

# General Purchasing Conditions for Deliveries and Services by Contractors

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## (1) Purpose and validity

All our orders and orders for deliveries and services by contractors are based exclusively on the following General Purchasing Conditions for Deliveries and Services by Contractors. Any and all individual regulations take precedence, in particular, provisions laid down in the order and in the minutes of negotiations, as well as any provisions applied by our customer if and in as far as that they were used as a basis, as well as the list of services including preliminary remarks.

## (2) Definitions:

CUSTOMER

CONTRACTOR = CONTRACTOR and all its vicarious agents

CLIENT = CUSTOMER's customer and Client's customer

Employee = Representatives, legal representatives, vicarious agents of CUSTOMER or CONTRACTOR

## (3) Value-added tax

Amounts as described below in more detail, in particular, amounts quoted in offers, orders and settlement sums, penalties and securities determined by mutual agreement or by a legally binding decision are expressed as t<sup>^</sup> respective net purchase values. If CONTRACTOR is a taxpayer within the meaning of section 13 b of the Value-added Tax Law (UStG, *Umsatzsteuergesetz*), section 48 b of the Income Tax Law (EStG, *Einkommensteuergesetz*), the respective amount is to be deemed to be exclusive of value-added tax at the statutory rate.

## (4) Data protection

CUSTOMER is an ISO/IEC 27001 certified company that applies high safety standards, so that both CUSTOMER and CONTRACTOR are obliged to a particularly high degree to observe and comply with the implementation of the legal provisions of the General Data Protection Regulation (GDPR) and the Federal Data Protection Act (BDSG, *Bundesdatenschutzgesetz*). CONTRACTOR is obliged to comply with the provisions of the GDPR and the BDSG as amended. CONTRACTOR may only employ persons for the provision of services who CONTRACTOR has trained accordingly and committed to data secrecy.

## 1 Basis of contract

- 1.1 The basis of contract is specified in section 1 of the minutes of negotiations and in addition by the laws of the Federal Republic of Germany
- 1.2 In as far as the basis of contract contains different requirements for documentation, for any evidence that may be required and for the conditions for acceptance, all such requirements must be fulfilled in their entirety. This can also be achieved by way of implementing the most far-reaching requirements in each case if and to the extent to which these also include less far-reaching requirements.
- 1.3 Any terms and conditions of CONTRACTOR that may deviate from or supplement these General Purchasing Conditions are not binding upon CUSTOMER even if CONTRACTOR does not object or if CONTRACTOR states that it intends to perform exclusively according to its terms and conditions.
- 1.4 CUSTOMER expressly refers to the 'VINCI Code of Ethics and Code of

Conduct' and the 'Anti-corruption Code of Conduct' in force at its company which can be downloaded from the following website: „<http://www.vinci-energies.de/de/nachhaltigkeit/gesellschaftliche-verantwortung/unsere-verantwortung/>“.

## 2 Basis of offers and orders

- 2.1 Orders and declarations of acceptance as well as any modifications thereof and amendments thereto are not valid unless made in writing. Any oral ancillary agreements made at the time the contract is entered into are only valid if they have been confirmed in writing by CUSTOMER.
- 2.2 If CONTRACTOR does not accept the order within 14 days, CUSTOMER will be entitled to revoke the order prior to receipt of CONTRACTOR's declaration of acceptance.
- 2.3 Complete transfer or subcontracting by CONTRACTOR to third parties

with regard to the supplies and services ordered is subject to CUSTOMER's written consent. CONTRACTOR and such third party are jointly and severally liable.

- 2.4 Costs for insurance of goods, in particular, for forwarding insurance, are part of CONTRACTOR's unit prices and therefore will not be borne separately by CUSTOMER. CUSTOMER is a prohibition or waiver customer.

## 3 Responsibilities, powers of attorney

The project manager is only authorised to issue instructions to CONTRACTOR if such authority is affirmed in the minutes of negotiations.

However, the project manager is never authorised to change or delete any wording or clauses of these special conditions or of the minutes of negotiations following their adoption. Any such changes or deletions are subject to express approval by

# General Purchasing Conditions for Deliveries and Services by Contractors

CUSTOMER's executive management or purchasing director.

## 4 General duties of CONTRACTOR

### 4.1 Information and care obligations

- (1) If CUSTOMER has informed CONTRACTOR of the intended purpose of the deliveries, or if this intended purpose is recognisable to CONTRACTOR even without express notification, CONTRACTOR is then obliged to inform CUSTOMER immediately if CUSTOMER's deliveries are not suitable for such intended purpose.
- (2) Circumstances which endanger adherence to agreed delivery dates must be immediately reported to CUSTOMER in writing in order to agree upon further steps.
- (3) CONTRACTOR is obliged to immediately notify CUSTOMER in writing of any changes in the type of composition of the material processed or its constructive design compared to similar deliveries or services previously provided to CUSTOMER. Any changes are subject to CUSTOMER's written consent.
- (4) CONTRACTOR must ensure that the deliveries and services comply with environmental protection, accident prevention and other occupational health and safety regulations as well as safety regulations and all legal requirements applicable in the Federal Republic of Germany, and inform CUSTOMER's of any special, not generally known handling and disposal requirements for each delivery. This includes, in particular, REGULATION (EC) No 1272/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (REACH) and all related EU and German legal acts.
- (5) Any safety-relevant defects which are detected at a later date on the basis of product observations must be reported to CUSTOMER without being requested to do so even after the warranty period has expired.

### 4.2 Technical documentation

- (1) All technical documents requested by CUSTOMER must comply with the

relevant German standards in form and contents and must be delivered in German. These documents constitute an integral part of the delivery.

- (2) The machine or manufacturing equipment ordered must be accompanied by instructions in three copies, subdivided as follows:
  - Product information
  - Requirements for the place of installation
  - Instructions for transport, installation and dismantling
  - Operating information (use)
  - Maintenance manuals and information.
- (3) Unless included in the operating manual according to section 4.2 (2), the following documents must be supplied as an annex to the manual:
  - Completed machine card according to the Committee for Economical Manufacturing (AWF, *Ausschuss für wirtschaftliche Fertigung*)
  - Information regarding accessories
  - Lists of wear and spare parts
  - Test/inspection report
  - Assembly drawing, if available
  - List of tools, if available
  - Programming instructions, if available
- (4) Technical documents required by CUSTOMER to prepare for installation and operation prior to delivery of the machine or production equipment must be delivered on the dates and in the quantities specified in the order.
- (5) When requested by CUSTOMER, CONTRACTOR is obliged to provide CUSTOMER with written confirmation that the deliverable complies with the provisions of the accident prevention regulation for 'Electrical Installations and Equipment' (DGUV V3).
- (6) In as far as official approval is required for the use of the machine or production equipment ordered, CONTRACTOR is obliged to provide CUSTOMER with the necessary documents in three copies. CONTRACTOR is obliged to support CUSTOMER to the best of CONTRACTOR's ability in obtaining official approval.

## 5 Special duties of CONTRACTOR

### 5.1 Compliance with the principles of the United Nations Global Compact

- (1) By joining the United Nations' Global Compact, CUSTOMER and its employees commit themselves to comply with the Global Compact.
- (2) CONTRACTOR undertakes to observe the principles of the UN Global Compact Initiative. These essentially concern the protection of international human rights, the right to collective bargaining, the abolition of forced and child labour, the elimination of discrimination in recruitment and employment, as well as responsibility for the environment and the prevention of corruption. Further information on the UN's Global Compact Initiative can be found at [www.unglobalcompact.org](http://www.unglobalcompact.org).
- (3) CONTRACTOR undertakes to inform CUSTOMER immediately of any and all infringements of the principles listed in subsections 1 and 2 occurring in CONTRACTOR's business sphere.
- (4) In the event that CUSTOMER becomes aware of any violation of the conditions mentioned in subsections 1 to 3, CUSTOMER reserves the right to review and, if necessary, terminate the joint business relationship.

### 5.2 Shipping

Deliverables must be adequately packed and shipped. Packaging and shipping instructions must be observed. Delivery notes or packing slips must be enclosed with each shipment. Order numbers and CUSTOMER's markings specified in the order must be shown on all documents. A dispatch note must be sent to CUSTOMER no later than on the day of shipping. Additional costs incurred by CUSTOMER due to non-compliance with the above requirements must be borne by CONTRACTOR.

### 5.3 Waste disposal

Packaging material may only be used to the extent necessary and must consist of the most eco-friendly material possible; CONTRACTOR is obliged to take back packaging within the framework of the provisions of waste law, unless otherwise agreed upon.

### 5.4 Spare parts and readiness for delivery

# General Purchasing Conditions for Deliveries and Services by Contractors

- (1) CONTRACTOR is obliged to supply spare parts for the duration of normal technical use, however, for at least 10 years after the last shipment of the deliverable, subject to reasonable terms.
- (2) If CONTRACTOR discontinues supplies of spare parts after expiry of the period specified in section 5.4 (1) or if the delivery of the deliverable ends during this period, CUSTOMER must be given the opportunity to place a final order.

## 5.5 Items made available by CUSTOMER

- (1) Items of any kind which CUSTOMER makes available to CONTRACTOR will remain CUSTOMER's property. Such items may only be used to provide the deliverables ordered.
- (2) CONTRACTOR is obliged to perform any necessary maintenance and inspection work at its own expense, to adequately insure the items provided and to provide CUSTOMER with proof thereof when so requested.
- (3) In as far as items made available by CUSTOMER are processed or transformed by CONTRACTOR to form a new movable item, CUSTOMER will be deemed to be the manufacturer thereof. In the event of combination or inseparable mixing with other items, CUSTOMER will become the co-owner of the new item in proportion to the value which the previously separate items had at the time of combination or mixing. If combination or mixing takes place in such a way that CONTRACTOR's items are to be considered to be the main item, the parties agree that CONTRACTOR will be obliged to transfer proportionate co-ownership to CUSTOMER; CONTRACTOR will keep such co-ownership in trust for CUSTOMER.

## 6 Changes in and additions to the scope of delivery and/or services

- 6.1 In the event that CUSTOMER receives from its CLIENT any subsequent orders within the scope of its order, CONTRACTOR will then be obliged to execute such order. Accounts will then be settled according to the unit prices of the main order.
- 6.2 CONTRACTOR is not entitled to refuse execution of a change that is required in order to achieve the agreed success or to refuse a change in the

agreed success unless CONTRACTOR cannot be reasonably expected to do so under the circumstances of the particular case. In as far as CONTRACTOR claims internal reasons for unreasonableness, it must bear the burden of proof.

- 6.3 In the event that preparation of an offer by CONTRACTOR requires planning services, CONTRACTOR is also obliged to perform such services in as far as it can be reasonably expected to do so, for instance, because CONTRACTOR's business has the required resources.

- 6.4 Within the scope of CLIENT's project, CUSTOMER may also buy material from CONTRACTOR without assembly/installation services subject to the terms of the order in as far as the material to be procured and/or the type of material is included in the scope of delivery of the main order.

- 6.5 Section 650 b of the German Civil Code (BGB, *Bürgerliches Gesetzbuch*) applies in all other cases where CUSTOMER requires changed services or a changed success of the work, with CUSTOMER being directly entitled to immediately order the changed service, unless the parties agree on a different deadline in the minutes of negotiations.

## 7 Time schedule

- 7.1 The agreed delivery date is binding. Advance shipments are subject to CUSTOMER's consent.
- 7.2 In order to determine whether shipments or installation work or services were completed on schedule, such shipments, work or services must have arrived or been completed at the shipping address specified by CUSTOMER.

## 8 Penalty

- 8.1 If CONTRACTOR is in default, CUSTOMER is entitled to demand a penalty of 0.1% of the order value per calendar day (with incomplete days counting as full days), but not more than 5% of the order value.
- 8.2 CUSTOMER can demand the penalty until payment or other fulfilment of the final invoice at the latest.

## 9 Acceptance

- 9.1 If agreed, joint preliminary acceptance will take place at the manufacturer's factory. CUSTOMER will determine the scope of preliminary acceptance. Following confirmation of preliminary acceptance by CUSTOMER, the delivery release will then take place.

- 9.2 Acceptance will be carried out by CUSTOMER's personnel at the place of installation. The machine or production equipment, including the associated technical documentation, will be checked for defects. CUSTOMER will determine the scope of acceptance testing. The machine or production equipment will not be deemed to have been accepted until CUSTOMER has signed the unqualified acceptance report.

## 10 Remuneration, prices

Prices are quoted free place of performance (DDP Incoterms 2010), including all loading (loading and unloading) operations.

## 11 Changes in remuneration

- 11.1 CONTRACTOR is obliged to disclose its calculation when requested by CUSTOMER if CONTRACTOR demands remuneration for services rendered as a result of a change in the agreed success or in order to achieve the agreed success.
- 11.2 CONTRACTOR is obliged to disclose its calculation of certain unit prices if CUSTOMER demands this in order to prepare amendments for CLIENT. CONTRACTOR is obliged to submit such calculation within 12 working days after being requested to do so.
- 11.3 Section 650 c BGB applies in all other cases where CUSTOMER requires changed services or a modified success of the work, with prices that have already been agreed upon being also applicable to such services, unless the parties agree upon a different price.

## 12 Invoices

The invoice must show the order number and the markings specified in the order.

## 13 Payments

# General Purchasing Conditions for Deliveries and Services by Contractors

- 13.1 Payment will be made after receipt of the goods and invoice within 15 calendar days minus 3% discount, within 15 to 29 calendar days minus 2% discount or optionally after 30 calendar days net without any discount.
- 13.2 Section 13.1 applies mutatis mutandis to other acts of performance by CUSTOMER as well as the justified assertion of rights to refuse performance and rights of retention.
- 13.3 If CUSTOMER allows the discount period for a down payment or the advance payment to expire, this will not affect the right to deduct discount for remaining payments or activities equivalent to performance.
- 13.4 All prices are exclusive of value-added tax. Value-added tax will be invoiced separately at the applicable rate in accordance with applicable tax regulations.
- 13.5 Cheques or bills of exchange are accepted as equivalent to performance.

## 14 Security

### 14.1 Performance bond

- (1) As security for the performance of the contract, CONTRACTOR is obliged to provide CUSTOMER at its request with security amounting to 10% of the order value ('performance bond') unless the parties have agreed to a different security amount in the minutes of negotiations. The performance bond secures CUSTOMER's claims for contractual performance of the service, as well as CUSTOMER's warranty and payment claims not related to defects (in particular, due to penalty, damages, reimbursement of additional costs and repayment of overpaid remuneration).
- (2) In as far as claims for defects are also secured by the performance bond, security is limited to claims for defects found before or during acceptance. The performance bond does not secure any claims due to defects which are discovered for the first time after commencement of the warranty period.
- (3) This performance bond also serves to secure recourse claims which CUSTOMER may have against CONTRACTOR based on a claim which CUSTOMER raises against CONTRACTOR in the event of a violation of section 14 of the Act on Mandatory Working Conditions for Employees Posted Across Borders and for Employees Regularly Employed in Ger-

many (AEntG, *Arbeitnehmerentsendegesetz*) by CONTRACTOR (payment of the minimum wage to employees and payment of the contributions to a joint institution of the parties to the collective bargaining agreement), section 28e (3a) to (3f) of the Fourth Book of the Code of Social Law (SGB IV, *Sozialgesetzbuch (SGB) Viertes Buch (IV)*) (payment of social security contributions) and section 150 (3) of the Seventh Book of the Code of Social Law (SGB VII, *Sozialgesetzbuch (SGB) Siebtes Buch (VII)*) (payment of contributions to the employers' liability association for the construction industry).

- (4) In order to simplify processing, CUSTOMER can retain 10% of the respective payment amount for each advance payment until the security amount is reached (cash withholding).
- (5) CONTRACTOR may, in as far as the cash amount withheld has not already been used for a justified purpose, demand payment thereof against simultaneous provision of performance bond to be issued by a credit institution or credit insurer that is permitted in accordance with section 17 (2) VOB/B and covering 10% of the order amount, corresponding to the sample attached to the minutes of negotiations and referred to as 'performance bond'.
- (6) In the event of a change in the order amount due to an increase in quantities, changes, ordering of optional items, etc., the amount of the performance bond will change accordingly. If CONTRACTOR has submitted a performance bond, the amount thereof must be adjusted when requested by a party to reflect the changed order sum. If the contract amount has increased, CUSTOMER is entitled to withhold a cash amount corresponding to the currently unsecured difference until the guarantee amount has been adjusted; this cash amount withheld can be replaced by adjusting the amount of the guarantee subject to the conditions laid down in subsection (5).
- (7) The performance bond may not contain a deposit clause. It also serves to secure any claims which CUSTOMER may have for reimbursement of overpayments as well as damages. This is also applicable if the warranty bond as contemplated in subsection (2) above is replaced by a bank guarantee. The claim for performance out of security (also in the form of a guarantee) does not expire before expiry of the limitation period for the secured claim.

- (8) CONTRACTOR can request that the performance bond be returned to it after acceptance and expiry of the verification period for the final invoice, as well as concurrently against the provision of security in accordance with section 14.2. Should, however, any claims secured by the security not yet be fulfilled, CUSTOMER may retain part of this security corresponding to such claims. If no performance bond was submitted, a cash amount withheld after acceptance and expiry of the inspection period for the final invoice will be reduced to the amount of the warranty retention plus any claims which were already asserted by CUSTOMER but not yet fulfilled.

- (9) The provision of security by depositing money is excluded. Otherwise section 17 VOB/B is applicable.

### 14.2 Security for CUSTOMER's claims due to defects

- (1) In order to secure CUSTOMER's claims due to defects discovered after acceptance (including damages), CONTRACTOR is obliged to provide at CUSTOMER's request security amounting to 5% of the invoiced sum ('warranty bond') for the 'full warranty period', unless the parties have agreed to a different security amount in the minutes of negotiations.
- (2) This warranty bond also serves to secure recourse claims which CUSTOMER may have against CONTRACTOR based on a claim which CUSTOMER raises against CONTRACTOR in the event of a violation of section 14 AEntG by CONTRACTOR (payment of the minimum wage to employees and payment of the contributions to a joint institution of the parties to the collective bargaining agreement), section 28e (3a) to (3f) SGB IV, and section 150 (3) SGB VII (payment of contributions to the employers' liability association for the construction industry).
- (3) In order to simplify processing, CUSTOMER can retain 5% of the respective payment amount from the final payment as warranty security (cash withheld).
- (4) CONTRACTOR may, unless the cash amount withheld has not already been used for a justified purpose as contemplated in subsection (3), demand payment of such cash amount withheld against simultaneous provision of a warranty bond to be issued by a credit institution or credit insurer that is permitted in accordance with section 17 (2) VOB/B and covering an

# General Purchasing Conditions for Deliveries and Services by Contractors

amount corresponding to the payment request, corresponding to the sample attached to the minutes of negotiations and referred to as 'warranty bond'.

- (5) CUSTOMER is obliged to return the warranty bond under the conditions of section 17 (8) No. 2 VOB/B, however, subject to the condition that instead of the period of two years specified therein in sentence 1, the limitation periods for claims due to defects as contractually agreed by the parties will apply instead.
- (6) If the parties have agreed upon a limitation period of 10 years in the minutes of negotiations, without having made a separate agreement to reduce security after the expiry of the standard limitation period of 5 years, security will be reduced to 1% of security, unless a claim has been made beforehand. After 10 years, security must be returned in full, unless any claims have been raised thereunder before. If the security has been claimed and the claim asserted in each case has not yet been fulfilled, CUSTOMER may retain a corresponding part of this security for such claims.
- (7) Otherwise 17 VOB/B and section 14.1 (7) apply.

## 15 Claims related to defects

- 15.1 Sections 377 et seqq. Of the German Commercial Code (HGB, *Handelsgesetzbuch*) and articles 38, 39 CISG are waived. The following applies instead: CUSTOMER is not obliged to inspect a delivery immediately unless this is not unreasonable or inappropriate for CUSTOMER due to the operating procedures made known to or recognisable by CONTRACTOR. In this case, a complaint is considered to be still submitted on time if it is made immediately after recognition of the defects unless the defects were obvious at the time of delivery even without inspection. If the parties do not agree otherwise in the minutes of negotiations, a period of three weeks after delivery and, in the case of obvious defects, of two weeks will be deemed to be sufficient.
- 15.2 CONTRACTOR warrants that its deliveries and services will remain free of defects during the statutory warranty period and that they have the contractually agreed characteristics. CONTRACTOR assumes the guarantee for the contractually agreed characteristics as well as performance or

quality characteristics (sections 443, 444, 639 BGB).

- 15.3 The limitation period for defects begins with formal acceptance of CONTRACTOR's services in the case of services requiring acceptance and with CUSTOMER's counter-signature on the confirmation of receipt of delivery in the case of services not requiring acceptance or, if this does not take place and if no special provisions have been made in this framework agreement, in accordance with the statutory provisions. The respective statutory limitation period is extended by 6 months. The limitation period will be suspended by a justified notice of defects.
- 15.4 Defects must be reported to CONTRACTOR in writing within a reasonable period of time as soon as they have been discovered in the ordinary course of business.
- 15.5 CONTRACTOR will carry out quality inspections and, on request, allow CUSTOMER to inspect the manufacturing process at CONTRACTOR's works. Corresponding documents will be made available to CUSTOMER at its request.
- 15.6 In the event of new production or rectification of defects, the defective item must be taken back by CONTRACTOR at the place of its intended use (location) as stated in the order placed with CONTRACTOR, otherwise at the place of performance.

## 16 Liability/insurance

- 16.1 CUSTOMER's liability to CONTRACTOR is limited to cases of intent or gross negligence.
- 16.2 (1) CONTRACTOR is obliged to take out at its own expense adequate business liability insurance, to maintain this during the term of the contract, wherein the following amounts must be available at least twice per insurance year in the event of several claims:
- | Type of damage:          | Cover:     |
|--------------------------|------------|
|                          | In EUR:    |
| Personal injury          | 2,000,000  |
| Damage to property       | 2,000,000  |
| Financial loss           | 1,000,000  |
| Active contributory loss | 500,000.00 |
- (2) CONTRACTOR will submit copies of the insurance contracts to CUSTOMER at the time of delivery. CONTRACTOR is not entitled to any pay-

ments from CUSTOMER until insurance cover is proven. CUSTOMER can make payments contingent upon proof of existence and continued existence of insurance cover.

(3) CONTRACTOR authorises CUSTOMER to contact the insurance company directly in the event of damage, to request information from the insurance company or to conduct negotiations. CUSTOMER is in this context irrevocably authorised to claim and accept compensation payments from the insurance company in its own name, in as far as such compensation payments are attributable to damage to CUSTOMER's property.

## 17 Term and termination

### 17.1 Termination

- (1) CUSTOMER can cancel the entire contract or parts thereof at any time.
- (2) If CONTRACTOR is responsible for the reasons for termination, only the services which have been provided up to that point in time in accordance with the contract, which are complete in themselves and which have been proven, will be remunerated in as far as these are usable by CUSTOMER. Further claims which CUSTOMER may have due to damages remain unaffected. CONTRACTOR is, in particular in the following cases, responsible for the reasons for termination:
- CONTRACTOR fails to provide a service free from defects despite being requested to remedy and despite a deadline being set therefor.
  - CONTRACTOR fails to comply with contractually agreed deadlines and dates despite being requested to remedy and despite a deadline being set therefor.
- (3) If CONTRACTOR is not responsible for the reasons for termination, CUSTOMER will reimburse the services demonstrably rendered up to the date of termination as well as any unavoidable costs. CONTRACTOR is not entitled to any further claims for performance or damages as a result of termination. CONTRACTOR is obliged to agree upon a corresponding provision with its subcontractors.
- (4) The rights to the work results created up to termination will be transferred to CUSTOMER.

### 17.2 Insolvency and insolvency petition against CONTRACTOR

# General Purchasing Conditions for Deliveries and Services by Contractors

- (1) CUSTOMER is, in particular, entitled to terminate the contract in accordance with section 17.1 (2) if CONTRACTOR suspends payments or files a petition for the opening of insolvency proceedings or comparable proceedings or if insolvency proceedings or comparable proceedings are opened against its assets.
- (2) Subject to a condition precedent should the case contemplated in subsection (1) occur, CONTRACTOR now already assigns its present and future performance and rectification claims which exist at the time the condition precedent occurs and which CONTRACTOR has from a legal relationship with a third party.
- (3) The object of this legal relationship must be the performance or rectification of a service which is also to be regarded as performance or rectification in the legal relationship between CUSTOMER and CONTRACTOR. In as far as that legal relationship also concerns the performance or rectification of services which are not to be regarded as performance or rectification in the legal relationship between CUSTOMER and CONTRACTOR, assignment of such claims is not possible.

## 17.3 Continuation of services

If the contract between CUSTOMER and CONTRACTOR is terminated by unilateral declaration of intent or agreement or otherwise (other than by performance, sections 362, 364 BGB) (hereinafter referred to as 'termination of the contract'), CONTRACTOR is obliged to provide any and all resources which CUSTOMER needs in order to continue the work. This includes in particular: the use of equipment, materials, facility components, drawings, know-how and intellectual property rights. CONTRACTOR is obliged to comprehensively support CUSTOMER in this use. CONTRACTOR is obliged to immediately hand over the complete project documents to CUSTOMER free of charge and hereby assigns all rights to these documents to CUSTOMER subject to termination of the contract as a condition precedent which CUSTOMER accepts. CONTRACTOR waives any rights of retention with regard to the surrender of documents for whatever legal reason and CUSTOMER accepts such waiver. Project documents are all items in physical form as well as any computer-based data, files and other information which may be directly or indirectly connected with the project and its execution.

## 17.4 Subcontractors

CONTRACTOR now already assigns to CUSTOMER, with CUSTOMER accepting such assignment, subject to termination of the contract as a condition precedent,

- any and all of CONTRACTOR's current and future claims against subcontractors ('subcontractors'), including any and all claims for performance, non-performance or defective performance, repayment claims arising from overpayments, claims for damages, warranty claims, claims for security and claims for insurance payments based on damage suffered by CONTRACTOR or its subcontractors, as well as
- any and all claims to and from related securities and guarantees (such as advance payment guarantees, performance and warranty bonds).

CONTRACTOR is obliged to include in all contracts to be concluded with each of its subcontractors a statement by the subcontractor in which the subcontractor agrees to CONTRACTOR assigning to CUSTOMER all of CONTRACTOR's claims that may exist against the subcontractor (in particular: claims for performance, repayment claims arising from overpayments, claims for damages, warranty claims, claims for insurance payments with regard to damage suffered by the subcontractor, claims against and from the guarantees provided by the subcontractor) subject to termination of the contract as a condition precedent.

When requested, CONTRACTOR is obliged to provide CUSTOMER with proof thereof.

## 18 Violations of intellectual property and patent rights

- 18.1 CONTRACTOR is obliged towards CUSTOMER to maintain secrecy in relation to third parties with regard to information, knowledge, experience (any and all know-how used and generated in the project) and other items of knowledge regarding the performance being the subject matter of the contract as well as the conditions of the project which have become known to it in conjunction with the project, even after the termination of the contract. This does not apply to third parties involved in the performance of the contract in as far as

such third parties have been obliged to secrecy in a corresponding manner.

- 18.2 CONTRACTOR will ensure that its employees, subcontractors and freelancers are also bound by the confidentiality obligation.
  - 18.3 CONTRACTOR warrants that the deliveries and services do not infringe any patent or other intellectual property rights of third parties. CONTRACTOR undertakes to fully indemnify CUSTOMER against any claims by third parties on CUSTOMER's first demand and to be liable for the damage incurred. CONTRACTOR will bear any licence fees.
  - 18.4 CONTRACTOR undertakes to treat as confidential any commercial and technical information and documents which are not generally known and which become known to it through the business relationship and to use such information and documents exclusively for the performance of the deliveries ordered. Subcontractors, if any, must be obliged accordingly.
  - 18.5 In references or publications, CONTRACTOR may only refer to CUSTOMER's company name or to its trademarks if CUSTOMER has given its prior written consent.
  - 18.6 The copyright for plans, drawings and ideas embodied in the delivery are personal to CONTRACTOR. CUSTOMER is the manufacturer within the meaning of section 950 BGB.
- ## 19 Assurances/other agreements
- 19.1 CUSTOMER is entitled to set off claims which CONTRACTOR has against CUSTOMER against claims which CUSTOMER or other related companies of CUSTOMER within the meaning of sections 15 et seqq. of the German Stock Corporation Act (AktG, *Aktiengesetz*) have against CONTRACTOR. CUSTOMER is also entitled to set off its claims against CONTRACTOR against any claims to which CONTRACTOR is entitled against one of the aforementioned companies.
  - 19.2 CONTRACTOR may only set off undisputed claims against CUSTOMER which have been established as final and absolute or which are ready for a decision against CUSTOMER's claims.
  - 19.3 CONTRACTOR is not entitled to assign its claims against CUSTOMER without CUSTOMER's written consent or to have them collected by

# General Purchasing Conditions for Deliveries and Services by Contractors

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third parties; this does not apply if CONTRACTOR has effectively agreed to extended reservation of title.

- 19.4 The documents (plans, drawings, documentation, data etc.) produced or procured by CONTRACTOR and to be handed over to CUSTOMER will become CUSTOMER's property. CONTRACTOR's right of retention after the end of performance (acceptance, termination or cancellation of the contract) is generally excluded unless CONTRACTOR's claims on which the right of retention is based have been accepted by CUSTOMER or established as final and absolute.
- 19.5 CUSTOMER's documents which are made available to CONTRACTOR must be handed over to CUSTOMER after completion of CONTRACTOR's services at the latest.
- 19.6 CUSTOMER is entitled to claim compensation from CONTRACTOR for any damage suffered by CUSTOMER as a result of CUSTOMER, for its part, being held liable by CLIENT for CONTRACTOR's culpable infringement of statutory or official regulations, or as a result of CUSTOMER being prevented from continuing with the work, or as a result of a delay in the construction process.
- 19.7 This contract itself as well as any and all modifications and amendments must be in writing in order to be effective. This is also applicable to a waiver of the written form requirement.
- 19.8 The parties hereto have not made and entered into any ancillary agreements.

## 20 Dispute resolution

In as far as the parties have agreed upon mediation or any other form of out-of-court settlement of conflicts in the minutes of negotiations, the provisions specified therein must be observed.

## 21 Jurisdiction, applicable law and severability clauses

- 21.1 The place of performance for deliveries by CONTRACTOR is the shipping address specified in the order. If no shipping address is specified and if the place of performance is not determined by the nature of the contractual obligation, CUSTOMER's address will be deemed to be the place of performance. DDP (Place of Performance) Incoterms 2010 have sub-

ordinate validity. The place of performance for payments is also CUSTOMER's place of business. Non-cash payment will be deemed to have been effectively made if the account contains sufficient funds when the transfer is made and when CUSTOMER has irrevocable access to the funds which are free from any rights of third parties.

- 21.2 In the event of a defect in its deliveries, CONTRACTOR is obliged to take back the defective item without disassembly at the place where the item is located in accordance with its intended purpose (location) (place of performance for rectification of defects). Section 19.6 remains unaffected.
- 21.3 If CONTRACTOR is a merchant, CUSTOMER's place of business, i.e. Frankfurt am Main, Germany, is the exclusive place of jurisdiction, also for cheque and bill proceedings. However, CUSTOMER is entitled to sue CONTRACTOR before any competent court of law.
- 21.4 All rights and obligations arising from this contract are governed exclusively by German law to the exclusion of international private law and the UN Convention on Contracts for the International Sale of Goods.
- 21.5 Should individual parts of these General Purchasing Conditions for Contractors or parts of other provisions referred to and included herein by reference be legally invalid, the validity of the remaining provisions will not be affected thereby.

An ineffective clause will be replaced with the nearest clause permissible according to law and case law, which reflects the economic and legal sense in the nearest, maximum permissible manner.