



General Terms & Conditions

1. Scope

- 1.1. The following General Terms & Conditions shall apply to all contracts for the procurement of goods and other services which are provided to a customer (hereinafter referred to as “**Customer**”) by ARRK Engineering GmbH (Munich, commercial register number HRB 143242 - hereinafter referred to as “**ARRK**”) under a contract. Hereinafter, ARRK and the Customer will also individually be referred to as a “**Party**” and jointly be referred to as “**Parties**”.
- 1.2. These General Terms & Conditions shall apply exclusively. Conflicting, derogating or additional contract, supply or license terms of the Customer will not become part of the contract, even where ARRK does not expressly object to them. The only exception from this is if ARRK has explicitly consented to their application in writing (text form is sufficient).
- 1.3. The contractual conditions of the main order must be used correspondingly for any additional and respectively change orders. This does not require separate agreement.
- 1.4. Insofar as the written order or respectively individual assignment puts in place regulations that deviate from these conditions, these deviating regulations shall take precedence.
- 1.5. These conditions also apply for future transactions with ARRK. The relevant version of the General Terms and Conditions is the one in effect at the time the contract is executed. These can be accessed using the following web address:

<https://engineering.arrk.com/terms-and-conditions>
- 1.6. Unless otherwise provided for in the relevant provision, text form (in particular e-mail) is not sufficient where these General Terms and Conditions refer to “written form”.

2. Subject matter of the agreement and offers

- 2.1. Unless expressly agreed otherwise, the offers of ARRK are subject to change.
- 2.2. As a general rule, orders do not have to be placed in a particular form. Orders which are placed orally are binding too. Unless otherwise agreed, orders that are placed orally shall be confirmed to ARRK in writing (text form is sufficient).

3. Service provision

- 3.1. The Customer undertakes to support ARRK in its work. In particular, it shall create the conditions in its sphere of control that are necessary for the proper performance of the contract free of charge. This also includes the timely disclosure or provision of any required data and other information, as well as the timely provision of other services on which the performance shall be based.

- 3.2** If the Customer does not provide the data or information or services which are requested by ARRK or otherwise required in a timely manner, and where the performance is delayed because of this, ARRK shall not be in default of performance.
- 3.3** ARRK is not obliged to check data or other information it receives from the Customer for correctness or completeness where, taking into account the respective circumstances, there is no reason to do so in an individual case.
- 3.4** ARRK reserves the right to provide partial services in an individual case.
- 3.5** ARRK may use third parties in the performance of its obligations. The contract can be subcontracted in whole or in part. Where ARRK subcontracts a contract, it shall notify the Customer of this in writing (text form is sufficient). Employees or affiliates are not considered 'third parties' for the purposes of these General Terms & Conditions. For the purposes of these General Terms & Conditions, an affiliate is a company which – directly or indirectly – is controlled by a party, controls a party, is combined with a party under common management, or is under joint control with a party. In this context, control is also assumed if at least 50% of the shares or voting rights are held.
- 3.6** ARRK will not subcontract contracts if the Customer, after it has been notified by ARRK, asserts that there are overriding interests worthy of protection. ARRK must be notified of this within an appropriate period of time and the Customer shall specify the relevant reasons. Where ARRK is not so notified, the Customer may not raise any further objections to the subcontracting.

4. Acceptance

- 4.1** The acceptance of the service shall be documented in a certificate of acceptance which the Customer needs to sign.
- 4.2** The Customer may not refuse to accept the service based on insignificant deficiencies which do not seriously impair the suitability of the service for the contractually agreed purpose.
- 4.3** If the Customer refuses to accept the service, it must provide the facts on which the refusal is based to ARRK in writing (text form is sufficient).
- 4.4** The burden of proof for a refusal of acceptance lies with the Customer.
- 4.5** A work shall also be deemed accepted, in particular, where the Customer refuses the acceptance for other unjustified reasons although it was asked by ARRK to provide the reasons and was given an adequate period of time for doing so.

5. Prices and payment terms

- 5.1** The amount of the compensation shall be agreed in the individual contract. Unless otherwise agreed in the individual contract, the compensation will be invoiced by ARRK on a monthly basis. Payments are due and payable within 30 days of receipt of the invoice without any deductions. The invoices issued by ARRK shall be deemed accepted if the other party to the contract does not object to them in writing (text form is sufficient) within two weeks of receiving the invoice.
- 5.2** The rates agreed only apply at the project location. If the Customer requires employees to undertake business trips or approves such trips, the Customer shall reimburse the related travel expenses. Travel times shall be remunerated as working time at the hourly rate agreed.

- 5.3** The Customer may only offset claims or assert rights of retention if its claims are undisputed or have been upheld and declared unappealable. Customer counterclaims from the same contractual relationship are excluded from this.
- 5.4** ARRK may assert rights to refuse performance and rights of retention against claims of the Customer at any time. ARRK is also entitled to offset its own claims against claims of the Customer where the Customer has transferred these claims to third parties.

6. Retention of title

- 6.1** The contractual object shall remain the property of ARRK until all payments to be made under the contract have been received.
- 6.2** The Customer is entitled to resell the contractual object without entering into an agreement on the exclusion of assignment. The claim resulting from the resale, including all ancillary rights, is hereby assigned to ARRK in advance. However, the Customer remains entitled to collect the claim even after the assignment. This shall not affect the right of ARRK to collect the claim.
- 6.3** Any processing or reworking of the contractual object owned by ARRK by the Customer shall always be done for ARRK. Where the object is processed together with other objects that are not owned by ARRK, ARRK becomes a co-owner of the new object in proportion to the value of the contractual object compared to the value of the other objects processed as of the time of the processing.
- 6.4** The Customer may not pledge the contractual object which is subject to retention of title as security or assign it as security. The Customer shall notify ARRK of any seizures that occurred at the instigation of third parties without undue delay.

7. Warranty

- 7.1** Unless otherwise agreed, the warranty shall be aligned with the legal provisions applicable in each case.
- 7.2** As a general rule, statements regarding the goods or services to be provided, such as the ones contained in a product or work description in offers, do not constitute an agreement on quality, unless the respective statement expressly gives rise to such an agreement on quality. In general, they do not constitute an agreement on a specific intended use either unless such an intended use was agreed in an individual contract.
- 7.3** If the goods or services to be provided are deficient or defective, the Customer shall grant ARRK an adequate period of time for subsequent performance.
- 7.4** The Customer is not entitled to remedy the deficiency itself or have it remedied by a third party without specifying a period for subsequent performance and waiting until that period has expired without the requested remediation. Where the Customer shortens the period for subsequent performance due to special circumstances which require immediate action, it must present these circumstances and the necessity of shortening the period for subsequent performance to ARRK in writing in substantiated form and provide appropriate reasons.
- 7.5** In each case of a claim of deficiency by the Customer, ARRK reserves the right to decide on whether to provide subsequent performance in the form of remediation or a new delivery.

- 7.6** If there is a deficiency, ARRK only needs to reimburse the Customer for expenses that are directly related to the subsequent performance. All further claims are excluded. The only exception is a claim for the reimbursement of expenses in accordance with Section 439 (3) of the German Civil Code (BGB).
- 7.7** All claims for defects must be asserted within one (1) year of the acceptance of the service.
- 7.8** The foregoing limitations of liability do not apply where ARRK has caused the breach of duty intentionally or by acting with gross negligence or where the claim is based on an injury to life, limb or health.
- 7.9** The Customer shall review the goods or services to be provided without undue delay and with the due care and diligence and shall notify ARRK of apparent deficiencies or defects within seven (7) days of the acceptance in writing (text form is sufficient). This also applies to any hidden deficiencies which are discovered later as of the time of discovery. Where the Customer does not comply with the duty to review and provide notification of deficiencies, it is not entitled to assert any warranty claims.

8. Liability

- 8.1** ARRK is liable without any limitation for intentional acts and gross negligence.
- 8.2** ARRK is only liable for ordinary negligence if it involves the breach of material contractual duties. In this context, the extent of the liability is limited to the foreseeable damage typically incurred with this type of contract. This also, in particular, applies to any indirect and/or consequential damage. In the event of ordinary negligence, liability for lost profits shall be excluded.
- 8.3** Any further liability beyond the liability set out in these General Terms & Conditions shall be excluded, regardless of the legal basis of the claim asserted.
- 8.4** The foregoing limitations and exclusions of liability do not apply to statutory strict liability (e.g. under the German Product Liability Law), liability under a no-fault guarantee or liability based on an injury to life, limb or health.
- 8.5** Where liability is excluded or limited in accordance with the foregoing provisions, this also applies to the personal liability of the salaried or other employees, agents and management bodies of ARRK, as well as any persons employed by it in the performance of its obligations.

9. Termination and rescission

- 9.1** Where the provision of the service is a work performance or a work delivery, the Customer may terminate the contract with an appropriate notice period. The notice period shall be no less than two (2) weeks. In addition, the statutory regulations apply.
- 9.2** This shall not affect the right to terminate the contract for cause. The existence of such a cause for termination shall be assumed, in particular, where one Party breaches a material duty under this contract and does not remove or remedy this breach or hold the other Party harmless within an adequate period of time specified by the other Party.
- 9.3** Where ARRK becomes aware of facts that give rise to doubts with respect to the Customer's ability to pay after the execution of the contract, ARRK is entitled to demand full payment or the provision of appropriate security within an adequate period of time specified by ARRK before it continues to perform the contract. Where the Customer has not made such payment or provided the security in the period specified by ARRK, ARRK has the right to terminate the contract.

- 9.4** Where the conditions of a statutory right of rescission are met, the Customer is only entitled to such a right of rescission if ARRK is responsible for the breach of duty on which the rescission is based.

10. No assignment

The Customer is not allowed to assign any claims the Customer may have against ARRK to other parties.

11. Covenant of non-solicitation

- 11.1** Where an employee of ARRK who is used in the performance enters into an employment agreement with the Customer during the provision of the service or within twelve months of the completion of the service, the Customer shall pay ARRK a 'referral fee' in the amount of 25% of the gross annual income of the respective employee.
- 11.2** **11.1** does not apply where the collaboration of the employee of ARRK in the provision of the service was not the cause for hiring the employee. The burden of proof for showing that it was not the cause lies with the Customer.

12. Confidentiality

- 12.1** The Parties undertake to keep confidential information which was provided to them or which they learned about otherwise in the context of the contract confidential and to only use such information in connection with the purpose of the cooperation. They must ensure that confidential information is not made available to third parties (directly or indirectly) and must take all actions that are required to ensure that third parties cannot access such trade secrets or exploit such secrets.
- 12.2** For the purposes of Section **12.1**, "confidential information" shall be defined as all company and trade secrets, as well as, in particular, information on costs and prices and the bases of their calculation; the projects and amounts, customer contacts and customer specifications, technical drawings and data, work products and time lines on which the relevant contract is based; as well as other information that was provided to a Party by the other Party or its subcontractors or which it learned about otherwise and which was classified as requiring secrecy by the disclosing Party or which obviously needs to be kept confidential.
- 12.3** The documents made available to the Parties or prepared by them in the context of the contract shall always be stored by them with the level of care that is standard in the industry to ensure that they cannot be accessed by third parties without authorization.
- 12.4** The obligation to cover confidentiality and non-utilization of confidential information shall not apply insofar as this information
- a.)** was demonstrably known to the Parties before the disclosure,
 - b.)** was already publicly accessible or known to the public before disclosure, or becomes known at a later point in time without a breach of the obligation to confidentiality,
 - c.)** was or is developed independently by the Parties, without accessing the company and trade secrets, or
 - d.)** must be disclosed due to a court instruction or regulatory action, or
 - e.)** was or is provided or made available to the Parties on a non-confidential basis.
- 12.5** If and to the extent that this is necessary in the context of the contract ("need-to-know principle"), the Parties may disclose information, as defined in Section **12.2**, to its employees and subcontractors and make copies of such information.

- 12.6** Where ARRK uses subcontractors in the context of the contract, ARRK shall place them under confidentiality obligations which correspond to its own confidentiality obligations vis-à-vis the Customer as necessary.

13. Ownership and copyrights

- 13.1** ARRK grants the Customer, with respect to the contractual work results created by ARRK (e.g. concepts, design drawings, or software) – unless otherwise agreed in the contract – subject to payment of the agreed compensation, a simple (i.e. non-exclusive) right of use. Irrespective of the scope of the rights granted to the Customer, ARRK shall in any event be entitled to use ideas, concepts, acquired know-how and the like for further developments and services, including for other Customers.
- 13.2** Where ARRK designs, manufactures and/or installs anything based on the instructions, drawings or other documents of the Customer, it does not accept any liability for any resulting infringement of the intellectual property rights of third parties. Where a third party claims vis-à-vis the Customer that intellectual property rights were infringed, the Customer shall notify ARRK of this without undue delay and indemnify ARRK against the claims of the third party. The Customer's duty to indemnify ARRK also extends to all expenses, such as legal costs, which are necessarily incurred by ARRK in connection with the claims brought against it by a third party.

14. Data protection

- 14.1** In particular with respect to the processing of personal data, the Customer must ensure compliance with the legal regulations regarding data protection. Where any obligation to protect data secrecy which is required under data protection law is required, the Customer shall impose such an obligation before any work is performed and shall provide proof of this to ARRK upon request.
- 14.2** Where necessary, an agreement relating to commissioned data processing must be concluded with ARRK to this end.

15. General

- 15.1** The place of fulfillment and place of jurisdiction for all disputes is exclusively Munich. This also applies if the Customer does not have a general place of jurisdiction in the Federal Republic of Germany when judicial proceedings are brought. However, ARRK may also bring proceedings in any other permissible court.
- 15.2** The law of the Federal Republic of Germany shall apply. The application of the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 (CISG) is ruled out.
- 15.3** If individual provisions of this contract between the parties, including these conditions, are or become ineffective, this shall not impact the validity of the remainder of the contract.