

General

These General Terms and Conditions shall apply to all contracts of Avesco AG (**Avesco**). Any changes thereto or deviations therefrom must be agreed in writing. The general terms and conditions of the Customer shall only apply if they have been accepted in writing by Avesco.

1. Offer

Commitment:

Offers prepared by Avesco shall be binding for 30 days after dispatch.

Planning Costs:

If the Customer asks Avesco to draft a project but does not commission it with its execution following submission of the offer, Avesco shall be entitled to request payment of the planning costs from the Customer in accordance with the KBOB tariff (publications: Coordination Conference for Public Sector Construction and Property Services, Remuneration Recommendations).

Structural Measures:

All structural measures associated with the installation of the contractual objects are not covered by the offer but the responsibility of the Customer. These include determining the location of the engine, aggregate and/or plant, ascertaining the ground conditions, obtaining the construction plans and official permits, preparing the foundations including tracks and electrical installations, providing water, creating a proper access road, providing a stable work surface for any interim storage or pre-assembly, providing the requisite crane capacity, supplying operating resources such as fuel, compressed air etc. and implementing further construction works.

2. Documents

Prospectuses and catalogs are not binding. Information in plans, drawings, technical documents and data in software shall only be binding if they form an integral part of the contract.

All documents remain the property of Avesco. In particular they may not be copied or reproduced, nor may they be made accessible to third parties without the written consent of Avesco or used for self-production of the applicable contractual objects. All documents must be returned to Avesco immediately upon request.

3. Conclusion of the contract

Contracts shall only become binding on the parties when signed by both parties.

4. Prices

Prices are quoted exclusive of VAT, EXW Langenthal (INCOTERMS 2010), excluding packaging and in freely disposable Swiss francs.

All ancillary costs such as for transportation, packaging, insurance, customs, approvals, certifications as well as taxes and duties shall be borne by the Customer. The prices may be amended by Avesco if the wage rates, customs, foreign exchange rates or commodity prices change between the time of contract conclusion and provision of the contractual objects.

5. Delivery Period

The delivery period commences upon contract conclusion but not before receipt of all information and documents to be procured from the Customer as well as any advance payments to be made.

The delivery period shall be deemed to have been met provided Avesco has dispatched notification to the Customer before expiry that the item is ready for collection.

Compliance with the delivery period presupposes the fulfillment of all contractual and non-contractual obligations of the Customer toward Avesco.

The delivery period shall be extended appropriately:

- if the Customer or third parties fall behind with the work to be carried out by them or the Customer falls behind in the fulfillment of its obligations;
- in the event of obstacles beyond the control of Avesco such as significant operational disruptions, accidents, labor conflicts, difficulties in the procurement of materials, official measures or omissions;
- in the event of other circumstances for which Avesco cannot be held responsible;
- in the event of payment default by the Customer.

If the delivery period is not met, the Customer can claim compensation for delay if Avesco is demonstrably responsible for the delay and the Customer is able to demonstrate loss or damage incurred as a result of the delay. If the Customer is supplied with a substitute delivery, the entitlement to compensation for delay shall no longer apply.

This compensation for delay shall amount to a maximum of ½% for each full week of delay but altogether no more than 5%, calculated on the contractual price for the delayed part of the delivery. No entitlement to compensation for delay may derive from the first two weeks of delay.

The entitlements of the Customer arising from or in connection with delays in the performance of the contract are explicitly and conclusively set out in clause 6 hereof. Any other and additional claims of the Customer are waived.

6. Transfer of Risks

The transfer of risks takes place in accordance with INCOTERMS 2010, EXW.

7. Inspection and Acceptance

The following applies to engines and aggregates:

The Customer is required to inspect the contractual objects within eight days and notify Avesco in writing immediately of any defects. Should the Customer fail to do

so or put the contractual objects into use, said contractual objects shall be deemed to have been accepted.

The following applies to plants/facilities:

Avesco shall inspect the contractual object prior to dispatch where customary. Should the Customer request additional inspections, e.g. an acceptance test, these must be agreed in writing and paid for by the Customer. The following shall apply in the event of an agreed acceptance test: Avesco shall notify the Customer in writing of the date of the acceptance test and the Customer shall be obliged to take part in this.

Acceptance is deemed to have taken place if:

- the Customer or its representative culpably fails to take part in the acceptance test; or
- the Customer refuses to sign an acceptance protocol without justification; or
- the Customer puts the deliveries into operation, places them in stock or tacitly approves them in any other way; or
- the Customer refuses acceptance without being entitled to do so, particularly in the case of negligible defects.

If no acceptance test has been agreed, the Customer shall inspect the contractual object within 30 days and notify Avesco of any faults immediately in writing. Should it fail to do so or put the contractual object into use, said contractual object shall be deemed to have been accepted. Where Avesco is responsible for faults, it shall remedy these within a reasonable period and the Customer shall provide Avesco with sufficient opportunity to do this. An acceptance test shall take place at the request of the Customer or Avesco following fault remediation.

8. Storage

If the contractual objects are not collected on time following completion and notification of their readiness for collection without any culpability on the part of Avesco, they shall be stored with Avesco or a third party at the cost and risk of the Customer.

9. Assembly and Disassembly

Avesco shall not be responsible for the assembly or disassembly of the contractual objects. If assembly or disassembly has been agreed, the corresponding terms of assembly of Avesco shall apply.

Should the installers provided be unable to commence or continue work through no fault of their own or of Avesco, all additional costs arising from this shall be borne by the Customer. This shall apply even where a flat-rate sum has been agreed for the assembly or disassembly work. The Customer shall furthermore provide all requisite auxiliary staff and assembly facilities (e.g. cranes) in good time. The costs (e.g. wages, social security contributions, insurance premiums, expenses) for these auxiliary staff and for the installers provided by the Customer shall be borne by the Customer.

The times specified by Avesco in connection with any assembly or disassembly work it is to carry out shall be binding on the Customer. Any additional costs due to non-compliance by the Customer with these specified times shall be borne by the latter.

Circumstances for which the parties are not culpable (e.g. force majeure, poor weather etc.) may result in delays. This shall not entitle the Customer either to withdraw the order or to claim compensation.

10. Payment Terms

The following payment terms apply:

- For purchase agreements concerning engines and aggregates: 50% upon conclusion of the contract without deduction; 50% within ten days net of invoice without deduction.
- For work contracts (including concerning plants): 30% upon order / 30% upon delivery of the planning documents by Avesco / 30% upon notification of readiness for collection or delivery by Avesco / 10% after completion of commissioning but no later than 90 days after notification of readiness for collection or delivery by Avesco. All amounts without deduction.
- For spare part deliveries and repairs: 30 days net after invoice without deduction.

Payments must be free of charge and must be made even if reworking is required on the contractual objects provided or parts need replacing or if the contractual objects are not collected on time for reasons for which the Customer is responsible.

11. Customer Default

If the Customer fails to settle due claims as agreed, it shall immediately be in default. In this case Avesco shall charge the Customer default interest of 5% from the due date without prior warning.

If agreed installments are not paid within 30 days of falling due due at the latest (including default interest), the entire outstanding amount shall become due immediately.

Avesco furthermore explicitly reserves the right in the event of payment default to withdraw from the contract and reclaim the contractual objects from the Customer. Avesco can withdraw from the contract and reclaim the contractual objects even if the Customer is only in default with the last installment, for example.

If Avesco declares its withdrawal from the contract, the Customer shall be obliged – in addition to the immediate return of the contractual objects – to make the following payments:

- rent of 5% of the agreed price for each full month or part thereof from collection until the return of the contractual objects;

- compensation for any extraordinary wear and tear and for any damage to the contractual objects;
- any disassembly, transportation and insurance costs for returning the contractual objects and any further associated expenses.

The Customer shall owe Avesco these payments even if it is not in any way at fault. Should the loss or damage sustained by Avesco exceed the aforementioned payments, the Customer shall refund it the additional amount unless it is able to prove that it is not at fault.

The aforementioned provisions shall apply mutatis mutandis to other cases of non-fulfillment of the contract by the Customer.

12. Retention of Title

The contractual objects shall remain the property of Avesco until the agreed price with all additional costs and interest has been paid, even if they have already been collected. Prior to this time they may be neither pledged, sold nor rented without the prior consent of Avesco; however, liability shall remain with the Customer. Avesco is authorized to have the retention of title entered in the retention of title register at the Customer's place of residence.

The Customer is furthermore obliged to notify Avesco immediately if it changes its domicile or head office.

13. Insurance

The Customer is obliged to take out all necessary insurance cover effective from the transfer of risks for objects not paid or not paid in full, including for example cover against theft, fire, explosion, natural hazards, transportation, machine and/or comprehensive machine insurance and assembly insurance. It shall cede its claims to insurance benefits arising from this to Avesco in the event of liability.

If the Customer is unable to supply proof of having taken out the necessary insurance cover, Avesco shall be entitled to take out said cover itself at the Customer's expense.

The Customer must inform Avesco immediately of all claims.

14. Warranty

Avesco guarantees the Customer that the product sold by it shall be free of all material, processing and construction errors at the time of delivery and during the period of liability for defects (as defined below) and that it shall comply with all Swiss laws and regulations applicable at the time of contract conclusion.

The period of liability for defects is 12 months from the date of collection by the Customer or – where contractually agreed – from acceptance of the contractual object or, if Avesco also carries out assembly (see clause 10), from completion thereof. However, the warranty period ends 18 months after notification by Avesco of readiness for collection or delivery at the latest. If the contractual objects change hands prior to the expiry of this period, the warranty shall end at the time of transfer of ownership.

The Customer shall notify Avesco in writing of faults within seven days of their discovery.

If a fault arises, the Customer shall initially solely be entitled to rectification by Avesco. The Customer must provide Avesco with sufficient opportunity for this. If rectification is not or is only partially successful, the Customer shall be entitled to the compensation agreed in such cases or, if no such agreement has been made, to an appropriate reduction in the price.

If the fault is of such a serious nature that it cannot be rectified within a reasonable grace period, and if the contractual object is not usable or only usable to a significantly reduced extent for the agreed purpose, the Customer shall be entitled to refuse to accept the faulty part of the contractual object or, if partial acceptance is not economically viable, to withdraw from the contract. Avesco shall in such cases merely be obliged to reimburse the price paid to it for the part of the contractual object affected by the withdrawal.

Should the Customer carry out repairs itself or commission third parties to carry out repairs to the contractual object or should it procure spare parts for such repairs from other sources than Avesco, it shall do so at its own cost and risk. In this case the warranty from Avesco shall end immediately.

Avesco in particular accepts no liability for:

- used objects or parts thereof;
- material and data that it has not supplied;
- assembly and disassembly work and data processing that it has not procured;
- objects to which changes have been made without its consent;
- damage of all kinds attributable to normal wear and tear, incorrect or violent handling, excessive use, insufficient foundations, unsuitable operation and maintenance, poor or inadequate controls, freezing, the use of unsuitable materials and lubricants, accidents or force majeure and the like;
- merchandise, materials and data from subcontractors (here Avesco shall only be liable under the warranty obligations of the manufacturing company concerned);
- any other claims exceeding the aforementioned warranty obligation.

Avesco assumes the warranty for supplies and services of subcontractors prescribed by the Customer solely under the warranty obligations of the subcontractor concerned.

The warranty claims of the Customer are explicitly and conclusively set out here in clause 14. Any other and additional claims are hereby expressly excluded.

15. Failure to Properly Perform Contract

In all cases of failure to properly perform contract not explicitly covered by these GTC the Customer shall initially set Avesco an appropriate grace period.

16. Liability

Avesco shall only be liable for loss or damage directly caused by it.

Liability for pure pecuniary losses, direct and indirect loss or damage as well as for consequential loss or damage including loss of revenues or profit, downtime, capital costs and costs for the purchase of substitute products or services is excluded to the extent permitted by law.

Avesco also assumes no liability for any claims resulting from the impairment (e.g. alteration, deletion or disablement) of software or other data processable by computers.

The liability of Avesco arising from or in connection with this contract or failure to perform it properly shall be limited in total to the contract value at most.

The claims of the Customer arising from or in connection with the contract or failure to perform it properly are explicitly and conclusively set out in these GTC. Any other and additional entitlements are excluded.

17. Force Majeure

Neither party shall be liable to the other for non-fulfillment or delayed fulfillment of its obligations under this contract in the event of force majeure. Force majeure refers to an event lying outside the control of the party, including but not restricted to natural disasters, government measures, official decisions, blockades, war and other military conflicts, mobilization, civil unrest, terrorist attacks, strikes, radioactive contamination from nuclear fuels or waste, lockouts and other industrial unrest, confiscations, embargoes or other circumstances that are unforeseeable, of a serious nature and not attributable to the parties and that arise following the conclusion of this agreement.

Each party shall do everything within its power that is necessary and reasonable to reduce the scope of the consequences arising from force majeure. The party affected by force majeure shall notify the other party immediately in writing of the beginning and end of the impediment.

Should disruption be caused by force majeure, the contract term and corresponding contractual deadlines shall be extended by the period corresponding to that of the disruption.

18. Data Protection

Avesco is entitled to process the Customer's personal data for the purpose of performing this contract to the extent necessary and in compliance with the prevailing legal provisions.

19. Right of Recourse

Should persons be injured or property belonging to third parties be damaged due to actions or omissions on the part of the Customer or its auxiliaries and a claim be lodged against Avesco in this matter, Avesco shall have a right of recourse against the Customer.

20. Applicable Law and Place of Jurisdiction

All disputes arising out of or in connection with the contract shall be governed by Swiss substantive law. The application of conflict-of-law rules and the provisions of the United Nations Convention on Contracts for the International Sale of Goods is excluded. The sole place of jurisdiction for the settlement of all disputes arising out of and in connection with the contract is the head office of Avesco.

Langenthal, June 2018