General Terms and Conditions of Vinci Energies Deutschland – Pole Infrastrukturen und Industrietechnik*

1. General
   a. Conditions of the Customer that deviate from or supplement these terms and conditions are not binding on Vinci Energies Deutschland – Pole Infrastrukturen und Industrietechnik* (Supplier/Contractor) even if Supplier does not object to these. Supplier reserves the right to conclude the contract only if the Customer declares that it wants to fulfill only on the basis of its terms and conditions.
   b. Ordering and acceptance as well as their modifications and supplements must be in written form. Verbal collateral agreements during conclusion of contract shall only be effective if they are confirmed in written form by Supplier. This applies also for changes to the contract after the conclusion of the contract.
   c. Subject to condition precedent for the event that an application for the opening of insolvency proceedings is filed against the assets of the Customer, the Customer herewith assigns to Supplier its current and future claims to performance and to payment at the time of the happening of the condition from a legal relationship of the Customer with a third party if and provided that the subject matter of such a claim can also be regarded as performance in the legal relationship between Supplier and the Customer.
   d. The ownership of and copyright to plans, drawings and ideas incorporated in the delivery are held by Supplier. Supplier reserves the ownership rights and copyright to tender documents, cost estimates and other similar information – also in electronic form. Supplier is manufacturer as defined by Section 951 German Civil Code (BGB).
   e. Documents and information are supplied to the other Contracting Party in trust; these may only be used for the agreed purposes and may only be made available to third parties with the prior written consent of Supplier.
   f. Offers are binding up to a maximum of 1 month from the date of the offer.

2. Contract provisions
   a. The following sequence shall apply, which shall also determine the priority in the case of objections:
      i. Confirmation of order by Supplier
      ii. The work contract
      iii. The record of the negotiation
      iv. The specifications
      v. The planning documents
      vi. The terms and conditions of the main contract
      g. The relevant DIN and/or EN regulations
      h. The instructions and notes of the manufacturer of the materials used
      i. The current state of the art
      j. The labour protection laws, the Ordinance on Industrial Safety and Health, the regulations of the professional associations and the relevant government agencies
      k. DIN 1961
      l. National German civil law

3. Contractual Penalties:
   a. If and to the extent that a penalty is effectively agreed, the following shall apply in addition:
      i. Notwithstanding the contractual commitments, the Customer grants the Supplier/Contractor a grace period of 14 calendar days starting from the agreed date, i.e. in this period neither of the Contracting Parties shall be regarded as being responsible for a missed deadline.
      b. All claims of the Customer to damage caused by default shall be compensated by this contractual penalty.

4. Insurance policies and obligations of the Supplier/Contractor
   a. The Supplier/Contractor undertakes with its insurance policies to procure a liability insurance in the amount of € 500,000 for personal injury and € 250,000 for other damages.

5. Performance
   a. Prior to the start of work the Customer must designate one supervisory and authorized person who is authorized to receive the instructions of the Customer and to inform the Customer of legally relevant declarations, actions, instructions and conditions.
   b. The Customer undertakes to coordinate the progress of the construction work, to take all required measures and to refrain from any actions that would impede this work, so that a performance of the work and services of the Supplier/Contractor can take place free of any legal or actual obstacles throughout the entire period of the performance of this work.
   c. The Supplier/Contractor shall be obligated to remedy defects within the scope of the statutory provisions, however item 7 shall apply regarding the warranty period. Withdrawal from the contract owing to a defect that is not substantial (cf. item 7 d) is only possible if the Supplier/Contractor is culpably responsible for a delay in remedying defects.
   d. Section 377 German Commercial Code (HGB) shall not apply.

6. Quality and function tests, test operation
   a. The Supplier/Contractor shall carry out a certified test operation, as per the performance of work defined in the contract, on the acceptance of the work contract.
   b. Place of performance for all payments is the seat of the Supplier/Contractor.

7. Acceptance and warranty
   a. A period of 12 months from the date of acceptance shall be valid for the warranty of the subcontractor.
   b. A justified notice of defects shall not impair the validity of the warranty with regard to these defects.
   c. If the acceptance is delayed for reasons that are not attributable to Supplier, the price and performance risk shall be transferred to the Customer from the date of completion of the performance.
   d. The acceptance shall take place without delay after the notification of the readiness for acceptance / completion. It shall not be possible to refuse this acceptance on the grounds of any force majeure. A defect shall be regarded as substantial if the intended use or function of the work to be performed by the Supplier/Contractor is excluded or substantially impaired.
   e. While the reservation of ownership is in force, the Customer shall not be entitled to either pledge the reserved goods or to assign them as security. The resale is only permitted in regular business dealings and subject to the conditions that the Contracting Party receives payment from its customer or makes the proviso that the ownership will only be transferred to the customer after it has fulfilled its payment obligation. The Contracting Party herewith assigns to Supplier its claims from the resale.
   f. The Customer shall notify Supplier without delay in the event of attachments, seizures or other orders from third parties for the property of Supplier up until the fulfillment of all claims of Supplier against the other Contracting Party from the business connection. This shall be valid also if individual goods have been paid for but other claims are still outstanding.
   g. ii. If the Customer has completely put the work into use or made it available to a third party for use/development, the acceptance shall be considered completed after 7 calendar days from the commencement of this use, provided no substantial defect (see letter d) exists and the warranty incumbent on the warranty is not impaired.

8. Settlement and payments, provision of security
   a. Malus payments shall be made in acc. with Section 5 of ATV-DIN 18299.
   b. Place of performance for all payments is the seat of the Supplier/Contractor.
   c. The furnishing of the following securities is agreed accordingly:
   d. For the proper fulfilment of all main performance obligations incumbent on the Supplier/Contractor according to the work contract with the exception of the warranty, 5% of the net order amount.
   e. For the fulfilment of all obligations of the warranty incumbent on Supplier/Contractor according to the work contract, 2% of the net order amount.
   f. The Supplier/Contractor may choose the form of security at his discretion and can change this at any time to another form.
ii. To the extent that the permission to use the software is included in the scope of delivery, the Customer has a non-exclusive right to use the supplied software including its documentation for the purpose of setting up and using the work.

iii. The Customer is initiating or executing work, without a delay in delivery for which the Customer is responsible, Supplier/Contractor can similarly execute the work.

iv. The Customer is in default with regard to an action or omission to which it is obligated according to the contract (Sections 280ff, 293f German Civil Code)

v. In the event that the security was put up in the form of a guarantee and that the secured main debt at the time of the return of the guarantee was reduced as a result, the beneficiary from the guarantee shall be obligated to return this guarantee concurrently against receipt of a guarantee put up on the corresponding portion of the security and otherwise unchanged.

vi. If the Supplier/Contractor provides notice of termination as per letter b) or withdraws, the Customer must compensate it for the work performed as well as for the work not performed less saved expenses. Further claims to damages of the Supplier/Contractor shall remain unaffected. Exclusions of liability between the Contracting Parties shall also not apply to this extent.

11. Liability
The Supplier/Contractor shall be liable to the Customer in the case of damage caused intentionally or by gross negligence. Exempted from this are only such cases in which the law imperatively demands another type of liability.

12. Final provisions

a. Amendments and supplements to this contract or these general terms and conditions shall require written form in order to be valid.

b. Provided written form is specified in the contract or in the general terms and conditions, transfer by fax but not by phone or electronic media will suffice. The right as per Section 127 (2) sentence 2 German Civil Code to subsequently demand an original copy shall remain unaffected.

c. Should individual provisions of these general terms and conditions be or become invalid, the validity of the remaining provisions will not be affected by this. The Contracting Parties undertake to amend or supplement invalid provisions in such a way as to come as close as possible to the desired intention of the respective party.

d. Place of jurisdiction for all disputes arising from this contract is Frankfurt-on-Main. However, the Customer shall be entitled to file an action against the Supplier/Contractor at any other valid place of jurisdiction.

e. All rights and obligations arising out of this contract are subject exclusively to German law to the exclusion of international private law and the UN Uniform Sales Law (CISG).

**VINCI Energies Deutschland - Infrastrukturen und Industrietechnik**

*Valid: 01.01.2016*

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*Applicable for the following companies:*