

# General Purchasing Conditions for CONTRACTOR's Construction and Assembly/Installation Services

## (1) Purpose and validity

All our orders for construction and assembly/installation services are based exclusively on the following special conditions for contracts for construction and assembly/installation services. 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 the 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 (BSDG, *Bundesdatenschutzgesetz*). CONTRACTOR is obliged to comply with the provisions of the GDPR and the BSDG 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 the 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 claims for changed or additional remuneration, for extension of the term or other claims, 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 CONTRACTOR's terms of contract, including CONTRACTOR's General Terms and Conditions will not become part of the contract. Such terms of CONTRACTOR are expressly waived and are not accepted by CUSTOMER. This also applies to all other external general terms and conditions of delivery, including, but not limited to, those laid down by ZVEI, VDI, etc. CONTRACTOR's assembly and service conditions, if any, are also excluded.
- 1.4 The VINCI Group's 'Code of Ethics and Code of Conduct' and the 'Anti-corruption Code of Conduct', which can

be downloaded from the website shown below, are additionally applicable:

"<http://www.vinci-energies.de/de/nachhaltigkeit/gesellschaftliche-verantwortung/unsere-verantwortung/>"

## § 2 Basis of offers and orders

- 2.1 CONTRACTOR is obliged to carefully examine specifications, planning and other contract documents submitted (in particular, with regard to dimensions and measurements) and to inform CUSTOMER in writing of any contradictions, ambiguities and/or inaccuracies of individual contract components relating to the type and scope of the services to be rendered.
- 2.2 CONTRACTOR confirms that it has clarified and assumes full responsibility for such clarification of all details of the services to be rendered and that it is either aware of the nature of the construction object and the local conditions or that it has refrained from obtaining the necessary knowledge at its own risk. If CONTRACTOR submits an offer without a prior site inspection, any disadvantage resulting therefrom will be at CONTRACTOR's own risk.

- 2.3 CUSTOMER must be informed in writing of any risks in CONTRACTOR's offer calculation. If no reservations are made, all risks of an order, if placed, will be considered to be included in the order.
- 2.4 CUSTOMER has the right to open CONTRACTOR's cost calculation submitted in order to examine supplementary claims which CONTRACTOR issues. CONTRACTOR will be given the opportunity to be present when the cost calculation is opened. Following inspection, the cost calculation must be sealed again in CONTRACTOR's presence and then stored securely.
- 2.5 Claims for additional costs, for instance, due to adverse circumstances, simultaneous work by several trades, heights and distances on the construction site will not be accepted.
- 2.6 The services to be performed also include any and all ancillary services within the meaning of section 4.1 of any relevant provision of the German Construction Contract Procedures, Part C (VOB/C, *Vergabe- und Vertragsordnung für Bauleistungen, Teil C*), tests, inspections and acceptances, measuring and testing equipment, commissioning and trial operation as required by law or contractually agreed upon.

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2.7 CONTRACTOR's offers for delivery and services are always binding upon CONTRACTOR and non-binding upon and free of charge for CUSTOMER. They are always based on CUSTOMER's General Purchasing Conditions for Construction and Assembly/Installation Services as made available to CONTRACTOR.

2.8 CONTRACTOR, by submitting the offer to CUSTOMER, accepts the provisions of section 2.7. Any written reference to CONTRACTOR's general terms and conditions in its offer will become and is invalid.

## § 3 Responsibilities, powers of attorney, site management

3.1 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 CUSTOMER's executive management or purchasing director.

3.2 CONTRACTOR is obliged to appoint a responsible specialist site manager in writing on or before the time work commences. The responsible specialist site manager is entitled to legally represent CONTRACTOR vis-à-vis CUSTOMER. It is responsible for quality, work preparation and personnel deployment as well as for compliance with labour law and labour protection regulations at the construction site.

3.3 The construction site assignment of CONTRACTOR's specialist site manager will end at the end of the project. His dismissal is subject to CUSTOMER's consent. Any temporary absence during the assembly/installation times, no matter for what reason, must be immediately reported to CUSTOMER. In such case, CONTRACTOR is obliged to appoint an equally competent proxy.

3.4 CONTRACTOR is obliged to indemnify CUSTOMER with regard to any damage, loss, disadvantage and claim of any third party that could result from non-availability of the specialist site manager. This also includes cases where CONTRACTOR's employees ask CUSTOMER for advice at the construction site with the consequence that CUSTOMER's unavoidable response could be interpreted as an instruction to employees not provided for in a contract to produce a work

(‘Werkvertrag’ pursuant to section 631 of the German Civil Code (BGB, *Bürgerliches Gesetzbuch*)).

## § 4 General obligations of the parties with regard to the execution of the order, framework conditions

4.1 CONTRACTOR has the complete delivery and/or service obligation with regard to the item/trade identified on page 1 of the minutes of negotiations. This includes everything that may be necessary for the complete and workmanlike performance of the service and its intended use, even if individual deliveries/services are not listed, entirely or in part, in the specifications, but are necessary for technical reasons.

4.2 CONTRACTOR is obliged to perform the deliveries or services described in the basis of contract and the specifications in section 1 of the minutes of negotiations in accordance with the contractual circumstances, in a manner that is usable and fit for purpose, free from legal or factual obstacles to usability for CUSTOMER, within the agreed performance period and in the manner agreed upon (scope of CONTRACTOR's performance).

4.3 The scope of CONTRACTOR's performance specifically corresponds to the recognised rules of technology, the relevant environmental protection, accident prevention and other occupational health and safety regulations as well as the generally recognised, safety-related and occupational medical rules applicable at the place of performance.

4.4 CONTRACTOR is obliged to carry out the work assigned to it independently, under its own responsibility and in a correct and careful manner. At the same time, it must also respect CUSTOMER's interests. CONTRACTOR is not subject to any right of CUSTOMER to issue instructions or directives; however, CONTRACTOR is obliged to observe CUSTOMER's technical specifications in as far as this is necessary for the proper performance of the contract.

4.5 CUSTOMER will provide CONTRACTOR with information and data required to prepare an offer or to execute the order. If necessary, technical documents, such as design drawings, installation plans, programme sequence descriptions or models, etc. will be made available in as far as they are in CUSTOMER's possession.

4.6 CONTRACTOR is obliged at all times to verify independently and under its

own responsibility whether its scope of performance can be rendered in a manner that is usable and fit for purpose as well as free from legal or factual obstacles in conformity with the contract on the basis of the basis of contract specified in section 1 and the information otherwise available to CONTRACTOR. CONTRACTOR must report any obstacles immediately, i.e. without culpable delay (reporting obligation).

4.7 Objections based on new knowledge must be communicated to CUSTOMER in writing at the latest before the performance of the contractual services starts. Failure to comply with this obligation will result in the loss of any additional claims.

4.8 CUSTOMER reserves the right to check the quality of services provided. The checks will always be carried out in CONTRACTOR's presence in as far as this is necessary and possible.

4.9 All services to be rendered by CONTRACTOR must be performed with perfect craftsmanship, in accordance with the generally recognised rules of technology and in conformity with valid standards. More far-reaching technical requirements, regulations, specifications and factory standards of CUSTOMER or of the operator of the facility to be erected as agreed upon with CONTRACTOR as the basis of contract pursuant to section 1.1 of the minutes of negotiations must be taken into account as additional requirements and in the order of priority specified in the minutes of negotiations. Any assembly/installation work performed in deviation from the regulations will be deemed to constitute nonconformity and must be remedied by CONTRACTOR at its own expense. This also applies mutatis mutandis to all deliveries made by CONTRACTOR.

4.10 Unless expressly agreed otherwise, CONTRACTOR is unconditionally obliged to observe the specifications for materials, brands, products, deliveries, etc. as laid down in the contract, including its components. Deliveries or services of an ‘equivalent nature’ are only permitted with CUSTOMER's express written consent.

4.11 CONTRACTOR may only use brand-new, flawless construction materials, components and equipment that comply with the relevant standards and test marks. Only materials may be used for which a subsequent delivery period of at least 10 years is guaranteed. When requested, CONTRACTOR is obliged to furnish at its own expense proof of the quality and serviceability of its deliveries and services.

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- 4.12 CUSTOMER must be invited to sampling appointments with sufficient notice. The invitation must specify the services to be sampled and the products or materials which CONTRACTOR intends to demonstrate to CUSTOMER. CONTRACTOR may only sample products and materials in conformity with the contract; any additional claims by CONTRACTOR will be excluded if CUSTOMER has chosen a specific product or material during the course of sampling and if CONTRACTOR has failed to inform CUSTOMER that this will lead to additional costs.
- 4.13 CONTRACTOR is obliged to draw up a report for each sampling session; a copy of the sampling report must be forwarded to CUSTOMER within one week after the sampling date. The costs of sampling and any evidence requested by CUSTOMER must be borne by CONTRACTOR. Approval of sampled materials does not release CONTRACTOR from its responsibility with regard to the quality of such materials.
- 4.14 CONTRACTOR undertakes to provide CUSTOMER, at the latter's request and free of charge, with a reasonable number of items to be delivered for the purpose of sampling.
- 4.15 The respective place of performance is indicated in the respective order. CONTRACTOR may not use, remove or alter any equipment at the place of performance without corresponding permission.
- 4.16 When entering and leaving the place of performance, CONTRACTOR must submit to the resulting inspections by CUSTOMER and/or CLIENT. CONTRACTOR must oblige its vicarious agents accordingly in the case of approved subcontracting.
- 4.17 CONTRACTOR undertakes to comply with all financial and tax regulations applicable at the place of performance. CONTRACTOR is, in particular, responsible for compliance with all registration and approval procedures under trade, residence and labour law at the place of performance. This obligation applies both to CONTRACTOR's company and its employees and other vicarious agents. CONTRACTOR is liable under criminal and civil law for any consequences resulting from violation of financial, tax, trade, residence and labour law regulations.
- 4.18 Quantities on which the contract between CUSTOMER and CONTRACTOR is based are always estimates which may increase or decrease. Items can also be omitted. CONTRACTOR is, however, obliged to maintain sufficient capacity. An increase in quantity by up to **20 %** will not result in postponement of dates or deadlines. The services to be rendered will be constantly coordinated with CUSTOMER's representative at the construction site. The order value/value of a framework order is not binding upon CUSTOMER. However, the respective individual call-off is binding.
- 4.19 CUSTOMER reserves the right to remove partial services – to whatever extent – from the total scope of scheduled or technical changes or changes requested by CUSTOMER and to transfer these to other contractors. In the event that this results in overlapping or interfaces with these contractors, CONTRACTOR is obliged to carefully coordinate its work with them. Any waiting periods that may result will not be remunerated.
- 4.20 In principle, CUSTOMER will perform its services to its CLIENT as part of an overall construction activity by CLIENT. It is common that other construction activities also take place during construction and assembly work. The interests of these companies must be taken into consideration.
- 4.21 CONTRACTOR cannot claim a situation where it can work without interruption. Multiple trips to the construction site will not be remunerated and are included in the unit prices or packages.
- 4.22 CONTRACTOR is responsible for and obliged to produce the necessary documentation in a checked quality, free of errors, and in any case with an error rate not exceeding the usual error rate of a finished, checked document. Formats, execution, drawing numbers, folder structures, etc. must be agreed upon with CUSTOMER before the documents are produced. CONTRACTOR must include any and all costs in this respect in the unit prices.
- 4.23 CONTRACTOR is obliged to obtain and provide any and all official approvals, certificates and attestations required for commissioning and operation of the work/facility produced by CONTRACTOR.
- 4.24 Contractor has the right to work for third parties as well. CUSTOMER's prior consent is not required for this unless CONTRACTOR also plans to work for a competitor on the same project of CUSTOMER.
- 4.25 CONTRACTOR must inform CUSTOMER immediately if there is any risk to the proper execution of the order by CONTRACTOR.
- 4.26 Advertising by CONTRACTOR or its subcontractors of any kind whatsoever at the construction site is not permitted without CUSTOMER's consent. CUSTOMER may also use construction site fences or construction crane as advertising carriers for its own advertising and have large-scale advertising attached to scaffolding, without CONTRACTOR being entitled to any claims on this basis, in particular, claims for remuneration.
- 4.27 Advertising by CONTRACTOR in conjunction with the project must be agreed upon with CUSTOMER prior to publication.

## § 5 Special duties of CONTRACTOR

### 5.1 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 Planning

- (1) CUSTOMER's release and approval notes on CONTRACTOR's execution/as-built documents, workshop and assembly drawings, etc. do not imply any joint responsibility on the part of CUSTOMER and do not limit CONTRACTOR's unlimited responsibility for its services.

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(2) CUSTOMER is entitled to issue amended planning specifications to CONTRACTOR. In such case, CONTRACTOR is obliged to independently check which further plans and drawings (concerning, for instance, technical building services) have to be adjusted accordingly and to amend the plans as required.

## 5.3 Personnel planning and deployment

(1) CONTRACTOR is obliged to inform CUSTOMER's site manager, no later than when work commences, which of CONTRACTOR's employees are assigned to execute the order.

(2) CONTRACTOR will employ its own personnel from countries of the European Community to execute the order. All employees must have a social security card and carry it with them on the works premises.

(3) Foreign employees may only be employed by CONTRACTOR if these employees have a valid residence and work permit for the geographic area and the time where and when the work is to be performed. CONTRACTOR must verify the existence of these prerequisites before these employees perform any work.

(4) CONTRACTOR is obliged to communicate the names of the employees deployed by it with sufficient lead time for the purpose of regulating access to the place of performance and to inform CUSTOMER of any changes in advance.

(5) CONTRACTOR is responsible for registration of the employees with works security (ID card office) as well as for the provision of any documents or permits that may be necessary for the deployment of employees. The works ID card issued by CUSTOMER must be carried at all times. CONTRACTOR must bear any costs incurred in the case of a loss of ID cards provided by CUSTOMER.

(6) CONTRACTOR and its employees must inform themselves, without being specifically requested to do so, of the company rules applicable at the place of performance and observe such rules.

(7) CONTRACTOR is obliged to have the work assigned to it exclusively performed by qualified personnel and to supervise them during work.

(8) Any of CONTRACTOR's employees who are not professionally or personally qualified to perform the services ordered by CUSTOMER must be replaced by CONTRACTOR. If an employee of CONTRACTOR is found with

alcohol or other intoxicating substances or if grossly negligent or intentional acts against safety/security, environment and health are detected, replacement of such employee is mandatory. Any and all consequences and/or costs must be borne by CONTRACTOR in such cases.

(9) CONTRACTOR is obliged to ensure group transport of personnel from the construction site car park or social rooms to the assembly/installation site.

(10) CONTRACTOR and its vicarious agents are not employees of CUSTOMER. CONTRACTOR is not entitled to claim from CUSTOMER vacation, fixed wages, continued payment of wages in the event of illness, overtime payments or other social benefits.

(11) CONTRACTOR alone is responsible for providing the employees required to perform the work taken on in sufficient numbers and at the agreed times and for making provisions for absence of employees due to holidays, rotation, illness, etc.

(12) CONTRACTOR undertakes to take responsibility as an independent economic partner for the success of the work to be carried out using its own work equipment and personnel or using subcontractors approved by CUSTOMER. In order to fulfil its contractual obligations, CONTRACTOR will exclusively use its employees or subcontractors approved by CUSTOMER. CONTRACTOR alone will be responsible for ensuring the organisation of the activities necessary for the performance of the contract. The parties agree that no contractual relationship, in particular, no employment relationship, exists or will exist between CUSTOMER and CONTRACTOR's employees and/or the employees of any of CONTRACTOR's subcontractors approved by CUSTOMER. CUSTOMER has no contractual right to issue instructions to CONTRACTOR's employees and/or the employees of any of CONTRACTOR's subcontractors approved by CUSTOMER. The employees of CONTRACTOR and/or of any subcontractors approved by CUSTOMER are employees solely of CONTRACTOR and/or of any subcontractors approved by CUSTOMER and will perform their work exclusively in fulfilment of their employment contract with CONTRACTOR and/or any subcontractors of CONTRACTOR approved by CUSTOMER.

(13) In the event that any employees of CONTRACTOR and/or employees of any subcontractors of CONTRACTOR approved by CUSTOMER assert against CUSTOMER the existence of an employment or service relation-

ship or assert claims against CUSTOMER arising from or in conjunction with an employment or service relationship, CONTRACTOR is obliged to fully indemnify CUSTOMER against any such claims.

## 5.4 Occupational safety, work guidelines

(1) CONTRACTOR and its employees are obliged to observe all valid guidelines and legal requirements for employers, in particular, those relating to occupational safety, accident prevention and working hours. CUSTOMER will not perform any supervision function. CONTRACTOR acts independently and is fully liable for any consequences under civil and criminal law that may result from misconduct.

(2) If CUSTOMER has issued its own rules supplementing statutory requirements (such as works rules), these additional requirements must be observed on the works premises. If failure to observe such requirements results in damage or work prohibitions for personnel, any resulting claims for damages must be borne by CONTRACTOR.

(3) Before commencing work, CONTRACTOR must appoint a person to CUSTOMER or its representative who will be responsible for ensuring mutual coordination of the necessary occupational safety and security measures (*coordination*). CONTRACTOR will implement suitable organisational measures in order to ensure that all of its employees behave in compliance with these measures. The responsibility of CONTRACTOR's superiors remains unaffected.

(4) When commencing work, CONTRACTOR's site manager will receive documented briefing on safety at work on the basis of CUSTOMER's safety at work instructions and CUSTOMER's works rules. CONTRACTOR's employees will be briefed by its site manager. The person briefed will sign an undertaking to comply with the work safety regulations. Violations will be punished with a ban on entering the works premises. CONTRACTOR must bear any resultant claims for damages.

(5) CONTRACTOR is obliged to make provisions, arrangements and suitable further measures that comply with the provisions of accident prevention regulation DGUV 1 'Principles of Prevention' (*Grundsätze der Prävention*) of the German Social Accident Insurance organisation (DGUV) and the accident prevention regulations otherwise applicable to CONTRACTOR as well as the applicable generally recognised safety and occupational

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health regulations. In as far as requirements exist in other legal provisions, these provisions will remain unaffected.

- (6) CONTRACTOR is obliged to ensure strict compliance with the rules and regulations recognised for the respective service in order to ensure safe and secure construction operations, accident prevention and protection against construction noise. CONTRACTOR must specifically oblige its vicarious agents to observe the industrial safety regulations. The equipment used by CONTRACTOR must meet the requirements of the relevant DIN standards for safety, the Product Safety Act (*Produktsicherheitsgesetz*), as well as VDE regulations and other regulations.
- (7) If work is outsourced to third parties (for example, to another subcontractor), CONTRACTOR is obliged to take any and all appropriate measures in order to ensure compliance with the industrial safety and security regulations by such third parties and to ensure the required briefing of and instructions to the employees of such third parties. CONTRACTOR will pass on to such third parties the industrial safety and security obligations laid down in this clause, and will monitor such third parties' compliance, in particular, with the obligations laid down in section 5.4 (1) to (3).
- (8) Any use of tools and equipment or other materials provided by CUSTOMER will be at CONTRACTOR's risk. CONTRACTOR is obliged to check the functional suitability and safety of any such resources and materials to the necessary extent prior to their first use and subsequently at regular intervals. CONTRACTOR is obliged to inform CUSTOMER without delay if the resources or materials made available are not in the required functional or safety-compliant condition. For the entire period of their provision, CONTRACTOR will assume the duty to ensure the safety of use of the resources, equipment and material made available, and will take measures necessary for the prevention of hazards.
- (9) CONTRACTOR will support CUSTOMER to the extent necessary and reasonable in the performance of the occupational safety and protection/security obligations in relation to CUSTOMER's client. This concerns both to the planning and the execution phase and, in particular, the safety and health protection plan that is required under the Construction Site Ordinance (*Baustellenverordnung*).
- (10) CUSTOMER is entitled at any time to demand information regarding the

industrial safety and security measures implemented by CONTRACTOR, regarding briefing of and instructions given to its employees, as well as supervisory and monitoring measures, and to inspect the documentation. CONTRACTOR is obliged to submit such documents when requested by CUSTOMER or any person commissioned by CUSTOMER. If the inspection shows that

- a) there are shortcomings in terms of expertise, qualification or reliability of an employee, CUSTOMER can request that such employee be replaced,
  - b) there are shortcomings in terms of instruction or supervision of employees, CUSTOMER can, after setting a reasonable deadline, request that such shortcomings be remedied, and prohibit further work pending completion of such remedial action. CONTRACTOR will then be in default due to the resulting delay in performance or failure to execute the order. In particularly severe cases, or if nonconformity is repeated, CUSTOMER is entitled to terminate the order without notice.
- (11) CUSTOMER reserves the right to intervene and issue instructions for coordination purposes in cases of mutual danger, imminent danger and for maintaining general safety and security. Activities can, in particular, be prohibited if employees fail to wear or use the necessary personal protective equipment or clothing or other safety equipment (such as fall protection). CONTRACTOR will then be in default due to the delay in performance or failure to execute the order. In particularly severe cases, or if nonconformity is repeated, CUSTOMER is entitled to terminate the order without notice.
  - (12) CUSTOMER also has the rights as contemplated in section 5.4 (10) and (11) directly in relation to CONTRACTOR's subcontractors. CONTRACTOR will lay down this authorisation of CUSTOMER in its contracts with subcontractors and oblige its subcontractors to accept the sanctions contemplated in section 5.4 (10) and (11) and will provide CUSTOMER, without being specifically requested to do so, with proof thereof by submitting the contracts.
  - (13) CONTRACTOR will provide all of its employees with defect-free, personal and standard-compliant protective equipment and clothing prior to commencing work. These items must, as a minimum, include a hard hat, safety boots (S3), protective gloves, protective goggles with shatterproof glasses and fire-resistant work clothing covering the whole body. The guidelines

of the employers' liability insurance associations and those of CUSTOMER must be observed when wearing personal protective equipment.

- (14) In the event that CONTRACTOR culpably violates its obligation under section 5.4 (1) to (6), it will be obliged to compensate CUSTOMER therefor; sections 280 et seqq. of the German Civil Code (BGB, *Bürgerliches Gesetzbuch*) are applicable. Damages owed to CUSTOMER include, in particular, damages for all reasonable time which CUSTOMER spends on discovery, investigation, processing and monitoring as well as the initiation of resulting measures while maintaining the economic and reasonable (section 254 BGB) management, at a net hourly rate of €80.00 plus VAT, if any, but at least a flat rate of 10% of the other damage resulting from the breach of duty. CONTRACTOR is expressly permitted to prove that no damage or a reduction in value has occurred at all or that it is substantially lower than the aforementioned flat sum.
- (15) CONTRACTOR knows that CUSTOMER is responsible to its Client for compliance with all occupational safety and security regulations in the execution of the order and that the Client, in the event of a breach of duty, may lose the order and that a blocking period may be imposed for further orders. CONTRACTOR undertakes to carry out its work with the greatest possible care, also as protection against potential disadvantages arising from this contractual relationship. In this respect, CONTRACTOR has a special duty of care, protection and diligence. Should the order be cancelled, CUSTOMER could suffer substantial damage. In the event of a breach of duty, CONTRACTOR is liable to CUSTOMER for damages.

## 5.5 Compliance with collective agreements and minimum wage

- (1) By signing the contract, CONTRACTOR declares that it is a member of the employers' liability insurance association responsible for it, that it has fulfilled its contribution obligations to the social insurance funds up until this date and that it will continue to do so, and that it has fulfilled and will fulfil current tax obligations.
- (2) CONTRACTOR is obliged to observe and comply with the relevant provisions of the Act on Mandatory Working Conditions for Employees Posted Across Borders and for Employees Regularly Employed in Germany (*AEntG, Arbeitnehmerentendegesetz*) and the Act on the Regulation of a General Minimum Wage (*MiLoG, Mindestlohngesetz*) as well as other

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- statutory or collectively agreed provisions on minimum wages as amended from time to time.
- (3) CONTRACTOR is obliged to ensure that the obligations under this section 5.5 are also transferred in writing to the subcontractors commissioned by it and to the temporary employment agencies commissioned by it or by a subcontractor, in each case with an obligation to pass such obligations on to further subcontractors and temporary employment agencies. CONTRACTOR is obliged to prove this to CUSTOMER at its request.
- (4) CONTRACTOR is obliged on first demand to indemnify CUSTOMER against all claims arising from or in conjunction with an infringement of this section 5.5, in particular, an infringement of the provisions of the AEntG or the MiLoG, by CONTRACTOR or a subcontractor appointed by CONTRACTOR or a temporary work agency appointed by CONTRACTOR or a subcontractor or any other subsequent subcontractors or temporary work agencies. Further claims which CUSTOMER may have remain unaffected.
- (5) A breach of the obligations under this section 5.5 entitles CUSTOMER to terminate the contract with CONTRACTOR without notice.
- (6) CONTRACTOR is obliged to provide suitable evidence in order to verify compliance with the obligations under this section 5.5 and to submit such evidence to CUSTOMER when requested ('right to information'). CUSTOMER or a third party commissioned by it may inspect these documents in order to enforce its right to information. CONTRACTOR must inform its employees in writing of the possibility of such checks.
- (7) CONTRACTOR is obliged to comply with all relevant and applicable provisions of labour and remuneration law as well as related public and social law relating to the respective country of performance, including any applicable collective agreements or works agreements, the rules relating to the minimum wage, assignment (times), health, safety and welfare of CONTRACTOR's employees and the granting of all their rights, and to pass on these obligations to its subcontractors approved by CUSTOMER. CONTRACTOR is additionally obliged to oblige its employees and subcontractors approved by CUSTOMER to comply with all applicable statutory regulations. In the event of a breach of the above obligations, CONTRACTOR is obliged to indemnify CUSTOMER on first demand against any and all claims which third parties may raise.
- (8) CONTRACTOR hereby assigns as security all rights to information against the subcontractors or temporary employment agencies employed by it to CUSTOMER who accepts such assignment. CUSTOMER will only notify the subcontractors or temporary employment agencies of such assignment and make use thereof if an insolvency petition has been filed against CONTRACTOR, if CONTRACTOR itself has filed such a petition or if CONTRACTOR fails to properly fulfil its obligations under this section 5.5, in particular, if CONTRACTOR is in default with performance. Up to that point in time, CONTRACTOR will remain authorised and obliged to assert any rights to information against subcontractors or temporary employment agencies in CONTRACTOR's own name and for its own account. For the avoidance of doubt, the disclosure obligation pursuant to section 5.5 (3) also includes the assignment of the right to information.
- 5.6 Construction site setup, tools**
- (1) Construction site setup is included in the contract prices.
- (2) CONTRACTOR is obliged to provide any construction site equipment required for the performance of its work, such as crew containers, tools and machines of all kinds as well as scaffolding up to a working height of **6 metres**. The related costs are included in the order value and/or the unit prices.
- (3) If scaffolding with a working height of more than 6 metres is required, this will be made available by CUSTOMER free of charge, unless otherwise agreed.
- (4) Any scaffolding hardware and installation requirements as contemplated in section 5.6 (3) hereof must in principle be reported in due time to CUSTOMER's site manager. Coordination with other trades is always necessary and primarily CONTRACTOR's obligation.
- (5) Any withdrawal of personnel, construction site equipment and tools, including large-scale equipment, must be reported to CUSTOMER's site manager in due time. Approval by CUSTOMER's site manager is mandatory for any such withdrawal.
- (6) CONTRACTOR assumes full responsibility for any loss and damage exceeding normal wear and tear for any operating resources and tools taken over from CUSTOMER and undertakes to fully compensate CUSTOMER for any such loss or damage. Unloading and loading of equipment will be at CONTRACTOR's expense.
- (7) In exceptional cases it may be necessary to move site equipment and tools to another location within the site area. In such cases, CONTRACTOR is obliged to organise the process and the required resources. The costs must be borne by CONTRACTOR. The same applies to material and items which CUSTOMER may make available to CONTRACTOR. If CUSTOMER is compensated by CLIENT, such compensation will be passed on to CONTRACTOR accordingly.
- 5.7 Environmental protection (hazardous substances, waste)**
- (1) Hazardous substances are substances which, by their nature, properties or condition, may pose risks to human life and health, the environment or property.
- (2) When handling these substances, CONTRACTOR is obliged to strictly observe all relevant regulations (including, but not limited to, the Ordinance on Hazardous Substances, Dangerous Goods and Transport Regulations, Ordinance on Flammable Liquids, Water and Waste Regulations (GefStoffV, *Verordnung zum Schutz vor Gefahrstoffen*)) in their respective valid version.
- (3) If certain substances are specified as mandatory by CUSTOMER, only these substances may be used.
- (4) If such substances are provided by CONTRACTOR within the scope of the order, the following environmental protection requirements will then apply:
- Halogenated hydrocarbons (HHCs) may not be contained.
  - Other solvents (such as hydrocarbons, alcohols, esters) may only be used if it is ensured that even in the event of unforeseen incidents no release into water, sewage systems or soil is possible.
  - Acids or alkaline preparations may only be used if it is ensured that no release into water, sewage systems or soil is possible during handling.
  - Preparations with heavy metals that must be labelled pursuant to the GefStoffV may not be used.
  - If there is a risk that substances may be released into water, sewage systems or soil contrary to the provisions of section 5.7 (4 b) or (4 c), or if substances must be used which are subject to a prohibition of use in accordance with the above provisions of this section 5.7, CUSTOMER's approval is

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required before any such substances are brought to the facility/construction site where the work is to be performed.

f. If CUSTOMER specifies a release procedure for the use of working substances, working substances may only be brought to or used in the facility/at the construction site where CONTRACTOR's performance is required after the required approvals have been issued.

g. If necessary, CONTRACTOR is obliged to submit an up-to-date safety data sheet for each substance to the responsible member of the purchasing team. Substances which have not been approved by CUSTOMER (as contemplated in section 5.7 (4 e)) or by CLIENT (pursuant to section 5.6 (4 f)) may not be brought to the facility/construction site where the work is to be performed.

(5) Waste produced during performance of the order and caused by CONTRACTOR or its vicarious agents must be disposed of by CONTRACTOR at its own expense and risk. CONTRACTOR is responsible for determining the type of disposal prior to commencing work. The disposal of residual materials via the waste water system is not permitted. The use of collection containers available at the facility/construction site where the work is to be performed is generally not permitted. Any provisions deviating from this are subject to CUSTOMER's written consent. After completion of work, the place of work must be cleared in a clean condition. Debris and residual materials must be removed by CONTRACTOR. In the event that CONTRACTOR fails to comply with this obligation, site clearing work will be carried out at its expense after expiry of a reasonable period of time granted to CONTRACTOR for this purpose.

## 5.8 Site cleaning/removal of debris

(1) CONTRACTOR is obliged to clean the construction site, which also includes the removal of building rubble caused by it; this must be carried out daily, independently and continuously and no later than at the end of each calendar week.

(2) CONTRACTOR must immediately submit to CUSTOMER on the latter's demand suitable disposal verification documents.

(3) In the event that CONTRACTOR fails to comply with this obligation in due time or in a correct manner, CUSTOMER may set a deadline for CONTRACTOR including a warning that CUSTOMER will refuse CONTRACTOR's cleaning service after such deadline has expired without a result.

(4) In the event that CONTRACTOR fails to fulfil its obligation even after expiry of the deadline, CUSTOMER can have the cleaning service carried out by third parties at CONTRACTOR's expense without the need for partial termination of the order.

## § 6 Material planning, material management

6.1 CONTRACTOR is responsible for its material planning for the scope of delivery and services included in its order. Delivery times, if any, must be taken into consideration.

6.2 In the case of materials provided by CUSTOMER, unloading and transport to the place of use must be carried out by CONTRACTOR. These services are included in the unit prices. The same applies to transport costs charged by a third party to CONTRACTOR or CUSTOMER for transport to the place of use.

6.3 With regard to materials provided by CUSTOMER, CONTRACTOR is obliged to receive the materials against written confirmation of receipt and to verify the correctness, completeness and faultlessness. In the event that any part of the deliveries does not correspond to the orders, CONTRACTOR must inform CUSTOMER immediately. Section 377 of the German Commercial Code (HGB, *Handelsgesetzbuch*) applies accordingly. Any damage to outer packaging must be reported to CUSTOMER within **24 hours**. Missing material must be reported at an early stage to CUSTOMER's site manager in order to ensure procurement. Waiting times due to non-availability of material will not be reimbursed. Under no circumstances may defective material be used.

6.4 Risk will pass to CONTRACTOR upon CONTRACTOR's acceptance of materials provided by CUSTOMER. However, CONTRACTOR is only responsible for accidental loss or accidental deterioration of material supplied by CUSTOMER in the event of default.

6.5 In the event that CONTRACTOR fails to check and confirm acceptance of material on the relevant delivery note, the material listed therein will be deemed to have been handed over in

a complete condition. From this point in time on, CONTRACTOR will bear full responsibility for material management as contemplated above. Material provided by CUSTOMER must be marked CUSTOMER's material and stored separately. Its whereabouts must be documented on the basis of measurements. The transfer of risk is subject exclusively to section 644 BGB.

6.6 CONTRACTOR will unload incoming delivery vehicles that deliver material intended for it and transport the material to the warehouse designated for this purpose where such material will be stored until used. When material is removed for use, CONTRACTOR will transport such material to the place of use and back to the warehouse after the end of work. Re-storage of residual material must be carried out by CONTRACTOR with an exact indication of quantity. CONTRACTOR loads the empty means of transport, such as pallets, racks, crates, tanks, cable drums, cartons, etc. and is responsible for approving the return transport to the supplier or for disposal.

## § 7 Changes in and additions to the scope of delivery and services

7.1 Any subsequent claims by CONTRACTOR after conclusion of the contract which are based on lack of knowledge of the construction site or the contents of the order will not be accepted by CUSTOMER.

7.2 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.

7.3 CONTRACTOR is not entitled to refuse the preparation of an offer to be prepared by it pursuant to section 7.2 of the minutes of negotiations and the execution of a change that is required in order to achieve the agreed success or to refuse a change in 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.

7.4 In the event that the 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

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to do so, for instance, because CONTRACTOR's business has the required resources.

- 7.5 The supplementary offer must identify the foreseeable consequences for the time schedule with regard to dates and deadlines of the trade-specific gross time schedule or the detailed arrangement plan of this contract replacing the trade-specific gross time schedule, as well as possible acceleration measures, including any resulting additional or reduced costs well in advance before performance (at least 5 working days after the request has been issued) by way of an updated offer cost calculation. Otherwise, the relevant schedule will remain unaffected.
- 7.6 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.

## § 8 Deadlines, dates

- 8.1 By accepting the order, CONTRACTOR undertakes to accelerate the processing of the order in such a way that nothing will prevent the completion of work in accordance with the agreed deadlines. Any construction-related problems, but also problems on the part of CONTRACTOR for which CONTRACTOR is responsible and which jeopardize a deadline from being met, must be reported immediately in writing to CUSTOMER's site manager.
- 8.2 If the order is placed on the basis of the 'Minutes of Negotiations for a Contract to Produce a Work, any interim deadlines as contemplated in this section 8.3 are contractual deadlines which are binding upon CONTRACTOR. This is also applicable to documentation deadlines.
- 8.3 In the event that the commencement of execution is delayed, CONTRACTOR is not entitled to demand compensation for additional expenses, waiting times, etc. or damages. This does not apply if CUSTOMER receives payments from the owner or main client (CLIENT) for the delay in the execution of construction WORK or if CUSTOMER itself caused the delay intentionally or through gross negligence. The agreed dates and deadlines will be fixed in accordance with the delay that has occurred. This is also applicable to any penalties that have been agreed upon.

8.4 CUSTOMER's time schedule is binding upon CONTRACTOR. CONTRACTOR will perform an independent deployment planning for the assembly/installation team to be provided by it. In any case, the number of team members must be adapted to the needs of the construction site in order to meet the completion dates according to the schedule. CUSTOMER reserves the right to subsequently agree upon special dates for completion of individual sections. CONTRACTOR will be liable for any damage resulting from insufficient availability of personnel.

8.5 CUSTOMER is entitled to change at its own discretion the schedule within the framework of the overall project schedule. Any such changes will be binding upon CONTRACTOR. The parties hereto agree that a reasonable period of time will be granted in accordance with the work to be performed and that the right to issue unilateral acceleration orders is subject to CUSTOMER's modification right pursuant to section 7.1 of the minutes of negotiations.

8.6 In the event that dates are changed by mutual agreement or in compliance with the aforementioned section 8.5, the penalty agreed for this will also apply to the newly determined dates.

8.7 CONTRACTOR is obliged to immediately notify CUSTOMER in writing of any hindrances during the performance of services which may lead to a time delay or other impairment of the performance result and to explain how long the delay will last. This is also applicable in the event of imminent hindrance or endangerment of the correct and timely performance of the services. CUSTOMER will inform CONTRACTOR that the latter must take counter-measures against possible operational disruptions.

8.8 CONTRACTOR is obliged to request cooperation services from the CUSTOMER or from third parties in a forward-looking and timely manner, so that disruptions to operations are avoided as far as possible.

8.9 The timely and correct fulfilment of the obligations of subsections 7 and 8 by CONTRACTOR has no influence on CUSTOMER's rights from other clauses, in particular, with regard to claims for damages due to default as well as penalties.

8.10 In the event of delays for which CONTRACTOR is responsible, CONTRACTOR is obliged to take any and all necessary measures in due time in order to meet the agreed deadlines or to minimise delays as far as possible. If necessary, CONTRACTOR will have

to work shifts, overtime and/or on Sundays/holidays at its own expense. CONTRACTOR is responsible for obtaining the required special permits in agreement with CUSTOMER.

8.11 In the event of CONTRACTOR's delay in delivery or performance, CONTRACTOR will be liable for any damage and disadvantages which CUSTOMER may suffer as a result thereof. Penalties, which CUSTOMER is obliged to pay in such case will be fully charged to CONTRACTOR.

8.12 In the event of CONTRACTOR's delay in delivery or performance, CUSTOMER will be entitled to terminate the order without notice for cause and to demand from CONTRACTOR any additional costs incurred as a result of retaining another contractor. Otherwise the consequences of a delay in performance and delivery are subject to the relevant legal provisions.

## § 9 Penalties

9.1 In the event the CUSTOMER's CLIENT charges CUSTOMER with a penalty as a result of CONTRACTOR's delay in delivery and/or performance, such costs will be passed on in full to CONTRACTOR.

9.2 Delayed receipt of input material, material and/or inclement weather conditions will not release CONTRACTOR from penalty.

9.3 CONTRACTOR can only claim non-availability of the necessary documents to be provided by CUSTOMER if CONTRACTOR has issued a written reminder for the documents and has not received these within a reasonable period of time.

9.4 In the event of a delay due to force majeure or caused by CUSTOMER, dates and deadlines for performance will be extended by the duration of the delay. As a precondition for acceptance of such delays with regard to penalty, CONTRACTOR must notify CUSTOMER in writing immediately after the cause of the delay has occurred in the event of force majeure and furnish proof.

9.5 For each case in which CONTRACTOR violates one of the obligations contemplated in section 22, CONTRACTOR is obliged to pay a penalty amounting to €25,000.00, unless the parties agree otherwise in the minutes of negotiations.



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## § 10 Acceptance

- 10.1 Unless otherwise agreed in writing, formal acceptance is deemed to be agreed upon. Acceptance and a date therefor must be requested by CONTRACTOR in writing from the representative named by CUSTOMER in the minutes of negotiations and from CUSTOMER's site manager.
- 10.2 CONTRACTOR can only request acceptance by CUSTOMER after completion has taken place without any defects. CUSTOMER can refuse acceptance if no defects exist. CONTRACTOR can only request repeat acceptance after it has proven that the defect has been remedied.
- 10.3 Acceptance of CONTRACTOR's performance, presupposing full completion of the work to be performed, will only take place at the time of overall acceptance by CUSTOMER.
- 10.4 The documentation as well as all necessary approvals and certificates must be available at the time of acceptance in accordance with the contract. They form part of the acceptance procedure. Missing documentation will forfeit acceptance of performance due to incompleteness.
- 10.5 In as far as the services to be performed by CONTRACTOR also concern necessary official approvals, certificates etc., CONTRACTOR is responsible for obtaining these on time and for handing them over to CUSTOMER on the day of acceptance.
- 10.6 Any other forms of acceptance, be it through use or commissioning or through expiry of the deadline after notification of completion or payment of the final payment, etc., are excluded.

## § 11 Transfer of title/risk

- 11.1 CONTRACTOR warrants that it and its subcontractors are entitled to dispose of its deliveries/services. CONTRACTOR is, in particular, obliged to deliver all items and goods (goods subject to reservation of title) to be delivered within the scope of the services to be performed by it free of any rights of third parties. Otherwise it must indemnify CUSTOMER against any and all disadvantages and damage.
- 11.2 Transfer of title has no relevance for the transfer of risk and warranty.

## § 12 Remuneration

- 12.1 Remuneration can be agreed upon either as a fixed price or on the basis of time and expense accounts. The following fixed-price methods can be used:
  - a. **Package price:** A fixed monetary value is paid for the entire scope of services of the order or defined parts thereof.
  - b. **Unit price:** A certain monetary value is agreed upon for a defined service; the sum of the services multiplied by the agreed monetary value is the remuneration.
- 12.2 If a fixed price has been agreed upon for a service, remuneration of time/costs incurred is not permitted.
- 12.3 If fixed prices are agreed upon for individual deliveries and/or services, such fixed prices include any and all costs for construction site setup, tools, equipment, labour costs, allowances, all travel costs, ancillary wage costs and other ancillary costs which are necessary for the fulfilment of contractual performance until the order has been fully completed. Charging rates are fixed prices.
- 12.4 All contract or unit prices are fixed prices. Unless otherwise agreed upon, prices are subject to price maintenance until completion of the project/construction project by the CUSTOMER's CLIENT. They include any and all transport costs, even if these are changed by law.
- 12.5 If the order is placed on the basis of the 'Minutes of Negotiations for a Contract to Produce a Work', deliveries and services which are rendered after expiry of the price maintenance period in accordance with section 12.5 thereof will only lead to price adjustment if CUSTOMER is responsible therefor and if a claim for price adjustment arises from other contractual or statutory provisions. In such cases, the parties will, prior to delivery or performance, agree upon price adjustment for the delivery/service yet to be rendered.
- 12.6 A claim, if any, due to interference with the basis of the transaction remains unaffected.
- 12.7 The basic and settlement rates are always based on the fact that CONTRACTOR or its vicarious agents work the weekly working hours as specified in the contract. Unless expressly agreed otherwise, these include all costs. Reimbursement of surcharges must be expressly agreed to in the order.

- 12.8 Increases or reductions of quantities must be communicated by CONTRACTOR in writing well in advance prior to execution. Optional items must be approved by CUSTOMER prior to execution.
- 12.9 Wage and material price increases occurring after the conclusion of the contract to produce a work will not be remunerated.
- 12.10 All documentation costs, including costs for official permits, certificates, attestations, etc., are included in the contract prices.

## § 13 Changes in remuneration and proof of price calculation

- 13.1 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 work success or in order to achieve the agreed work success.
- 13.2 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.

## § 14 CONTRACTOR's contribution to the payment of costs

Allocations agreed upon pursuant to sections 14.1. and 14.2 of the minutes of negotiations will be offset against partial invoices and the final invoice, respectively.

## § 15 Work paid by the hour

- 15.1 Work paid by the hour will only be recognised by CUSTOMER after prior separate supplementary written agreement and after submission of a time sheet to CUSTOMER's local site manager within 24 hours.
- 15.2 Confirmation of working time is not to be deemed to constitute acceptance for accounting purposes.
- 15.3 The normal working time is 50 hours per week. Saturdays are considered to be normal working days. Unless otherwise agreed, the basis for the calculation of overtime pay is **70%** of the value of the agreed hourly wage.

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- 15.4 The basis for remuneration of work paid by the hour is the pure working time. Supervision, driving and travel times as well as allowances for absence from home, etc. will not be remunerated. Site manager hours do not qualify as work paid by the hour. Such work will be billed on a **quarterly hour** basis.
- 15.5 In the case of fixed-price orders, billing of work paid by the hour, including overtime surcharges, will be kept to a minimum – no more than **5%** of the order sum – unless a change in the billing procedure is contractually agreed upon.
- ## § 16 Settlement of accounts, measurements
- 16.1 In the case of flat-rate orders, CONTRACTOR is obliged to provide evidence of the performance status as claimed in the respective invoice. CUSTOMER's site manager is responsible for verifying performance status and documents submitted as proof.
- 16.2 Measurements must be taken at least once a week and submitted to CUSTOMER's site manager for verification.
- 16.3 CONTRACTOR is obliged to draw up a detailed, verifiable measurement report broken down according to facility components and to submit such report to CUSTOMER's site manager for verification. The checked and countersigned measurement report is a precondition for CONTRACTOR's claim for down payment or for presentation of the final invoice.
- 16.4 Verification of measurements, regardless of whether these are partial or total measurements, will be carried out in any case subject to CLIENT's final inspection. CONTRACTOR is fully liable for any payments which CLIENT may claim back from CUSTOMER as a result of CLIENT's inspections.
- 16.5 CONTRACTOR is obliged to render verifiable accounts for its services. CONTRACTOR is obliged to draw up the invoices in a clear and concise manner, observing the order of the items and using the descriptions contained in the constituent parts of the contract. Calculations of quantities, drawings and other documents required to prove the type and scope of the service must be enclosed. Amendments and supplements to the contract must be specially marked in the invoice; they must be invoiced separately when requested.
- 16.6 The facts necessary for rendering accounts should, if possible, be established jointly in accordance with the progress of work. The accounting provisions in the Technical Terms of Contract and the other contract documents must be observed. In the case of services that are difficult to determine while work is underway, CONTRACTOR is obliged to request the joint establishment of facts in due time in advance.
- 16.7 The final invoice must be submitted no later than 10 working days after completion of services with a contractual execution period of no more than 3 months, unless otherwise agreed; this period is extended by 6 working days for each additional 3 months execution period.
- 16.8 In the event that CONTRACTOR fails to submit a verifiable invoice despite CUSTOMER having set a reasonable deadline for this, CUSTOMER can then draw up such an invoice itself at CONTRACTOR's expense.
- ## § 17 Payments
- 17.1 German law requires CUSTOMER to withhold **15%** of the invoice amount to be paid for construction services to CONTRACTOR and to transfer such percentage to the tax office. This applies if CONTRACTOR is subject to German tax law. CUSTOMER is only released from this withholding obligation if CONTRACTOR has submitted a valid tax deduction and non-objection certificate to CUSTOMER.
- 17.2 If section 13 b UStG is applied in accordance with the declaration in the minutes of negotiations, CONTRACTOR is not entitled to charge value-added tax for down payment claims or in invoices. Advance payment claims or invoices which nevertheless contain a value-added tax item are not permitted. In this case, the CONTRACTOR's payment claim will be deemed not to have been made.
- 17.3 CONTRACTOR's invoices and down payment claims must precisely describe the respective service on the basis of the order. They must show all accounting data provided by CUSTOMER.
- 17.4 Requests for down payments must be submitted to CUSTOMER in each case after significant construction progress has been achieved.
- 17.5 All necessary verification documents – such as measurement reports, calculations, sketches, drawings, etc. – must also be submitted in duplicate.
- 17.6 Components specially manufactured and provided for the required service as well as materials and components delivered to the construction site will also be deemed to be billable services if title to them has been transferred to CUSTOMER or suitable security has been provided as CUSTOMER may elect.
- 17.7 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.
- 17.8 CUSTOMER does not accept any interim or partial invoices.
- 17.9 If, notwithstanding the foregoing, CUSTOMER does pay any interim or partial invoices, CUSTOMER reserves the right to demand repayment in each such case. This is also applicable if payment is made without a reservation of the right to demand repayment. In such case, payment is not to be deemed to constitute recognition or acceptance of the service.
- 17.10 CONTRACTOR must submit the final invoice within 4 weeks after completion of the construction project on the basis of the final measurement and the acceptance report or CUSTOMER's declaration of acceptance. If VOB/B has been agreed upon, section 14 VOB/B is applicable instead.
- 17.11 Invoices will be paid in accordance with the payment agreement.
- 17.12 Acknowledgement and/or payment of the final invoice do not exclude claims for repayment due to incorrectly billed services and claims. The plea of cessation of enrichment is waived.
- 17.13 Unconditional acceptance of the final payment excludes subsequent claims if CONTRACTOR has been informed in writing of the final payment and if the exclusion effect has been specifically mentioned.
- CUSTOMER's final refusal in writing of any further payments with reference to payments made is equivalent to final payment.
- Earlier claims which are still unsettled are also ruled out unless reservation of such claims is once again expressly declared.
- 17.14 Reservation must be declared within 28 days after receipt of notification of final payment in accordance with section 17.13. This reservation will become obsolete if an auditable invoice for the reserved claims is not submitted.

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ted within a further 28 days – beginning on the day following the expiry of the 28 days referred to in sentence 1 – or, if this is not possible, if the reservation is substantiated in detail.

17.15 The non-extendable deadlines do not apply to a request for correction of the final invoice and payment due to measurement, calculation and copying errors.

## § 18 Security

### 18.1 Performance bond

- (1) As security for the performance of the contract, CONTRACTOR is obliged to provide CUSTOMER 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) In as far as CUSTOMER does not require CONTRACTOR to provide security for compliance with collective agreements as contemplated in section 18.3, the 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 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) 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 withholding amount 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 section 18.1 (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 18.2. 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.

### 18.2 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 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) In as far as CUSTOMER does not require CONTRACTOR to provide security for compliance with collective agreements as contemplated in section 18.3, the 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 section 18.2 (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 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 hav-

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ing made a separate agreement to reduce security after the expiry of the standard limitation period of 5 years, security will be reduced to 20% of the security previously provided, 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 18.1 (7) apply.

## 18.3 Security for compliance with collective agreements

- (1) CUSTOMER is entitled to demand from CONTRACTOR an irrevocable, unlimited, unconditional and directly enforceable guarantee from a credit institution or credit insurer which meets the requirements of section 17 (2) VOB/B. Such guarantee must correspond to the sample attached to the minutes of negotiations and referred to as 'guarantee for compliance with collective agreements'. The security amount must correspond to 5% of the order value, unless the parties have agreed to a different security amount in the minutes of negotiations.
- (2) This guarantee 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) If CUSTOMER exercises this right to demand a guarantee, CONTRACTOR undertakes to provide such guarantee within 14 days after receipt of such request.

## 18.4 Security for CUSTOMER's prepayments

- (1) In order to secure any agreed advance payment by CUSTOMER (including damages), CONTRACTOR is obliged to provide a guarantee from a credit institution or credit insurer permissible pursuant to section 17 (2) VOB/B for an amount corresponding to the agreed advance payment, corresponding to the sample attached to the minutes of negotiations and re-

ferred to as 'advance payment guarantee'. Submission to CUSTOMER is a precondition for the advance payment to become due.

- (2) The guarantee must be returned if the conditions laid down in the security agreement are fulfilled
- (3) Otherwise 17 VOB/B and section 18.1 (7) apply.

## 18.5 Securities in favour of CONTRACTOR

- (1) In as far as CONTRACTOR validly demands security in accordance with section 650f BGB, the parties agree upon a 'reasonable period' of at least 10 working days. Section 650e BGB is excluded.
- (2) In cases where CONTRACTOR normally has a right to refuse performance in accordance with the contractual and statutory provisions, CUSTOMER is entitled to prevent suspension of performance by CONTRACTOR by submitting an indemnity bond for an amount corresponding to any disputed payment claim which has not yet been secured. Section 650f BGB in conjunction with section 232 BGB is analogously applicable to the form of security and payment of the costs thereof. CONTRACTOR is only entitled to exercise any right to refuse performance which it may have if it has announced suspension of performance at least 12 working days prior to complete or partial suspension of its work.

## § 19 Rights in case of defects, warranty, guarantees

- 19.1 Services which during execution are already found to be defective or not in conformity with the contract must be replaced by CONTRACTOR at its own expense and in accordance with section 19.1 of the minutes of negotiations. If CONTRACTOR is responsible for the defect or non-conformity with the contract, it is also obliged to compensate for any resulting damage. If CONTRACTOR fails to comply with the obligation to remedy a defect, CUSTOMER can set to CONTRACTOR a reasonable deadline for remedying the defect and warn CONTRACTOR that CUSTOMER will terminate the contract after fruitless expiration of the deadline.
- 19.2 In cases of incorrect assembly/installation, CONTRACTOR will be granted a reasonable period of time in order to remedy the defect. If no satisfac-

tory result is achieved within this period, CUSTOMER can carry out the work itself or have it carried out by retaining third parties on the basis of time spent and costs incurred. CONTRACTOR must bear any resultant costs.

- 19.3 In urgent cases, CUSTOMER itself can, after consultation with CONTRACTOR, carry out the remedial work or have such remedial work carried out by a third party. Minor defects can, without prior agreement and without affecting the warranty obligation, be remedied by CUSTOMER itself in order to fulfil its duty to mitigate damage. CUSTOMER can then bill CONTRACTOR for the necessary expenses. The same applies if unusually high damage is to be expected. CUSTOMER has in any case the right to choose between rectification of defects and new production.
- 19.4 Should any damage or defects of any kind occur as a result of work carried out by CONTRACTOR or affecting CONTRACTOR's scope of delivery, the warranty period will total 5 years and 6 months after acceptance by CUSTOMER.
- 19.5 In the event that acceptance/commissioning of the building or facility into which CONTRACTOR's services were incorporated does not take place within 6 months after acceptance by CUSTOMER at the latest, the warranty period will total 5 years and 6 months either from the date of commissioning by CUSTOMER or from the date of acceptance by CUSTOMER, in as far as acceptance takes place prior to commissioning.
- 19.6 In the event of remedial action or replacement delivery, the agreed warranty or guarantee period will begin at the time of such remedial action or replacement delivery.
- 19.7 CONTRACTOR hereby assigns to CUSTOMER, which accepts this assignment, all of CONTRACTOR's claims for defects, warranty claims, product liability claims as well as any claims arising from securities that it may assert against its suppliers and subcontractors in this respect. This assignment does not affect CUSTOMER's own claims for defects which it has against CONTRACTOR.
- 19.8 CUSTOMER hereby authorises CONTRACTOR until revocation of this authority to enforce the assigned claims against its subcontractors and suppliers itself. Furthermore, CONTRACTOR can demand that the assigned claims be reassigned in the event that CONTRACTOR successfully remedies the defect or otherwise fulfils CUSTOMER's claims based on defects,

# General Purchasing Conditions for CONTRACTOR'S Construction and Assembly/Installation Services

provided that CONTRACTOR's fulfilment of CUSTOMER's claims based on defects is sufficient.

19.9 No later than two weeks before acceptance, CONTRACTOR is obliged to provide CUSTOMER with a list of all subcontractors and suppliers retained, including their addresses and precise details of the trades to be performed, defect claims/guarantees agreed upon as well as items delivered. At CUSTOMER's request, CONTRACTOR is obliged to hand over and to provide CUSTOMER with all documents and information necessary to enforce the assigned claims.

19.10 CONTRACTOR warrants that all deliveries and services within the meaning of the German Civil Code are guaranteed and essential characteristics. The burden of proof is reversed to the disadvantage of the supplier/CONTRACTOR pursuant to section 477 BGB. In the event that CONTRACTOR fails to fulfil its guarantee obligation within a reasonable period set by CUSTOMER, CUSTOMER can then perform the necessary measures itself or have such measures performed by third parties at CONTRACTOR's expense and risk without prejudice to CONTRACTOR's guarantee obligation.

to the building, neighbouring sites, roads and paths, etc.

20.4 CONTRACTOR is liable for the subcontractors retained by it as for its own personnel.

20.5 Any liability on the part of CUSTOMER for CONTRACTOR's materials and equipment is excluded.

20.6 CONTRACTOR is obliged to indemnify CUSTOMER against any and all claims for damages by third parties arising in the course of the execution of the construction project and associated therewith in as far as such claims are caused by CONTRACTOR's or its vicarious agents' performance. This also applies to consequences of product liability.

20.7 CONTRACTOR is obliged to take out at its own expense adequate business liability insurance, to maintain this during the term of the contract and to prove this to CUSTOMER no later than at the beginning of construction/assembly, wherein the following amounts must be available at least twice per insurance year in the event of several claims:

Type of damage:	Cover:
Personal injury	€2,000,000.00
Damage to property	€2,000,000.00
Financial loss	€1,000,000.00
Active contributory loss	€500,000.00

CONTRACTOR will submit copies of the insurance contracts to CUSTOMER at the time of commencement of construction at the latest. CONTRACTOR is not entitled to any payments from CUSTOMER until insurance cover is proven. CUSTOMER can make payments contingent upon proof of existence and continued existence of insurance cover.

20.8 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.

20.9 Unless otherwise specified in the minutes of the negotiations, CONTRACTOR undertakes to take out construction work insurance at its own expense.

20.10 If CUSTOMER or CLIENT takes out construction insurance for the construction project which also provides cover for CONTRACTOR's services, CONTRACTOR agrees to pay and to reimburse CUSTOMER for the premiums in proportion to the order value. CUSTOMER will in such case disclose the insurance conditions to CONTRACTOR at its request.

## § 21 Termination of contract

### 21.1 Termination and withdrawal

(1) CUSTOMER is entitled to terminate the contract in accordance with sections 648 and 648 a BGB.

(2) Furthermore, CUSTOMER is entitled to withdraw from the contract, as a whole or in part, in the following cases:

- Work becomes impossible as a whole or in part due to force majeure.
- CUSTOMER has work discontinued as a whole or in part and/or changes the basis of the contract existing between CUSTOMER and CONTRACTOR.
- 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.
- CONTRACTOR discontinues payments or files a petition for the opening of insolvency proceedings or other comparable proceedings, or insolvency proceedings or comparable proceedings are opened against its assets.

### 21.2 Consequences of termination of the contract

(1) If CUSTOMER terminates or withdraws from the contract due to a breach of contract for which CONTRACTOR is responsible, the services performed up to that point may only be invoiced at contract prices to the extent to which they can be used by CUSTOMER as intended.

(2) Furthermore, CUSTOMER can also claim damages for the remaining construction work not performed in accordance with the contract, in par-

## § 20 Liability, insurance

20.1 The transfer of risk is subject to section 644 (1) BGB.

20.2 Prior to acceptance, CONTRACTOR is obliged to ensure safe use with regard to its scope of services and to release CUSTOMER from this obligation. During the execution of construction work, CONTRACTOR must ensure, in particular, compliance with all safety regulations as well as compliance with all protection and safety measures in accordance with the accident prevention regulations and the Construction Site Ordinance. Under no circumstances will CONTRACTOR be released from its obligations by claiming that it was not supervised, either fully or partly.

20.3 CONTRACTOR assumes liability for third-party damage of all kinds, i.e. it is responsible for any damage caused by it or its vicarious agents to persons and property on the construction site,

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ticular, for compensation for additional costs and consequential damage incurred as a result of the completion of work by CUSTOMER and/or a third party, and offset these counterclaims against the CONTRACTOR's remuneration claims.

(3) Damage suffered by CUSTOMER will be considered when settling accounts.

(4) 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.

(5) CONTRACTOR now already enters 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 and suppliers ('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).

(6) 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.

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

## 21.3 Completion of the project

A project/construction project is deemed to be completed at the earliest when the main order and all subsequent orders between CUSTOMER and its CLIENT are deemed to be fulfilled.

## § 22 Confidentiality, copyright and intellectual property rights, customer protection

22.1 CONTRACTOR is obliged to maintain confidentiality. Without CUSTOMER's consent, CONTRACTOR is not permitted to pass on any information regarding the construction project to third parties not involved in the construction project.

22.2 Publications about the construction project by CONTRACTOR or its employees are not permitted without CUSTOMER's prior written consent. Publications in this sense also include the description of the construction work, the publication of drawings, calculations and other documents, as well as photograph, film, radio and television recordings and publications on the Internet. CONTRACTOR will obtain ensure that the subcontractors retained by it issue a corresponding obligation to CUSTOMER.

22.3 CONTRACTOR will ensure that, with regard to the services performed, neither CONTRACTOR itself nor any subcontractor retained by it will assert any copyright or other intellectual property rights which would prevent CUSTOMER's unrestricted use and exploitation of CONTRACTOR's services.

22.4 Until completion of the project and/or the construction project, CONTRACTOR may not conduct any 'direct business' of any kind with CUSTOMER's CLIENT without CUSTOMER's consent. This means that

CONTRACTOR may not enter into any direct or indirect business relations with CUSTOMER's CLIENTS or their legal successors with regard to the work being the subject matter hereof and any associated additional or follow-up orders which are technically related to this work.

The obligation as aforesaid will survive completion of the project and/or construction project for a period of 1 year after termination of the contract (withdrawal, termination or acceptance).

22.5 CONTRACTOR is generally prohibited from making and entering into any direct ancillary agreements between CONTRACTOR and CUSTOMER's CLIENT. CONTRACTOR will be liable for any violation.

22.6 CLIENT is any direct or indirect customer of CUSTOMER in as far as this customer is related to the project/construction project for which CUSTOMER is working.

22.7 Resources, business transactions and working methods of one party which come to the knowledge of the other party within the framework of the execution of the order must be kept secret in relation to third parties even beyond the term of the contract; the respective employees must be obliged to assume corresponding obligations.

22.8 The obligations contemplated in the above subsections are subject to a penalty in accordance with section 9.

## § 23 Assurances/other agreements

23.1 Any assignment or collection assignment or pledging of claims against CUSTOMER arising for CONTRACTOR from and in conjunction with the construction project is only permitted with CUSTOMER's prior consent.

23.2 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.

23.3 CONTRACTOR may only set off undisputed claims against CUSTOMER which have been established as final

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and absolute or which are ready for a decision against CUSTOMER's claims.

23.4 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.

23.5 CUSTOMER's documents which are made available to CONTRACTOR must be returned to CUSTOMER after completion of CONTRACTOR's services at the latest.

23.6 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.

23.7 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. The terms of this contract are

also applicable to amendments and additional orders.

23.8 The parties hereto have not made and entered into any ancillary agreements.

## § 24 Mediation

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.

## § 25 Jurisdiction, applicable law and severability clauses

25.1 The place of performance for all of CONTRACTOR's obligations is the contractually agreed place of performance, or alternatively the location of the project.

25.2 In the event of a defect, 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).

25.3 The place of jurisdiction for all disputes arising from this contract is Frankfurt/Main, Germany. However, CUSTOMER is entitled to sue CONTRACTOR at any other admissible place of jurisdiction.

25.4 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.

25.5 Should individual parts of these General Purchasing Conditions for Construction and Assembly/Installation Services 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.