

**DIGITRANS GMBH**

**GENERAL TERMS AND CONDITIONS OF PROCUREMENT**

**FOR ENGINEERING**

**1. SCOPE**

- 1.1. These General Terms and Conditions of Procurement for Engineering (hereinafter in short: "GTC-E") shall apply to all orders or commissions for the provision of services (hereinafter in short: "Orders") of DigiTrans GmbH (hereinafter in short: "DigiTrans"), based on which a supplier or a service provider, (hereinafter in short: "Supplier"), enters into or already has a business relationship with DigiTrans or is commissioned by DigiTrans. Engineering includes e.g. engineering services, planning services, software creation (except standard software), data acquisition and processing, preparation of expert reports, project management, etc.
- 1.2. These GTC-E are an integral component of every engineering contract of DigiTrans with a supplier and replace any General Terms and Conditions of the supplier (in short "GTC"). Any General Terms and Conditions of the supplier shall hereby expressly countered and they to not become part (not even implicitly) of a contract entered into between DigiTrans and the supplier unless DigiTrans agrees expressly to the inclusion of the GTCs.
- 1.3. Performance of the order by the supplier shall be regarded as acknowledgement of these GTC-E
- 1.4. These GTC-E shall apply for all future business, even in individual cases, in particular for future additional or follow-up orders or jobs not expressly referred to as such.

**2. OFFERS**

- 2.1 Unless otherwise expressly agreed, offers, samples, estimates, consultancy and consultancy documents for DigiTrans shall be free and non-binding. Offer documents shall not be returned by DigiTrans.
- 2.2. The supplier must expressly point out in an offer in a highlighted part in the event of an offer not being binding. Where the supplier omits this notice, the offer shall be regarded as binding for at least 30 working days.
- 2.3. Plans, drawings, drafts, data, etc., provided by DigiTrans during the course of submitting the offer or performing an order to the supplier shall remain the property of DigiTrans and may not be used, reproduced or disclosed to third parties for purposes other than preparing an offer or performing a contract without the express consent of DigiTrans.

**3. ORDERS**

- 3.1 Orders of DigiTrans shall always be placed in writing and exclusively by the DigiTrans management.

Verbal orders shall not be binding on DigiTrans and shall not give rise to any claims of the Supplier against DigiTrans for termination of the contract or damages. The same shall apply in the same way to changes and additions to orders. Other (oral) promises, representations and warranties by DigiTrans or agreements deviating from these GPC in connection with the order shall only become binding to the Supplier in the event of written confirmation by the DigiTrans management.

- 3.2 Orders shall be confirmed by the supplier without delay in writing (order confirmation s. 3.3). Where the supplier fails to send a written order confirmation within five working days of receipt of the order, DigiTrans shall be able to cancel its order within 14 working days. In this event, the supplier will be entitled to no claims for contract cancellation or compensation. DigiTrans may demand compensation from the supplier for damages caused by terminating the contract and/or delays. The order shall automatically be deemed to have been accepted in full if no notification to the contrary is received from the supplier within 10 working days.
- 3.3 Order confirmation shall be made by returning a copy of the DigiTrans order to DigiTrans with the company-signed note: "We agree with all points of the order". Should a delivery date deviating from the order or otherwise deviating delivery or payment conditions be requested by the supplier, then these shall only become binding if DigiTrans expressly agrees to them in writing. Transferring the delivery or service ordered or commissioned to third parties (subcontractors) shall require the prior written consent of DigiTrans.
- 3.4 Transferring the service ordered third parties (subcontractors) shall require the prior written consent of DigiTrans.
- 3.5 Unless otherwise stated expressly, prices listed shall always be understood as fixed prices in Euros excluding VAT.

#### **4. SERVICES**

- 4.1. The Supplier shall ensure that the services ordered by DigiTrans are actually suitable in technical terms and with regard to compliance with legal standards (e.g. construction regulations, trading regulations, patent law, etc.) and/or technical standards (ÖNORM, DIN, etc.). In this respect, the supplier has a duty to investigate, warn and inform DigiTrans.
- 4.2. Any delays in the performance of the service shall be notified by the supplier without delay, stating the reasons.
- 4.3. Unless otherwise expressly agreed, performance to DigiTrans on the basis of DDP named place of destination basis in accordance with INCOTERMS 2020.
- 4.4 Unless special agreements have been made, it shall be the supplier's responsibility to take out the necessary insurance with sufficient coverage (in particular public liability insurance and planning liability insurance).
- 4.5. Additional service exchange agreements can be concluded between DigiTrans and the supplier if required.

## **5. NOTIFICATION OF DEFECTS AND WARRANTY**

- 5.1. DigiTrans shall inspect the services rendered by the supplier for defects and, insofar as these are recognizable, notify the supplier of any defects in writing. The supplier shall expressly waive the objection of delayed reporting of defects.
- 5.2. A confirmation of receipt or acceptance issued by DigiTrans, shall not apply as acknowledgement with regard to the performance being complete or free from defects.
- 5.3. Should random samples highlight defects, DigiTrans shall be entitled to warranty rights and compensation claims for the entire service.

## **6. PAYMENT**

- 6.1. The supplier's payment deadlines shall commence at the earliest with receipt of a proper invoice and the agreed performance of services.
- 6.2. In the absence of a different written agreement, the following payment periods shall apply: 14 days with a discount of 3% deducted or 60 days net.
- 6.3. The Supplier may assign its claim against DigiTrans to third parties only with the written consent of DigiTrans.
- 6.4. In the event of service (or part thereof) being defective or in breach of contract, DigiTrans shall be entitled to retain payment until performance of the whole in accordance with the contract. Payment deadlines shall start to run again after full performance in accordance with the contract.

## **7. DIGITRANS LIABILITY RESTRICTION**

- 7.1. The Supplier shall only be entitled to claim damages for financial loss from DigiTrans exclusively in the event of willful intent or gross negligence by DigiTrans.
- 7.2. Any liability of DigiTrans is restricted to the order value of the contract whose obligations DigiTrans has breached. DigiTrans's liability towards the supplier for lost profit, downtime, contractual losses or any other consequential losses is excluded.
- 7.3. The exclusion of liability also covers claims against employees of DigiTrans, representatives and vicarious agents.

## **8. CONFIDENTIALITY**

- 8.1. The supplier shall treat all information passed to it via enquiries, orders, entering into and processing the contract or otherwise via business cooperation with DigiTrans as strictly confidential, in particular business and trade secrets disclosed or otherwise obtained from DigiTrans. The supplier may only

disclose this information with the prior written express consent of DigiTrans. The supplier shall hold DigiTrans harmless in the event of this duty of non-disclosure being breached.

- 8.2. The supplier may only refer to the business relationship with DigiTrans, in particular for advertising purposes, after the prior written consent of DigiTrans

## **9. RESERVATION OF OWNERSHIP**

- 9.1. Agreeing a reservation of title by the Supplier is expressly waived. Services shall pass unencumbered and with full right of use without delay to DigiTrans after complete performance, possibly integration test and preliminary acceptance by DigiTrans.
- 9.2. In any event, DigiTrans shall retain title to any equipment supplies by DigiTrans, and they shall be stored and identified separately at the supplier. The supplier shall pay corresponding compensation in the event of reduced value and loss. The supplier shall inspect the supplied equipment without delay following receipt for its suitability and freedom from error. DigiTrans be entitled to enter the site of the materials supplied where reasonable for the supplier and with appropriate notice.

## **10. PROTECTIVE RIGHTS OF THIRD PARTIES**

- 10.1. The supplier shall confirm that its delivery and/or service does not infringe protective rights or copyright of third parties and shall hold DigiTrans harmless in this respect.

## **11. CLOSING PROVISIONS**

- 11.1. Individual parts of these GTC-E being invalid does not affect the validity of the remaining provisions. DigiTrans and the supplier undertake now, based on the good faith of the contracting parties, to find a replacement provision coming as close as possible to the commercial outcome of the invalid provision.
- 11.2. Austrian law shall apply to the exclusion of rules regarding renvoi and conflict of laws of international private law and CISG. The Place of performance is the registered office of DigiTrans.
- 11.3. Sole jurisdiction for all disputes resulting from (or in connection with) orders and/or the contractual relationship or future contracts between DigiTrans and the supplier lies with the court competent for Linz.