

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

1. General

- a. Conditions of the Customer that deviate from or supplement these terms and conditions are not binding for Vinci Energies Deutschland – Pole Infrastrukturen and Industrietechnik* (Supplier/Contractor) even if Supplier does not object to these or if the Customer declares that it wants to fulfil 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, drawing 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

The following sequence shall apply, which shall also determine the priority in the case of objections:

- a. The confirmation of order by Supplier
- b. The work contract
- c. The record of the negotiation
- d. The specifications
- e. The planning documents
- f. 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:

If and to the extent that a penalty is effectively agreed, the following shall apply in addition:

- a. 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 herewith that it has taken out 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 receive all legally relevant declarations of the Customer with effect for the Supplier/Contractor.
- 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. Reservation of ownership

- i. All goods belonging to the delivery (reserved goods) shall remain the property of Supplier up until the fulfilment 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.
- ii. 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.
- iii. The Customer shall notify Supplier without delay in the event of attachments, seizures or other orders from third parties.
- iv. In the case of default in payment Supplier shall be entitled to redeem the goods after dunning and the other Contracting Party shall be obligated to surrender the goods. The assertion of the reservation of ownership and the seizure of the plant by Supplier shall not be regarded as withdrawal from the contract.
- v. Supplier shall be entitled to withdraw from the contract and to demand the immediate return of the delivery if an application for the opening of insolvency proceedings is filed against the Customer, if notice of termination of the work contract is given, or if the

work contract is terminated in any other way.

6. Quality and function tests, test operation

- a. Should the Customer request proofs of quality or function, it shall remunerate separately for these.
- b. (1) The Supplier/Contractor shall carry out an agreed test operation after the completion of work and before the acceptance only to the extent that the work contract explicitly stipulates this. (2) Should obstructions or defects arise during this test operation that completely block this test or make it comparably difficult to perform, the duration of the test operation, the duration of the impairment and the duration of the restarting of the test operation will be extended. (3) Should obstructions or defects arise during this test operation that obstruct or impair the use of this plant in part or in full, the test operation shall begin again anew after the complete and proper elimination of the defects. (5) The result of the test operation shall be recorded in writing.

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 impede the course 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 a non-substantial defect. 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. If the Customer has partly or completely put the work into use or made it available to a third party for use/further processing, 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 Supplier/Contractor is notified within this period. The use of parts of a structural plant to continue the works shall be considered a partial acceptance.

8. Settlement and payments, provision of security

- a. Measurements 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.
 - i. For the fulfilment of all obligations of the warranty incumbent on Supplier/Contractor according to the work contract, 2% of the net order amount.
 - ii. The Supplier/Contractor may choose the form of security at his discretion and can change this at any time to another form.

- iii. If and provided the Supplier/Contractor has not made a choice in this matter, the security will be furnished as cash withholding. If a surety is put up to replace a security existing in some other form, this other security shall be surrendered without delay.
 - iv. The Customer shall return securities for claims based on defects within two years of the date of acceptance of the construction work (cf. for example Section 17 (8) Para. 2 German Construction Contract Procedures (VOB/B)). A reasonable part of the security may only be retained because of unfulfilled claims based on defects, if notification of these justified defects was already provided during the warranty period.
 - 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
 - e. An assignment or pledging of claims of the Customer against the Supplier/Contractor is only permitted with the prior written consent of the Supplier/Contractor.
9. Provisions for pricing and settlement of accounts:
- a. The contract prices are fixed prices up until completion, unless subsequently otherwise specified.
 - b. The prices are based on the wage and materials cost valid at the time of the offer. Should a period of more than 2 months lie between the receipt of the offer and the signing of the contract or between the signing of the contract and the commencement of the performance of the work, without a delay in delivery for which Supplier is responsible, Supplier can adjust the prices to take into account most recent material, wage (corresponding to the changes of the base wage of the local and relevant collective labour agreement) and other ancillary costs (Section 315 German Civil Code (BGB)).
 - c. Prices shall be EXW (Incoterms 2010) unless expressly otherwise agreed.
 - d. Added to the prices are the applicable value added tax in the respective statutory amount.
- e. The Customer shall be entitled to withhold payments or services or to offset these against counterclaims only to the extent that its claims are undisputed or res judicata.
- 10. Use of software**
- a. 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.
 - b. The Customer shall be permitted to make a security copy of the software and to use this copy.
 - c. All other rights to the software and the documentation, including the copies are held by Supplier, which is also the manufacturer as defined by Section 951 German Civil Code.
 - d. Termination/withdrawal
 - e. Section 649 of the German Civil Code shall apply in the event of a notice of termination by the Customer or a jointly decided cancelling or termination of the contract – without prejudice to the other rights of the Contracting Parties.
 - f. The Supplier/Contractor shall be entitled to terminate the contract, if alternatively
 - i. The Customer is in default with regard to an action or omission to which it is obligated according to the contract (Sections 280ff, 293ff German Civil Code)
 - ii. The Customer is in default in payment
 - iii. The Customer is assigning or has assigned rights and obligations to a third party with full or partial effect of discharging these rights and obligations
 - iv. The Customer has discontinued his payments, an application for the opening of insolvency proceedings has been filed against his assets or suspended for lack of assets, the Customer is initiating or executing liquidation proceedings or has taken such a decision
 - v. The legal entity of the Customer is to be dissolved in law or has been dissolved or otherwise terminated or is to be terminated
 - vi. Based on substantive law, the Supplier/Contractor is entitled to terminate the contract, to withdraw from it or to otherwise end it.
- vii. in the case of Section 314 German Civil Code
 - g. 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 provision.
 - 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

*Applicable for the following companies:

Elektro Stiller GmbH, Frankenluk AG, Omexom Frankenluk GmbH, Omexom GA Nord GmbH, Omexom GA Süd GmbH, Omexom Hochspannung GmbH, Axians GA Netztechnik GmbH, Omexom Service GmbH, Martin Bohsung GmbH, Ing 3E GmbH, Omexom Umspannwerke GmbH, Actemium BEA GmbH, Actemium Fördertechnik Rheinland GmbH, Omexom Ebehako GmbH, Actemium Cegelec GmbH, Actemium Cegelec Services GmbH, Actemium Controlmatic GmbH, Actemium EMR GmbH, Actemium H&F GmbH, Actemium Kappelhoff GmbH, Cegelec Contracting GmbH, Controlmatic Industriestandhaltung und Service GmbH, LMR – Technik GmbH Ingenieurbüro für Prozeßautomation, Omexom Kraftwerk Service GmbH, Petrochemicals Maintenance Services GmbH (PMS), Langer GmbH, VED Industrietechnik Management GmbH, VINCI ENERGIES DEUTSCHLAND GmbH