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**General delivery terms and conditions**

**Eisenbeiss GmbH**

**(Status 15th April 2022)**

**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 shall become part of the contract in their entirety and shall be binding for all current and future business transactions with Eisenbeiss, even if no express reference is made to them.

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. If individual clauses of these general delivery terms and conditions are reproduced (in full or in abbreviated form) in offers or other documents from Eisenbeiss, this shall not affect the fact that these general delivery terms and conditions and each individual clause thereof shall become part of the contract in their entirety and shall be binding.

**2 Proposal / Signing the contract / Written Form / 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.

The conclusion of the contract itself, amendments or supplements to the contract and / or these general delivery terms and conditions, ancillary agreements and other declarations must be made in writing (e-mails without electronic signature do not fulfill this written form requirement). This shall also apply to any amendment of the written form requirement. Verbal collateral agreements do not exist.

Any amendments or supplements to the contract can only be agreed with legal effect by the authorized representatives of Eisenbeiss in the number authorized to represent the company.

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.

Eisenbeiss shall only be obligated to perform the service if and as soon as the client has completely fulfilled all obligations incumbent upon it that are necessary for the performance and execution of the order.

**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. Eisenbeiss is also not obliged to check the materials, components etc. provided by the client. 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 / Operating and maintenance instructions**

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, even without a special request, that Eisenbeiss is provided with all the documentation, information and components 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. The client shall be responsible for providing evidence of full compliance with the obligations set out herein.

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.

4.4 The client shall bear the costs arising from the fact that work has to be repeated or delayed as a result of incorrect, incomplete or subsequently changed information provided by Eisenbeiss. The client shall also bear all additional expenses incurred by Eisenbeiss due to the fact that the client or a third party attributable to him does not provide Eisenbeiss with the documents, information and / or components necessary for the execution of the order, or does not provide them in a timely manner or incompletely. Eisenbeiss has no duty to warn in this context.

4.5 The client is also obligated to check the documents provided for the execution of the order (photos, logos, drawings etc.) for any copyrights, trademark rights or other rights of third parties and guarantees that the documents are free of third-party rights and can therefore be used for the intended purpose. If a claim is made against Eisenbeiss by a third party due to such an infringement, the client must fully indemnify and hold us harmless. The client must compensate Eisenbeiss for all disadvantages incurred by a third party claim, in

particular the costs of appropriate legal representation. The client undertakes to support Eisenbeiss in the defense against any claims by third parties and to provide the necessary documents for this purpose.

§ 4.6 The client must inform Eisenbeiss in writing within 3 working days of the initiation of restructuring proceedings and / or the ordering of an enforcement freeze. In this information, the client must explain with reasonable justification whether, and if so, why the maintenance of the contract concluded with Eisenbeiss is absolutely necessary for the continuation of the client's daily operations.

§ 4.7 In order to ensure the proper and safe operation of the contractual goods, the corresponding operating and maintenance instructions in the respective valid version must be strictly complied with.

## **5 Secrecy / Data protection**

5.1 The client hereby undertakes irrevocably to keep strict 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, additional costs according to § 4.4 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.

6.6 It is agreed that in case of repair or maintenance of gear units and add-on parts only the attempt to restore the original function or performance is owed. Should the desired success not be achieved or not be achieved in full despite careful processing, the full agreed remuneration shall nevertheless be due.

6.7 Eisenbeiss has a unrestricted right of retention to the relevant object of repair of the client due to all its claims arising from the order in question, in particular also for compensation for necessary and useful expenses as well as damages caused by the client. Claims by the client for delivery to him or third parties, including instructions to dispose of the object of repair in a specific manner, can be countered by Eisenbeiss with the right of retention of the item and the objection of concurrent payment until the remuneration and any claims for compensation have been paid in full.

## **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. They may be used by the client during and after termination of the contractual relationship exclusively for purposes covered by the contract in compliance with these general delivery terms and conditions and the applicable legal provisions. In this context, the client is not permitted to sell, modify, reproduce and/or distribute or disclose the work(s) to third parties without our express written consent. Under no circumstances shall an unauthorised reproduction/dissemination/alteration/disclosure of the work give rise to any liability on the part of Eisenbeiss - in particular 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 any 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. Exceeding the delivery periods and dates does not entitle the client to withdraw from the contract and / or to assert any claims whatsoever, unless delivery periods and dates have been expressly agreed in writing as binding.

11.2 Reductions in delivery times are amendments to the contract. For the agreement of binding delivery time reductions, the requirement of written form and power of representation pursuant to 2.1 shall therefore apply.

11.3 Withdrawal from the contract as a consequence of delayed delivery is in any 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.

11.4 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,

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, or

c) restructuring proceedings have been initiated against the client at the client's request or a stay of execution has been ordered and the client has not informed Eisenbeiss of this in due time or has not provided sufficient justification as to why the maintenance of the contract is absolutely necessary for the continuation of daily operations ( refer to 4.6).

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.

11.5 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 or repaired 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.

11.6 The components (in particular worn bearings, gears, seals, shafts, etc.) accrued or replaced in the course of the repair or service activity - in accordance with the order - will be finally scrapped by Eisenbeiss 14 days after the agreed service has been provided. If the client does not agree with this and wants to have the parts replaced during the repair or service activity back, then he must inform Eisenbeiss of this in writing when placing the order.

## **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. The client may only assert its rights under the warranty in court/arbitration within one month of the expiry of the warranty period agreed above. Thereafter, these shall be time-barred.

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 termination of the contract). 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 / Exclusion and limitation of liability / Burden of proof**

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.

Any liability on the part of Eisenbeiss for indirect damage, pure financial loss and consequential damage (in particular consequential damage caused by a defect) - such as loss of profit, interruption of business, loss of data and information, costs arising from loss of production, savings not achieved, loss of interest and damage arising from third-party claims against the client - is excluded in all cases.

13.3 The liability of Eisenbeiss for damage to property 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 damages may only be asserted by the client in court or in arbitration (depending on the specific agreement) within six months of knowledge of the damage and the damaging party. After that they are time-barred.

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 The client bears the burden of proof that the prerequisites for the claims asserted by him exist. This also applies to the existence of intentional or grossly negligent action on the part of Eisenbeiss.

13.7 If contractual penalties have been agreed, all claims over and above these penalties by the client, 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, pandemic, epidemic 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

For all disputes arising from or in connection with the contract, it is agreed that the exclusive place of jurisdiction shall be the court having subject-matter and local jurisdiction for the registered office of Eisenbeiss. However, if the contracting parties separately agree in writing on the applicability of the Arbitration Rules (Vienna Rules) of the International Arbitral Institution of the Austrian Federal Economic Chamber (VIAC), the arbitral tribunal shall have exclusive jurisdiction, which shall take precedence over the general agreement on the place of jurisdiction.

### 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.

## **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 / Reduction in Validity

If any provision of these general delivery terms and conditions is or becomes invalid or unenforceable in whole or in part, this shall not affect the validity of all other business provisions. The contracting parties shall replace the legally invalid or unenforceable provision by a valid and enforceable provision which comes as close as possible to the legally invalid or unenforceable provision in terms of content and purpose.

If a provision of these general delivery terms and conditions is (partially) void or (partially) ineffective, this shall not lead to its complete omission. Rather, the provision concerned shall be reduced in a manner that preserves its validity and shall in any case remain valid and effective to the extent that it is not objectionable.

### 17.2 Offsetting

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

### 17.3 Subcontractors



The use of subcontractors is always permissible.

#### 17.4 Language deviations

Insofar as these general delivery terms and conditions are also provided in whole or in part in other languages, Eisenbeiss assumes no warranty or liability for the translation of these general delivery terms and conditions into other languages. In the event of linguistic deviations in the general delivery terms and conditions written in other languages, the German language version shall take precedence over the other language versions.

#### 17.5 Consumers

**For consumers, the mandatory rules of the KSchG and the VGG apply insofar as they contradict 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 contract partner can revoke their agreement to this declaration of consent at any time in writing by e-mail or letter to the Eisenbeiss contact data and demand its erasure - as far as legally permissible.