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	Dok.Nr.: <b>3_01_QMF_001_Teil2_AGB_ISE_Elektrizukauf_Typ_B_englisch_03</b>	Version:	3.00


ISE GmbH, Mühlwasserstraße 34, A . 1220 Wien, Austria

# QMF

**3\_01\_QMF\_001\_Teil2\_AGB\_ISE\_Elektrizukauf\_Typ\_B\_englisch\_03**

## AGB Ë Elektrizukauf (englisch)

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<b>Firma:</b>	ISE	ISE	ISE	ISE
<b>Datum:</b>	06.01.2014			
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## General Terms & Conditions of Purchase Electric

### Preamble

1. ISE - Industrie Software Entwicklung GmbH (herein referred to as "ISE") will accomplish complete automation solutions for its customers. Based on the compiled designs and planning by ISE for its customers, a part of this project shall be assigned to the contractor as a subcontractor, based on the regulations below.

### I. Scope of Applicability


1. These General Terms and Conditions in accordance with the most recent version shall apply exclusively for all contracts concluded by ISE and their contractors within the scope "Electric".
2. Any conflicting terms and conditions of business issued by the contractor shall not be deemed accepted nor shall they form a constituent part of contract, even if ISE is aware thereof, unless ISE expressly agrees with their validity in writing. This shall also apply even if ISE does not separately protest them.
3. These terms and conditions of purchase shall also apply if ISE accepts or pays for deliveries of products and services of the contractor in the knowledge of conflicting supplier terms and conditions or supplier terms and conditions differing from these terms and conditions of purchase.
4. Any dissenting conditions, verbal side arrangements, changes or additions to these conditions as well as its attachments, resp. enclosures shall require a written agreement between the two contracting parties. This shall also apply for changes of this formal requirement.
5. In the context of and for the duration of the entire business relationship these terms and conditions shall also apply to all subsequent transactions according to article I.1. without any need of express reference thereto or agreement thereon at the conclusion of such transaction.

### II. Design

1. The electrical design and its clarification shall be assumed by ISE and will be provided to the contractor duly before execution of the project.
2. The contractor shall check the plans, provided by ISE, with regard to correctness, feasibility, completeness and legal conformity.
  - 2.1. The contractor shall immediately inform ISE in writing about defects in correctness, feasibility and completeness within the provided plans, detected before or while the execution of the order.
  - 2.2. The contractor shall be solely liable for all damages and defects as well as consequential loss that result from such detectable defects and that the contractor did not inform ISE about. The contractor shall bear all costs for the elimination of such defects and the eventual obligation for compensations of damage by ISE.
3. Changes of these plans shall only be made after written approval by ISE.
  - 3.1. Changes shall be made by hand, adding date and signature, within the transmitted plans with entries "as built-in" in the assembly plan, electrical wiring diagram, clamp/terminator diagram, cable-list and bill of materials.
  - 3.2. The contractor shall be solely liable for all damages and losses resulting from changes that were not approved by ISE.
  - 3.3. The contractor shall bear all the costs for the elimination of such defects and the eventual obligation for compensations of damage by ISE.
4. All information provided to the contracting party in the course of the initiation, closing or execution of the offered contract as well as decision documents of every kind, particularly plans, outlines and other technical documents by word, sound or picture remain an intellectual property of ISE just like samples and catalogues and stand under protection of the according legal regulations. The contracting party doesn't receive any intellectual property or utilization rights. In case the contractor fails to comply with this clause, the contractor shall take full liability and shall indemnify and hold ISE harmless in any way.
5. At ISE's own choice all project relating documents provided to or created by the contractor along with all copies or duplicates must be returned immediately upon request and without solicitation, at the latest after complete fulfilment of the contract, or must be destroyed.
6. All information relating to the project or the tender shall be treated strictly confidential according to Point IV.6.

### III. Components


1. The contractor must exclusively use those components which are listed in the provided electrical design by ISE.
2. In case that the use of those components is not possible, the contractor shall inform ISE immediately in writing, by concurrent notification of the reason and the corresponding reduced costs.
3. The use of different components shall only be allowed after written approval by ISE.
4. Changes of components must be entered by hand, adding date and signature, in the plans provided by ISE.
5. Special components, necessary for completion of the work, shall be bought by ISE and provided on time for installation if agreed.

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#### IV. Rights and Obligations

1. The contractor shall only dispatch professional qualified personnel to fulfil the task.
  - 1.1. The proof for the professional qualification shall be supplied by presentation of according certificates (master craftsman diploma, HTL-graduation) in the electric profession.
  - 1.2. When performing services within the scope of ~~Pharma Projects~~, the contractor states that he has according sectoral knowledge. When in doubt, the contractor shall immediately confer with ISE.
  - 1.3. The contractor shall disclose the personnel to be dispatched together with the proof of their professional qualification in written form upon first request, but at the latest in the course of the preliminary acceptance test,.
  - 1.4. In order to reduce expenses, ISE shall be entitled to dismiss unqualified personnel without further ado.
  - 1.5. In the case of dismissal of such unqualified dispatched personnel, the contractor shall dispatch accordingly qualified personnel immediately and without any additional costs.
  - 1.6. The contractor shall bear responsibility that at least one professionally qualified labourer is on site at all times, who will act as the contact person in charge for ISE and who has to be up to date with the project development.
2. In addition to Point II. the contractor shall inform ISE immediately about defects in the designs occurring in the context of the project execution in written form.
  - 2.1. If the contractor should carry out an ~~apparent defect~~, the contractor shall bear all costs for elimination of this defect.
  - 2.2. The right to assert any further compensation remains unaffected.
3. The delegation of this order to third parties shall be prohibited without the written approval of ISE.
  - 3.1. The contractor shall bind the subcontractor by contract in the same way as the contractor himself is bound according to the regulations of this contract, resp. the separate order/purchase agreement.
  - 3.2. The contractor shall take full liability for the subcontractor and shall indemnify and hold ISE harmless in any way.
4. In order to control the periods of delivery, quality and progress of work, ISE shall be granted access to the premises of the contractor, after due advance notification.
5. With delivery of the work, the contractor shall surrender all data sheets, manuals of the actually used components, electrical device identifications of all actually used components and of the complete work, according to the electrical design, particularly the declaration of CE-conformity and the CE-testing documentation, actually all documentation and shall further label the delivery (electric control cabinet) completely and computer-assisted.
6. Agreed-upon deadlines and time periods are binding.
  - 6.1. The receipt of the goods by ISE is the determining factor for having met the date of delivery or the period of delivery.
  - 6.2. If the contractor is responsible for setup or installation, and unless otherwise agreed upon, the contractor shall assume all required incidental costs such as travel expenses, availability of tools, freight costs and insurance costs as well as daily allowances.
  - 6.3. The legal stipulations shall apply if agreed-upon deadlines are not met.
  - 6.4. If the contractor anticipates difficulties with respect to production, the supply of required materials, meeting the delivery date or similar circumstances that might interfere with his ability to deliver in a timely fashion or delivery with the agreed-upon quality, the contractor must immediately notify ISE.
  - 6.5. The unconditional acceptance of a delayed delivery or service does not constitute a waiver of claims to which ISE is entitled due to the delayed delivery or service; this applies until the complete payment of amounts owed by ISE for the delivery or service in question.
  - 6.6. Partial deliveries are precluded as a rule, unless ISE expressly agreed to them or they are reasonable.
7. The contractor shall keep confidential all business or technical information made accessible by ISE (including features which might be learned from objects, documents or software submitted and any other information or experiences) towards third parties, as long as and to the extent they are not public knowledge, and may only be made available in the contractor's premises to persons who need to make use of the information for the purpose of supplying to ISE and who must also be required to maintain confidentiality. The information remains exclusive property of ISE. The contracting party doesn't receive any intellectual property or utilization rights. In case the contractor fails to comply with this clause, the contractor shall take full liability and shall indemnify and hold ISE harmless in any way.
  - 7.1. Without ISE's prior written approval, such information . except for deliveries to ISE . may not be duplicated or exploited commercially. At ISE's request, all information originating from ISE (including any copies or recordings made, if applicable) and loaned items must be immediately returned to ISE completely or proved to be destroyed at ISE's own choice.
  - 7.2. ISE reserves all rights to such information (including copyrights and the right to file for industrial property rights such as patents, utility models, semiconductor protection, etc.). In the event these are provided to ISE by third parties, this reservation of rights also applies to these third parties.
  - 7.3. Products built on the basis of documentation such as drawings, models and the like prepared by ISE or based on ISE's confidential information or ISE's tools or tools modelled on ISE's tools, may neither be used by the contractor himself nor be offered or supplied to third parties. This also applies to ISE's print orders correspondingly.

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#### V. Payment

1. All the services ordered by ISE and performed by the contractor shall be performed as a flat rate order and shall only be reimbursed in accordance with the separate order/purchase agreement.
  - 1.1. With the agreed flat rate fixed price all demands of the contractor shall be reimbursed.
  - 1.2. Further demands of any kind shall be excluded.
2. With acceptance of the order, ISE shall make a down payment in the amount of 20%.
  - 2.1. After the successful preliminary acceptance test (FAT) according to Point VI.1. ISE shall pay a further instalment in the amount of 50%.
  - 2.2. The remaining sum shall be paid after final acceptance of the complete solution by ISE's customer at the earliest .
3. Unless otherwise agreed upon, the invoices are to be paid within 14 days by deducting a 3% discount or within 30 days without deduction as of the payment due date and the receipt both of the invoice and the goods or services. The payment is subject to invoice verification.
4. The contractor shall have no right to set-off or reduction unless the underlying counterclaims have been conclusively determined by a court or expressly acknowledged by ISE.
5. The contractor shall have no right to retention unless the underlying counterclaims have been conclusively determined by a court or expressly acknowledged by ISE.

#### VI. Warranty


1. The warranty term, within which warranty claims may be raised, shall be 24 months and shall start at the date of the final acceptance by ISE's customer.
2. A mutual preliminary acceptance test (FAT) with ISE and the contractor shall take place.
  - 2.1. The work made by the contractor shall be energised and first acceptance tests shall be performed.
  - 2.2. Faults occurring during the preliminary acceptance and the following start of operation shall be rectified within 2 days at the contractor's own expense within the scope of warranty.
  - 2.3. In case the contractor does not fulfil his obligation in due time, ISE shall have the right to perform the necessary works on its own or through a competent third party at the expense of the contractor without further notice. ISE's right to assert any further compensation remains unaffected.
3. Before the final acceptance by ISE's customer of the complete solution, it is agreed that a mutual performance testing shall take place within the start of operations on site.
  - 3.1. Faults occurring during the performance testing and the following start of operation shall be rectified within 2 days at the contractor's own expense within the scope of warranty.
  - 3.2. In case the contractor does not fulfil his obligation in due time, ISE shall have the right to perform the necessary works on its own or through a competent third party at the expense of the contractor without further notice. ISE's right to assert any further compensation remains unaffected.
4. ISE shall notify the contractor immediately upon the occurrence of a fault after the final acceptance by ISE's customer. The contractor shall cure such faults within 2 days at the contractor's own expense within the scope of warranty. ISE's right to assert any further compensation remains unaffected.
5. The contractor shall notify ISE in writing, if he wants ISE to perform the necessary work. Such a cure of fault shall not exempt the contractor from liability. ISE's right to assert any further compensation remains unaffected.

#### VII. Auxiliary Service

1. The manufacturing and installation of the delivery item, resp. the ordered work according to the separate order/purchase agreement shall exclusively be performed as a flat rate order.
2. Time and effort for installation and wiring shall be reimbursed either as a flat rate fixed price or by measurement according to standard prices (according to order/purchase agreement)
3. Any additional order shall be set out in writing and shall be reimbursed according to standard price.
4. The standard prices shall conform with the standard price list that shall be handed over before acceptance of the order and that shall be an integral part of the agreement.
5. Directed performances shall not be rendered and shall therefore not be reimbursed.
6. All deliveries/performances defined in the order/purchase agreement must include all the necessary material, equipment and extra work within the scope of this contract and its basis, even though they are not explicitly stated.

#### VIII. Liability

1. The contractor shall assume full liability for any damages and losses, regardless of negligence or fault, that shall have been caused by him or a third party in his sphere of influence. The contractor shall hold ISE fully indemnified for any resulting liability.
2. The contractor shall fully indemnify ISE for any loss or damage of the special components according to Point III.5.
3. Furthermore the contractor shall fully indemnify ISE for all costs incurred by distraint, confiscation, lawsuit or retention of these special components.
4. In the event a product liability claim is asserted against ISE, the contractor agrees to hold ISE harmless from such claims if and to the extent the damage was caused by a defect of the supplies or services. However, in cases of liability based on fault, this only applies if the contractor is at fault. If the cause of the damage falls within the area of responsibility of the contractor, the contractor shall have the burden of proof to that extent. In

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the above cases the contractor assumes all costs and expenses, including the costs for any legal action or a recall campaign. In addition the legal stipulations shall apply.  
5. ISE's right to assert any further compensation remains unaffected.

#### **IX. General**

1. All norms and directives mentioned in these terms shall be an integral part of the purchase contract.
2. All the documents for the tender must be immediately returned or proved to be destroyed at first request.
3. There are no verbal side arrangements to this contract.
4. Any modifications or amendments of the abovementioned terms shall not take effect unless agreed by both parties in written form.
5. The invalidity of any provision of these terms and conditions shall not affect the validity of the other provisions. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted provision to the greatest extent possible.
6. It is agreed on both sides, that place of jurisdiction for all present and future claims arising from this arrangement shall be the commercial court in Vienna.
7. For the interpretation of this contract Austrian actual law shall apply. The international purchase laws shall not apply.
8. These terms and conditions are conceived for legal transactions between enterprises. Should legal transactions with consumers according to article 1 of the regulations of the consumer protection law be based on these terms, then they shall only be valid in this respect.
9. The English version of these terms and conditions of purchase shall be for convenience purposes only. In case of any inconsistencies, the German version shall prevail.