General Purchasing Terms and Conditions

I. General Part

These General Purchasing Terms and Conditions apply exclusively to all orders of EFKON GmbH, STRABAG Infrastructure & Safety Solutions GmbH and STRABAG Anlagentechnik GmbH ("PRINCIPAL") for deliveries and services of the supplier.
The General Purchasing Terms and Conditions are divided into the general part and the special parts II to V, whereby the general part applies to all services and the special parts II to V apply with regards to the performance, in addition to the concrete contractual relationship.

1. Order placement, conclusion of agreement

1.1. The supplier provides price information, offers, quotes, descriptions etc., free of charge.
1.2. Order placements (orders) by the PRINCIPAL must take place in writing and are delivered by letter, fax or email.
1.3. Amendments, additions, side letters, verbal agreements etc. require the written form in order to become legally effective.
1.4. Upon acceptance of the order by the supplier, these General Purchasing Terms and Conditions become an integral part of the agreement.
1.5. The supplier must immediately confirm the acceptance of the order in writing, by means of order confirmation.
1.6. The PRINCIPAL is entitled to withdraw the order if the supplier has not accepted the order by means of order confirmation, within 5 days of receipt of the order.
1.7. Deviating conditions of the supplier and other terms of various associations or lobbies are not recognised and do not become part of the agreement, even if the PRINCIPAL has not expressly disagreed with those on a case-by-case basis.
1.8. Deviating and/or other conditions become part of the agreement only if expressly agreed by the PRINCIPAL in writing in the concrete case.

2. Scope of the service and changes to the service

2.1. The supplier provides and owes services in accordance with the scope of the service requested in the order.
2.2. The PRINCIPAL is entitled to demand changes to the agreed scope of the service at any point in time. The supplier must submit a new written offer to the PRINCIPAL for the changes to the agreed scope of the service on the basis of evident costs.
2.3. Changes to the scope of the service are not permitted until approved in writing by the PRINCIPAL. Changes to the scope of the service provided by the supplier without the PRINCIPAL's prior written approval will not be remunerated by the PRINCIPAL.

3. Duty to cooperate and provisions

3.1. The PRINCIPAL carries out required duties to cooperate in a timely manner, if they are agreed in writing between the supplier and the PRINCIPAL.
3.2. All manufacturing and inspection devices, tools, materials, parts and/or information provided by the PRINCIPAL are the PRINCIPAL's sole property and the supplier must only use them within the framework of the contractual fulfilment and not pass them on to third parties. The supplier is obliged to return provisions immediately after contractual fulfilment.

4. Delivery and delay

4.1. Deliveries and services must comply with the PRINCIPAL's instructions.
4.2. The PRINCIPAL's order number and/or reference code must be listed on all dispatch notes, delivery papers and invoices.
4.3. Unless otherwise agreed in the order, the delivery is made in accordance with Incoterms 2020 CPT (named destination).
4.4. The delivery dates stipulated in the order are arrival dates (named destination).

4.5. Deliveries made more than 5 days prior to the agreed delivery date and/or partial deliveries are permitted if expressly requested in writing or released by the PRINCIPAL, only.
4.6. The supplier must immediately notify the PRINCIPAL in writing of a pending delivery or service delay and provide reasons and expected duration.
4.7. In the event of a delivery or service delay, irrespective of additional legal or contractual claims, the PRINCIPAL is entitled to withdraw from the contract completely or partially, without setting a period of grace.
4.8. In the event of a delivery or service delay, the PRINCIPAL is furthermore entitled to demand a penalty of 0.2 % of the order value of the late delivery or service, up to a maximum of 10 % of the order value, per calendar day, irrespective of culpability.
4.9. The PRINCIPAL reserves the right to claim any penalties in excess of the claims for damages.

5. Transfer of risk, export control, quality, dispatch

5.1. The supplier is obliged to comply with all the PRINCIPAL's requirements regarding mode of transport and dispatch rules.
5.2. The transfer of risk takes place in accordance with the agreed Incoterms.
5.3. The supplier is obliged to comply with all applicable national and international foreign trade regulations, and in particular, to obtain all required export permits for all deliveries and services, if, in accordance with the respective applicable foreign trade regulation, the PRINCIPAL or a third party, rather than the supplier, is obliged to obtain the respective export permit.
5.4. The supplier must submit all relevant information and data required by the PRINCIPAL to comply with the applicable national and international foreign trade regulations, to the PRINCIPAL in writing as soon as possible, at the latest, however, before the delivery date.
These include, in particular, the following information:
- Provision of all applicable export list numbers;
- Provision of the statistic merchandise numbers, in accordance with the harmonised system of the World Customs Organization (WCO);
- Provision of the good's country of origin (non-preferential origin);
- Supplier declaration on preferential origin (for European suppliers) or certificates on preferences (for non-European suppliers) and
- the "Export Control Classification Number" (ECCN) in accordance with the U.S. Commerce Control List, if the goods are subject to the U.S. Export Administration Regulations.

5.5. The supplier must comply with the PRINCIPAL's requirements with regards to quality management, information security and environment.
5.6. The PRINCIPAL is entitled to audit compliance with these provisions unannounced during business hours on-site at the supplier's premises, on his own or together with a third party or to commission a third party to conduct an audit.
5.7. The supplier is obliged to comply with all applicable laws, regulations, guidelines and other legal standards with regards to his deliveries and services.

6. Prices

6.1. The price listed in the order is a fixed price and includes all costs such as installation and documentation costs, packaging and dispatch costs, official fees, levies etc..
6.2. Additional expenses for complete provision of deliveries or services shall be borne by the supplier.
6.3. Price escalation and index clauses are not effective without the PRINCIPAL's express written approval.

7. Payment terms

7.1. The invoice must be submitted to the PRINCIPAL, listing all contractual details after delivery or complete provision of the service, and the written confirmation of the service must be attached.

7.2. The payment period starts once delivery or service is completed and upon receipt of a verifiable invoice.
7.3. For deliveries before the agreed delivery deadline, the payment period starts with the agreed delivery date, at the earliest.
7.4. Unless otherwise agreed, payment within 30 days is made with 3% discount or within 60 days net.
7.5. Delay starts with a written reminder.
7.6. The PRINCIPAL is entitled to retain any withholding tax on the amount payable and to pay it to the treasury, if there is no valid exemption certificate from the supplier
7.7. The PRINCIPAL is entitled to offset any penalties incurred, without further explanation, against remunerations and other receivables of the supplier.
7.8. The supplier is not entitled to offset against the PRINCIPAL.
7.9. The assignment and pledging of receivables (or parts of receivables) of the supplier against the PRINCIPAL to third parties must be announced to the PRINCIPAL beforehand and negotiated on a case-by-case basis. The PRINCIPAL is entitled to retain 2 % of the recognised invoice amount for administrative expenses in connection with the assignment of claims or a pledging of the claim or to offset this.

8. Transfer of ownership and retention of title

8.1. The transfer of ownership happens at the same time as the transfer of risk.
8.2. Any retention of title by the supplier is ineffective.

9. Warranty

9.1. The supplier warrants that his deliveries and services comply with the specifications, the current safety provisions (laws, regulations, standards, etc.) taking the latest version and the rules of technology and other requirements agreed between EFKON and the supplier into consideration, display the generally assumed characteristics that are also agreed in the agreement, are free from third-party rights and remain free from defects for the warranty period.
9.2. The warranty period is 36 months from acceptance of the work. In the event of hidden defects and defects of title the warranty period starts upon recognisability of the defect, at the earliest.
9.3. By means of written notification of a defect, the period for legal assertion of all claims in connection with a reported defect is inhibited until successful remedy of the defect.
9.4. The application of §§ 377 and 378 UGB is expressly excluded, and the PRINCIPAL is therefore not obliged to examine the deliveries and services for defects immediately after delivery or service or to give notice of a defect immediately.
9.5. The PRINCIPAL is entitled to give notice of a defect in writing at any point in time by means of a letter, fax or email.
9.6. The supplier is obliged to present suitable measures to remedy the defect to the PRINCIPAL within 5 days.
9.7. The supplier must, at his expense, either correct defects within a period determined by the PRINCIPAL, make a new delivery of goods or provide a new service free from defects, reduce the price accordingly, or change the agreement, in coordination with the PRINCIPAL.
9.8. In cases of imminent danger or tardiness of the supplier in the course of remedying the defect, the PRINICPAL is entitled to have the goods improved at the supplier's expense and to terminate the contract in full or in part.
9.9. The supplier must reimburse the PRINCIPAL for all costs in connection with remedying the defect, such as e.g. transport or travel costs, costs of assembly or disassembly, inspection costs, rectification costs by a third party etc..
9.10. After successful remedy of the defect, the warranty starts again.
9.11. In the event of a serial defect, the supplier must exchange or rectify all affected products within the framework of the warranty.
9.12. The supplier undertakes to provide EFKON with suitable replacement parts for at least 5 years after acceptance and to carry out repairs himself or to have them carried out at his own responsibility.

10. Liability

The supplier is liable in accordance with the legal provisions.

11. Non-disclosure and protection of documents

11.1. The supplier undertakes all necessary steps to keep secret all information concerning the PRINCIPAL or the contractual object brought to his attention in connection with the agreement, provided the information is not general knowledge or was transferred to the supplier in another legal way. The supplier is obliged to keep results or partial results compiled by him in the framework of the agreement secret and to use them in the fulfilment of contractual performance only.

11.2. The supplier must not use the PRINCIPAL as a reference in other projects unless the PRINCIPAL has given his prior written approval.

12. Subcontractors

The supplier must not transfer the provision of the service to subcontractors unless the PRINCIPAL has given his prior written approval.

13. Data protection

The supplier is obliged to comply with the legal provisions of data protection, in particular, the protection of personal data.

14. Applicable law, place of jurisdiction

14.1. Austrian substantive law shall apply excluding the conflict-of-law rules and the UN Sales Convention.

14.2. The place of jurisdiction is the court responsible for the PRINCIPAL at the PRINCIPAL's registered office. The PRINCIPAL is, however, entitled to file a lawsuit at the court that has factual and local responsibility for the supplier, instead.

15. Compliance guidelines

15.1. The supplier undertakes with regards to the PRINCIPAL, to comply with the principles of conduct stipulated by STRABAG in the Supplier Codex, and the principles concerning conditions of employment and human rights that are attached to the Code of Conduct, in the framework of his activities for the PRINCIPAL. For the Supplier Codex and the attachment to the Code of Conduct see www.strabag.at.

16. Term of the agreement and termination

16.1. The term of the agreement starts upon placing an order by the PRINCIPAL and ends with the fulfilment of all obligations resulting from the agreement. In the case of services, the agreement comes into force at the date agreed in the order and the term of the agreement shall be as agreed in the order.

16.2. The PRINCIPAL is entitled to terminate the agreement for important reasons in writing without keeping a notice period.
Important reasons are, in particular:

- a serious violation of the agreement by the supplier;
- the commencement of insolvency proceedings concerning the supplier's assets or the refusal of such proceedings due to lack of assets; or
- the existence of circumstances that make further proper fulfilment of the agreement apparently impossible.

16.3. In the event of a serious violation of the agreement by the PRINCIPAL, after a previous warning and after expiration of a suitable period of grace without a satisfactory result, the supplier is entitled to terminate the agreement for important reasons, in writing without keeping a notice period.

16.4. Regardless of any termination of the agreement, the PRINCIPAL's acquired property and usage rights shall apply irrevocably and permanently, and it is explicitly agreed between the supplier and the PRINCIPAL that these acquired rights cannot be limited and/or withdrawn unilaterally.

17. Final provisions

17.1. In case one provision or several provisions of these General Purchasing Terms and Conditions is or becomes invalid or unenforceable, the validity of the remaining provisions shall not be affected. The supplier and the PRINCIPAL undertake to reach an agreement in place of the invalid or unenforceable provision that corresponds to the original provision's legal and

economic goal as closely as possible.

II. Special part for works

In addition to the general part, the following provisions apply with regards to performance of works.

18. Intellectual property rights

18.1. All industrial property rights and work results arising in the framework of the implementation of the agreement, belong to the PRINCIPAL only.

18.2. The supplier transfers all industrial property rights and work results newly arising in the framework of the implementation of the agreement to the PRINCIPAL, to the extent he is legally permitted to do so.

18.3. In case a transfer of the newly arisen industrial property rights and work results is not possible, the supplier shall grant the PRINCIPAL the irrevocable, exclusive right to comprehensive use and processing of these; this right is unlimited with regards to place, time and content, transferable, paid by the agreed compensation and applicable to all known types of usage. The granting of rights includes, in particular, the right to full or partial transfer of these usage rights to third parties and the right to processing.

18.4. If the supplier uses existing industrial property rights and/or know-how in the framework of the implementation of the agreement, the supplier shall grant the PRINCIPAL the irrevocable, non-exclusive usage right to these existing industrial property rights and existing know-how; this right is unlimited with regards to place, time and content, transferable, and paid by the agreed compensation.

III. Special part for the purchase of components

In addition to the general part, the following provisions apply with regards to performance for the purchase of components.

1. Usage rights

The supplier grants the PRINCIPAL the irrevocable, non-exclusive usage right with regards to the components; this right is unlimited with regards to place, time and content, transferable, and paid by the agreed compensation.

IV. Special part for the purchase of products with integrated software

In addition to the general part, the following provisions apply with regards to performance for the purchase of products with integrated software.

1. Usage rights

1.1. The supplier grants the PRINCIPAL the irrevocable, non-exclusive usage right with regards to software that is integrated in the product and was not specially developed for the PRINCIPAL; this right is unlimited with regards to place, time and content, transferable, and paid by the agreed compensation.

1.2. The supplier grants the PRINCIPAL the irrevocable, exclusive usage right for extensive usage and exploitation with regards to software that is integrated in the product and was specially developed for the PRINCIPAL; this right is unlimited with regards to place, time and content, transferable, and paid by the agreed compensation and applicable to all known types of usage. The granting of rights with regards to the software that is integrated in the product and was specially developed for the PRINCIPAL includes, in particular, the right to full or partial transfer of these usage rights to third parties and the right to processing of the software that is integrated in the product and was specially developed for the PRINCIPAL.

2. Software Updates

The supplier undertakes to provide the PRINCIPAL with all subsequent software updates, free of charge, for the duration of the warranty period.

V. Special part for the purchase of software

In addition to the general part, the following provisions apply with regards to performance for the purchase of software.

1. Usage rights

1.1. The supplier grants the PRINCIPAL the irrevocable, non-exclusive usage right with regards to software that was not specially developed for the PRINCIPAL; this right is unlimited with regards to place, time and content, transferable, and paid by the agreed compensation.

1.2. The supplier grants the PRINCIPAL the irrevocable, exclusive usage right for extensive usage and exploitation with regards to software that was specially developed for the PRINCIPAL; this right is unlimited with regards to place, time and content, transferable, and paid by the agreed compensation and applicable to all known types of usage. The granting of rights with regards to the software that was specially developed for the PRINCIPAL includes, in particular, the right to full or partial transfer of these usage rights to third parties and the right to processing of the software that was specially developed for the PRINCIPAL.

2. Software Updates

The supplier undertakes to provide the PRINCIPAL with all subsequent software updates, free of charge, for the duration of the warranty period.