

ASTEC Engineering Purchasing Terms and Conditions (PTC) – Edition 2007

The following purchasing terms and conditions (PTC) shall apply to all contracts between ASTEC and Contractors/Suppliers, regardless of whether they concern deliveries and/or services of the Contractor/Supplier, unless the contracting parties have expressly agreed otherwise with regard to individual points. Deviating, conflicting or supplementary terms and conditions of the Contractor/Supplier, even if known, shall not become binding, even if ASTEC do not explicitly contradict them again unless ASTEC agreed to them in writing in a particular case. Contract performance activities on our part shall not be considered as agreement to contract terms deviating from our terms and conditions. These PTC shall also apply to all business connections with the Contractor/Supplier, unless expressly agreed otherwise. As a framework agreement, these PTC shall also apply to all future business connections between ASTEC and the Contractor/Supplier, in particular in the case of additional contracts and orders.

1. General Provision, Contractual Basis

Orders, changes, any supplements or other amendments to the contract are only legally binding if they have been issued in writing by the authorised purchasing department. The Contractor/Supplier can only refer to agreements with other persons if the Contractor/Supplier have informed the authorised purchasing department immediately and written confirmation has been received. The Contractor/Supplier confirm these PTC when he begins with the execution of the purchase order. Verbal agreements shall be confirmed in writing by the authorised purchasing department of ASTEC before they can be considered to be legally binding. Order date is the submission date of the purchase order. The purchase order shall be confirmed or refused in writing

without delay. If the Contractor/Supplier does not refuse the purchase order within ten days of receiving it, the order shall be deemed to have been accepted with the content of the purchase order. For as long as the order is not accepted as a result of its being confirmed as a result of which the order and its contents are fully accepted, ASTEC will be entitled to withdraw the purchase order free of charge and will not be required to give any reasons. Any such revocation shall be considered as timely if it was sent before Contractors/suppliers acceptance was received by ASTEC. Differences to the purchase order must be clearly highlighted and require ASTEC's express written approval for them to become effective. The unconditional acceptance of order confirmations, deliveries and/or services will not be equivalent to acknowledgement of the General Terms and Conditions of the Contractor/Supplier. The conditions and the general terms and conditions of the contractor/supplier are herewith expressly contradicted.

2. Prices

The agreed prices are fixed prices including all taxes (except VAT) and duties. Unless stipulated otherwise in the Order, the prices shall be quoted "DDP" according to INCOTERMS 2000. The price includes the costs of Documentation, technical inspection, packaging, Marking, signing etc. In case of deliveries to foreign countries the export customs treatment incl. assumptions of all costs are included in the service of the contractor/supplier.

3. Payment and Invoicing

Unless otherwise agreed, all of the contractor/supplier invoices are payable within 60 days of receipt of the invoice and after fulfilment of all requirements specified in

the purchase order. ASTEC is entitled to retain payment, as long as ASTEC has not received the documentation in the agreed quality, format and quantity from the Contractor/Supplier. Payment is not to be equated with acceptance of correct deliveries and performance and therefore, shall not constitute a waiver with, respect to fulfilment, warranty, guarantee, claims for damages, contractual penalty etc. to which the contractor/supplier is entitled. In the event of complaint about a defect or other complaint, the purchasing price/compensation for work and services may be withheld in full.

Invoices must be issued with the order and delivery note number and the ASTEC UID number. The VAT shall be shown separately in each case. Invoices are not to be provided together with the delivery but sent separately. The Contractor/Supplier shall not be entitled to transfer claims from the contractual relationship to third parties without prior written consent by ASTEC. The contractor/supplier agrees that ASTEC may offset the contractor's claims against claims that ASTEC has against the contractor/supplier for deliveries and/or services or other legal reasons, even if the due dates are different or if, for example, cash payment on the one hand and payment by instalments or bills of exchange on the other is agreed. If applicable, the offsetting refers to the balance.

4. Packing and Shipment

The shipment conditions and packaging guidelines of ASTEC apply. If the contractor/supplier does not have them, they should be requested from ASTEC. The contractor/supplier must provide a valid evidence of preference (such as a movement certificate, certificate of origin etc.). Separate regulations of ASTEC must be observed. Unless otherwise stated in ASTEC's shipment conditions, no indication of value may appear on the shipping documents accompanying the goods. Costs for transport insurance are covered by ASTEC only if this has been agreed in writing.

In case of non-compliance with ASTEC shipment, packaging, customs clearance or documentation regulations, all resulting risks,

damage and costs shall be covered by the contractor/supplier.

5. Dates

The delivery and/or performance dates and deadlines stated in the purchase order are binding and apply upon arrival at the place of performance. In the same way, the contractor/supplier purchaser is obliged to properly fulfil all of the obligations to which it is subject, and in a timely manner.

If the contractor/supplier recognises that the agreed dates and deadlines cannot be adhered to, he is obliged to inform ASTEC immediately in writing, and include the reason and the expected duration of the delay. In the event of delayed and/or defective performance of the services and/or deliveries, he must pay the following contractual penalties, calculated in each case from the total order value, up to the actual delivery or service date. The contractual penalties may be deducted from the Contractor's current invoices.

- Deliveries and services: 1% per week of delay or each week of delay begun. Maximum 10% of the total order value
- Documentation: 1% per week of delay or each week of delay begun. Maximum 10% of the total order value

The obligation to pay a contractual penalty arises for the contractor/supplier with the occurrence of the delay. The payment of contractual penalties does not release the contractor/supplier from his obligation to fulfil the contract and from any resulting liabilities.

6. Guarantee, exclusion of the obligation to notify defects

In addition to the properties required by ASTEC and those generally to be assumed, the contractor/supplier guarantees that his deliveries and services are complete and free of defects and that they correspond to the latest state of the art. Furthermore, the contractor/supplier warrants that during the warranty period, the item will retain its properties in their entirety and that its composition, in particular in accordance with ASTEC's specifications, will be fully preserved and fully functional. The guarantee period

shall be two years after acceptance of the entire system and after successful completion of the test run for which the services and/or deliveries of the contractor/supplier are intended, but no longer than three years from acceptance of the delivery by ASTEC or complete performance of the service. For deliveries and/or services on buildings, this guarantee period shall be five/ten years. The guarantee period shall be extended by those periods in which the delivery item or the plant part for which the services and/or deliveries have been provided is shut down due to defects for which the contractor/supplier is responsible. The duty to give notice of defects and the obligation to report defects in accordance with § 377 ff. UGB by ASTEC is expressly excluded, without ASTEC losing any legal claims (in particular claims under warranty and claims for damages and error contestation). In the case of replacement delivery or repair, the guarantee period shall begin anew from the time ASTEC accepts the replacement delivery or successfully completes the repair work.

7. Transfer of risk, project management

Notwithstanding the INCOTERMS, the risk shall pass from the contractor/supplier to ASTEC upon acceptance of deliveries or services. Unless otherwise agreed, the delivery or service provided by the contractor/supplier serves to fulfil ASTEC's obligations with regard to the installation of an acid regeneration plant in a steel mill. If this should result in a delay in the project execution or in the temporary suspension of the project, the contractor/supplier shall store the ordered goods in a suitable manner for a maximum period of six months at the written instruction of ASTEC during this period, without the contractor/supplier being entitled to any cost reimbursement claim against ASTEC. If the delay in the implementation of the project or the temporary suspension of the project lasts longer than six months, the contractor/supplier may claim against ASTEC the costs directly incurred as a result of the delay after the end of this period, provided that these costs can be proven in detail. Lost profit can under no circumstances be claimed. If the project is discontinued completely,

ASTEC is entitled to withdraw from the purchase order unilaterally. In this case, the contractor/supplier cannot assert any claims for damages. [Services]

8. Elimination of defects and Indemnity

In the event of defects occurring within the warranty period, the contractor/supplier shall, at ASTEC's discretion, remedy the defect free of charge by repairing the defect, making a subsequent delivery or replacing the defect service or defect parts. If the contractor/supplier does not or not sufficiently fulfil its obligation to rectify the defect within a reasonable period of time, ASTEC is entitled to carry out these rectifications itself or have them carried out by third parties at the contractor's/suppliers expense. The contractor/supplier is obliged to pay full compensation for all damage for which he is responsible. This shall apply in particular to any expenses incurred by himself or third parties (including material and personnel expenses) in connection with the detection or rectification of defects, as well as to any material and personnel expenses and other costs caused by defects.

Subcontractors and suppliers of the contractor are in any case considered to be his vicarious agents, so that the contractor/supplier is liable for his fault as for his own.

If the defect is not minor, ASTEC is also entitled to demand cancellation of the contract instead of the mentioned legal remedies.

9. Export licence

The contractor/supplier is obliged to procure at his own expense any export licences required related to his deliveries and/or services, in particular for export to the country of the end user (customer of ASTEC). The contractor/supplier assures that at the time of the order the complete delivery of the ordered item is secured and that there are no official or other restrictions to the contrary, otherwise the contractor/supplier shall be liable for any damage incurred by ASTEC as a result.

10. Product liability

In the event that a claim is made against ASTEC on the basis of product liability, the contractor/supplier is obliged to indemnify ASTEC against such claims if the contractor is liable on the basis of or in connection with its deliveries and/or services. In such cases, the contractor/supplier shall bear all costs and expenses, including the costs of any legal action and recall activities.

11. Protective rights of third parties

The contractor assures that the rights of third parties do not conflict with the intended use of the purchased goods and/or services, in particular that no patents or other industrial property rights of third parties are violated. Should such impairments or infringements of rights be asserted, the contractor/supplier undertakes to indemnify ASTEC and/or the end user for any limitation against claims by third parties.

12. Confidentiality

The contractor/supplier is obliged to keep strictly confidential all issues relating to the content of the order, the business case and all information received from ASTEC, and undertakes to use the information exclusively for the execution of the respective order. They may not be used for other purposes, duplicated or made available to third parties.

13. Drawings, execution documents, documentation and supplied materials

The ownership and exclusive right of use of the drawings, information and know-how provided by ASTEC to the contractor/supplier remains with ASTEC. The contractor /supplier acknowledges that these are copyright-protected exclusively for ASTEC. Provided material remains the property of ASTEC and must be marked as such and stored separately. In the event of loss and/or damage, the contractor/supplier is liable even if not at fault.

The contractor/supplier shall be obligated to supply the documentation necessary for the installation, commissioning and operation of the goods and/or services supplied by the contractor/supplier. As a minimum, the documentation includes commissioning

instructions, operating instructions, spare parts lists and overview and installation drawings. The minimum number to be supplied by contractor/supplier shall be 10 copies in A4 format for instructions and lists and 10 copies in A4 format for drawings and 5 copies in the original size of the document. Unless otherwise agreed, all documents shall be written in English. All drawings contained in the documentation shall be provided to ASTEC in AutoCAD 2006 format. All documentation must also be provided electronically on CD or DVD (5 copies).

14. Cancellation of a contract

ASTEC may withdraw from the contract in whole or in part in the case of a breaches of duty and after unsuccessfully setting a reasonable grace period (usually 14 days). A reminder to comply with the contract is also deemed to be the setting of an appropriate grace period. Breaches of duty are in particular also the delay in intermediate or final dates, unauthorised subcontracting or defects that endanger the fulfilment of the contract by ASTEC accountability to their contractual partners. In the event of breaches of duty, ASTEC is entitled to carry out the omitted or insufficiently performed deliveries and/or services itself or through third parties at the expense of the contractor/supplier. The costs incurred in meeting such obligations may either be invoiced directly by ASTEC or deducted from the next payment due from ASTEC to the contractor/supplier.

15. Miscellaneous

The contractor's/suppliers possible right of retention is expressly excluded. Any default interest for claims of the contractor/supplier amounts to 5% p.a.

ASTEC reserves the right to perform intermediate and final tests and to reject faulty documentation.

Sub-suppliers must be notified to ASTEC and must be approved by ASTEC in writing. The contractor/supplier is also liable for compliance with these purchasing terms and conditions by his sub-suppliers.

Any incidental costs related to the execution of the purchase order which are not regulated

either in agreements or in INCOTERMS 2000 shall be covered by the contractor/supplier. If the acceptance of ordered goods is delayed on the agreed delivery date for reasons not attributable to ASTEC, the contractor/supplier agrees to store the ordered items for ASTEC at its own premises or those of a third party for up to 6 months free of charge and at the contractor's/suppliers risk.

All deliveries to ASTEC must be made free of reservations of ownership and the rights of third parties. Such retentions of title are deemed invalid also without express objection by ASTEC. Notwithstanding the provisions in these PTC, further statutory claims of ASTEC remain unaffected. If the contractor/supplier suspends payments, becomes insolvent or if insolvency proceedings are applied for or opened over his assets, ASTEC is entitled to withdraw from the unfulfilled part of the contract.

16. Place of Fulfilment, Applicable Law, Court Jurisdiction

Place of fulfilment is the delivery address specified in our order. These terms and conditions shall remain binding in their remaining parts even if individual or several terms are ineffective. Ineffective terms shall be replaced by terms which come closest to the meaning and purpose of the ineffective terms in a legally effective manner (severability clause).

The contract is subject to Austrian law, excluding the UN Convention on Contracts for the International Sale of Goods.

The exclusive place of jurisdiction for deliveries and payments and all disputes resulting from contracts closed between the contractor/supplier and ASTEC is the competent court of the District Court Vienna Innere Stadt. ASTEC however has the right to sue in any other court.