for typical signs of wear and damage caused by use and age. Eisenbeiss and the Client also agree that such typical signs of wear and tear and damage typical of use and age do not constitute material defects. Furthermore, Eisenbeiss shall not be liable for damages resulting from improper use or treatment, such as incorrect type selection or assembly, overstressing, soiling, rust, disassembly or installation of foreign parts.

12.3 The warranty immediately becomes void if without our prior written consent the client or a third party not authorised by us makes changes to the delivered goods themselves.

12.4 The warranty period does not apply to work or goods supplied to fulfil warranty obligations. The right of recourse in paragraph 924 of the ABGB (Austrian Civil Code) is excluded.

12.5 If Eisenbeiss remedies defects and/or provides other services or additional work that are not covered by the warranty, these will be invoiced according to the time taken.

12.6 The assumption of guarantees by Eisenbeiss must be expressly agreed, designated as such and requires the written form to be effective. Information in brochures, programs, price lists, instructions for use, offers and other general (technical) information of Eisenbeiss is not a guarantee or the assurance of certain properties.

## **13 Liability / Compensation**

13.1 The client has selected the object of the contract themselves and has made themselves aware of the type, technical properties and feasibility of using the object of the contract.

13.2 With the exception of personal injury, the liability of Eisenbeiss for all claims on whatever legal grounds is limited to willful intent and gross negligence.

In this respect, this excludes for us compensation for indirect loss and consequential loss (in particular consequential damages) - such as lost profit, interruption to production, loss of data and information, costs and

production downtime, unachieved savings, loss of interest and losses caused by third-party claims against the client.

13.3 The liability of Eisenbeiss for every imaginable case of liability excluding claims over and above for whatever legal reason is limited to the order value.

13.4 Claims for compensation can only be made within six months of the loss and liable party being recognised.

13.5

If goods are manufactured by Eisenbeiss based on engineering specifications, drawings, models or other specifications provided by the client, or goods accepted for repair or modification are processed, our liability is limited only to the conditions stipulating implementation. Eisenbeiss is freed from the obligation to provide warning in accordance with paragraph 1168a of ABGB (Austrian Civil Code).

13.6 If contractual penalties have been agreed, all claims over and above these penalties, for whatever legal reason, are excluded.

#### **14 Force majeure**

In the event that either party is prevented from performing its obligations in the course of this contract due to force majeure, such as war, fire, storm, earthquake, flooding or, in particular, industrial action, the affected party shall notify the other party of the occurrence of such event as soon as possible by fax or e-mail, indicating as far as possible the expected duration of this event and the extent to which fulfilment of the contractual obligations is affected.

In the event of force majeure, the party concerned shall not be liable for any delay or error in the performance of its obligations, but shall make all reasonable efforts to resume performance of the contract as soon as possible.

Both contracting parties shall continue with their obligations immediately after the case of force majeure has ended, or after elimination of the effects, and the dates specified in the contract shall be extended accordingly.

#### **15 Court of jurisdiction / Choice of law / Mediation**

15.1 Court of jurisdiction

All disputes regarding this contract including - including disputes regarding its existence or non-existence - will be decided exclusively by the court of jurisdiction at Eisenbeiss headquarters.

15.2 Governing law

This contractual relationship is governed by Austrian law excluding the UN Convention on the International Sale of Goods and the provisions of Austrian Private International Law as well as other conflict of law rules.

15.3 Mediation

In the event of disputes regarding this contract not being mutually resolved, the contract partners mutually agree to out-of-court settlement of the conflict in accordance with Austrian civil mediation law presided by mediators specialising in commercial mediation taken from the list published by the Austrian Ministry of Justice. If no

mutual agreement is reached on the choice of commercial mediators or on the matter of dispute, legal proceedings will be taken within one month of the collapse of negotiations.

## **16 Electronic invoicing**

Eisenbeiss is entitled to send the contract partner invoices in electronic form. The contract partner expressly declares that they agree to us sending them invoices in electronic form.

## **17 Other provisions**

### **17.1 Severability clause**

Should a provision of these delivery terms and conditions be or become legally invalid or unenforceable in whole or in part, this does not affect the legal validity of all other business terms and conditions. The contract partners will replace this invalid or unenforceable provision with a valid and enforceable provision which comes closest to the content and purpose of the invalid or unenforceable provision.

### **17.2 Formal requirement**

Amendments or supplements to a contract or these delivery terms and conditions must be made in written form. This also applies to changing the requirement for the written form. No oral side agreements will be made.

### **17.3 Offsetting**

Offsetting our claims with counter claims of any kind is excluded.

### **17.4 Subcontractors**

The use of subcontractors is always permissible.

### **17.5 Consumers**

**For consumers, the binding regulations of the Austrian Consumer Protection Law apply to the extent they deviate from the above provisions.**

## **18 Declaration of consent for data processing**

Eisenbeiss is entitled to process personal data entrusted to us (e.g. names, addresses, dates of birth, etc.) within the framework of the purpose of the contractual relationship and to use them to send information, to establish contact by telephone and for marketing activities. The client can revoke their agreement to this declaration of consent at any time in writing by e-mail or letter to the contact data of the contractor and demand its erasure - as far as legally permissible.