

**General terms and conditions (GTC) of  
EQOS Energie Österreich GmbH  
for the installation and maintenance of electrotechnical  
and mechanical facilities**

## 1. Scope

1.1. The present General Terms and Conditions apply to business transactions with **EQOS Energie Österreich GmbH** (hereinafter "EQOS Energie") as contractor.

1.2. Unless any other written agreements to the contrary exist, EQOS Energie works under the present general terms and conditions; the same shall apply to order extensions and follow-up orders. Regardless of the contents of the individual regulations, the applicability of any general terms of purchasing or terms and conditions or any other contract forms of customers or principals shall be excluded entirely. These or any parts thereof shall only apply if they have been accepted explicitly by EQOS Energie in writing.

1.3. The present GTC enter into force on 01/06/2015 and shall apply to transactions concluded as of that date. The present GTC shall only apply to transactions between entrepreneurs.

## 2. Quotation

2.1. Quotations shall be non-gratuitous. The remuneration paid for a quotation shall be credited if a contract is awarded on the basis of the quotation and if such crediting is agreed in advance.

2.2. All technical documents including the specifications shall remain the intellectual property of EQOS Energie and must not be used elsewhere nor surrendered or made accessible to third parties in any form whatsoever without the written consent of EQOS Energie.

2.3. Quotations shall only be submitted in writing and shall only be valid if they have been signed by EQOS Energie in a legally binding manner.

2.4. For lack of any other explicit provision in the quotation itself, acceptance of a quotation shall only be possible with respect to the entire performance offered.

## 3. Order

Basically, orders shall only be deemed accepted if either a contract for services was concluded with EQOS Energie or an order letter was countersigned by EQOS Energie, or if there is a written order confirmation by EQOS Energie.

## 4. Contract performance

4.1. EQOS Energie shall not be obliged to effect performance until all technical and contractual details have been clarified and the principal has met its obligations (provisions and/or preliminary work) and has created the structural, technical and legal prerequisites for performance and until there is free access to the place of installation without any hazards.

4.2. Any third-party permits required, in particular from the authorities or the utility companies, must be provided by the principal; EQOS Energie is authorised to effect, at the principal's expense, any notifications to authorities that are either mandatory or customary with respect to the building project and/or to the object of performance.

4.3. For the duration of contractual performance, the principal shall provide EQOS Energie, without charge, with

suitable space for the safe and proper storage of tools, components and materials. Said premises must not be accessible to anyone except EQOS Energie.

4.4. The energy required for contractual performance including trial operation as well as other raw materials, resources and facilities shall be provided by the principal free of charge, in sufficient quality and in the amount required.

4.5. If the nature of the contract warrants urgent execution or if its urgent execution is demanded by the principal, and if this was not known when the contract was concluded, any extra costs incurred as a consequence, such as overtime premiums, costs in connection with the prompt procurement of materials, additional staff and/or tools, technical equipment and the like, shall be charged additionally.

## 5. Changes of performance

5.1. EQOS shall be entitled to receive additional reasonable remuneration for additional services or changes to contractual services that are not covered by the contract as awarded, if such services or changes were ordered by the principal or its representatives after placing the order.

5.2. EQOS Energie shall reserve to implement minor changes in technical terms that can reasonably be expected to be accepted by the principal. The same shall apply even if the principal has released a corresponding drawing or an adequately detailed specification and the change appears necessary or reasonable or practical with a view to technical development or safety.

## 6. Performance deadlines and dates

6.1. Any delivery and completion dates proposed shall only be binding upon EQOS Energie if their observance was explicitly promised.

6.2. If commencement of contractual performance or performance itself is delayed and if the delay was not caused by circumstances which EQOS Energie is solely responsible for, the bindingly agreed dates and deadlines including those agreed or promised will be postponed accordingly, if this is explicitly confirmed by EQOS Energie upon occurrence of the delay and if the duration of the delay is known. No automatic extension of agreed dates only for the period of the delay may be derived therefrom. The extra cost incurred by delays shall be borne by the principals on a current basis, unless EQOS Energie is responsible for the circumstances having caused the delay.

6.3. If the principal fails to remove the circumstances that have caused the delay under 6.2. within a reasonable period granted to it by EQOS Energie, the latter shall be entitled to otherwise dispose of the materials and equipment already procured by it for contractual performance; in case of continued performance, all deadlines and dates will extend additionally by the period required for the replenishment of such equipment and materials used elsewhere.

6.4. If the provision of services is delayed by the occurrence of force majeure or through any other inevitable events outside the sphere of influence of EQOS Energie, the performance period shall be suspended accordingly and shall continue to run only after the obstacle has been

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removed. If EQOS Energie is impeded in rendering its services by an event of force majeure, EQOS Energie shall not be liable for such default or the impossibility of performance, provided EQOS Energie informs the principal accordingly without delay, describing the relevant event in detail.

6.5. Instances of force majeure shall be in particular unexpected, inevitable events, acts of God, unusual acts by third parties, wars (whether declared or not), war-like situations, strikes, embargoes, and all other elemental events that act from the outside and could not be prevented even by applying utmost reasonable care, and that are so exceptional that they cannot be considered a typical operational risk.

6.6. It shall also be force majeure if several employees charged with key tasks of contractual performance are absent due to mass diseases (e.g. pandemics, epidemics). Moreover, instances that make contractual performance impossible or inefficient due to the shutdown of branch establishments or plants by authorities shall be considered instances of force majeure.

## **7. To be furnished by the principal**

7.1. Equipment and other materials to be furnished by the principal shall not be the object of warranty and liability. Basically, equipment and materials furnished by the principal shall be handed over unloaded and unpacked at the place of installation. Unless such equipment and materials constitute installation or assembly materials to be mounted or installed by EQOS Energie, they must basically be handed over to EQOS Energie at the place of installation in set condition (= at the final place of destination, mounted in correct position in a workmanlike manner).

7.2. The goods, materials, equipment, parts, facilities, storerooms, documents and operating resources provided by the principal shall be made available to EQOS Energie free from any third-party rights. Should any corresponding third-party rights be violated by EQOS Energie, the principal shall indemnify EQOS Energie adequately in this respect.

## **8. Prices**

8.1. If any changes occur between conclusion of the contract and performance of the contract with respect to

- a) the cost of labour and/or
- b) the cost of acquisition of the materials employed, whether it be through legislation, ordinance, collective bargaining agreement, by-laws, official recommendation, other official measures or on account of changes to global market prices, the prices concerned shall increase accordingly, unless a period of less than two months has expired between the award of the contract and contractual performance.

8.2. Only fixed price quotations or quotations with price fixing until a specified calendar day shall be exempt from 8.1. In case of fixed price quotations, EQOS Energie still reserves the right to adjust the respective prices due to exceptional and unforeseeable fluctuations of the commodity market. The basis shall be the commodity price index for the eurozone (overall index) immediately before submitting the quotation.

8.3. Unless anything else was agreed, prices are ex works or ex warehouse, excluding packaging, or if delivery free site is agreed, with freight vehicle on road accessible by vehicle approached at ground level, plus VAT in each case.

## **9. Payments**

9.1. Unless agreed otherwise, 30% (thirty per cent) of the total price (contract amount incl. all known additional services and VAT) shall be due upon placing the order, 30% (thirty per cent) of the total price upon commencement of performance, 30% (thirty per cent) of the total price after completion of the works and/or performance, and the rest upon submission of the final invoice.

9.2. If contractual performance by EQOS Energie takes longer than 45 (forty-five) days, EQOS Energie shall be entitled to submit partial invoices based on the work done in one-month intervals.

9.3. If performance is delayed in accordance with 6.2., EQOS Energie shall in any case be entitled to submit partial invoices for the services rendered so far and to mark them as due for payment. If the relevant delay lasts for any longer than 45 days, EQOS Energie shall be entitled to withdraw from the contract, to submit a final account for the services provided, and to claim compensation for the loss incurred.

9.4. If after conclusion of the contract, EQOS Energie comes to know about lack of solvency of the principal or about its poor financial situation, EQOS Energie shall be entitled to invoice all services rendered and to designate such invoices as due for payment, making any continuation of the work dependent upon the provision of adequate collateral by the principal.

9.5. The principal shall not be permitted to offset its own receivables against those of EQOS Energie, unless EQOS Energie has turned insolvent or there is a legal connection between the counterclaims of EQOS Energie and the principal's liabilities from the contract, and if said claims have been judicially confirmed or acknowledged by EQOS Energie.

9.6. The principal expressly agrees that claims against the principal of affiliated companies of EQOS Energie (e.g. parent company, subsidiaries or affiliate, allied company, participation companies of EQOS Energie), and claims of joint ventures to which EQOS Energie or its affiliated companies belong, may also be offset by EQOS Energie in a similar manner.

9.7. Invoices shall be due for payment after 14 (fourteen) days without deduction.

9.8. In case of payment default, interest on arrears in the legal amount under § 352 UGB (Austrian business code) shall be charged, even without any prior written reminder.

## **10. Warranty, liability and compensation for damages**

### **10.1. Warranty**

- According to § 928 ABGB (Austrian civil code) there shall be no warranty for apparent defects that are manifest already on delivery, acceptance or commissioning of the contractual performance.
- The statutory warranty period shall commence upon

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handover to or acceptance by the principal or in case neither handover nor acceptance takes place, upon invoicing at the latest; however, if the principal starts using the contractual performance already before handover or acceptance, the warranty period shall commence at this time.

- At first, the principal shall only be entitled to improvement or replacement of the object/work. Only if both are impossible or if unreasonable effort is associated with these warranty-based remedies, the principal may immediately demand monetary compensation by way of a reasonable price reduction.

- Materials subject to consumption or otherwise wear shall only have the service life corresponding to the respective state of the art. EQOS shall not grant any warranty on the service life of light sources.

### 10.2. Liability

The services provided as well as the goods, equipment and installations delivered only offer the safety that may be expected on the basis of admission regulations, operating instructions or other regulations regarding maintenance and handling, in particular with a view to mandatory inspections of equipment and plants, or on the basis of other information provided.

### 10.3. Damages

- EQOS Energie shall only be liable for damage to the objects it has taken over for processing in the course of contractual performance and for the defect caused if it is responsible for the damage.

- All other claims of the principal, in particular claims for compensation of all further damage, including any damage consequential to the defect, shall be excluded, unless it is a physical injury or EQOS Energie is responsible for gross negligence or intent.

- In case of assembly and repair work, damage may occur  
a) to existing pipes and appliances, as a consequence of invisible circumstances or material defects,  
b) during mortising work in broken, loose masonry.  
Such damage shall be at the expense of the principal.

- In any case, the liability of EQOS Energie shall be limited to 10% of the net contract total.

- Liability for loss of productivity shall be excluded.

## 11. Retention of title

11.1. All goods delivered and mounted shall remain the property of EQOS Energie until they are fully paid; the same shall apply if the goods are meant to be resold. In this case, the principal's customer must be informed about the title being retained.

11.2. If the principal is in default of payment or if EQOS Energie gets to know about any facts under 9.4, EQOS Energie shall be entitled to disassemble the goods and equipment subject to title retention and/or to otherwise take them back without this being equivalent to contract repudiation or redhibition.

## 12. Confidentiality

The principal undertakes to keep confidential all business- or product-related information that it comes to know about within the scope of the order, such as, in particular, documents, design drawings, but also business-related data,

that have been provided to it. This obligation shall apply for a period of 5 years after delivery and service provision.

## 13. Anti-corruption clause, corporate ethics and human rights

### 13.1. Anti-corruption clause

The principal declares and agrees to neither (directly or indirectly) offer any kind of advantage to third parties, nor to accept (directly or indirectly) any gifts or payments for itself or for others, nor to procure, promise or accept promises of any other advantages that are or may be considered as illegal practice or bribery.

### 13.2. Corporate ethics

The principal declares and explicitly agrees to comply with the laws of the respectively applicable legislation, to desist from corruption and bribery, from money laundering, to observe the basic rights of its employees, to refrain from using child labour, and to safeguard the health and safety of its employees. Furthermore, the principal declares and agrees to comply with the laws as well as national and international standards regarding environmental protection.

### 13.3. Human rights

Furthermore, the principal declares and agrees to observe the European Convention on Human Rights (ECHR) dated 04/11/1950, which entered into force on 03/09/1953, including its respective amendments.

13.4. The principal shall impose the above-stated declarations and obligations under items 13.1., 13.2. and 13.3. upon its clients and suppliers.

13.5. In case of violations by the principal against items 13.1., 13.2. or 13.3., EQOS Energie shall be entitled to cancel the contract with immediate effect. Moreover, the principal shall indemnify EQOS Energie in every respect.

## 14. Final provisions

### 14.1. Place of performance

The place of performance shall be 4030 Linz, Winetzhammerstrasse 6 (seat of EQOS Energie).

### 14.2. Applicable law

All transactions concluded or performed on the basis of these GTC shall exclusively be governed by Austrian law to the exclusion of the conflict of law rules of private international law and of the UN Convention on Contracts for the International Sale of Goods.

### 14.3. Place of jurisdiction

The materially competent court in Linz/Donau, Austria, shall have jurisdiction.

### 14.4. Miscellaneous

Any amendment to the present GTC shall only be valid if made in writing and with the written consent of EQOS Energie. The same shall apply to any waivers of this written form requirement.

### 14.5. Severability clause

Should individual provisions of the present GTC be ineffective or unenforceable, or should they become so after the contract has been concluded, this shall not affect the validity of the rest of the GTC. The ineffective or

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unenforceable provision should be replaced by an effective and enforceable one, whose impact comes closest to the economic objective pursued by the contracting parties with the ineffective or unenforceable provision. The above provisions shall apply accordingly in the event that the GTC are found to have any loopholes.