

# General Purchasing Conditions for Services by Contractors

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## (1) Purpose and validity

All our orders and orders for services are based exclusively on the following General Purchasing Conditions for Services. All individual regulations take precedence, in particular those of the order and the negotiation protocol, as well as regulations of our customer if and to the extent that they were taken 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 designated below, in particular amounts quoted in offers, orders and settlement sums, contractual penalties and securities determined by mutual agreement or legally binding refer to the respective net purchase value. If the Contractor is a tax debtor pursuant to §§ 13 b UStG, 48 b EStG, the respective amount shall be exclusive of statutory value added tax.

## (4) Data protection

CUSTOMER is an ISO/IEC 27001 certified company with a high security standard and therefore the CUSTOMER and the CONTRACTOR have to observe and comply with the implementation of the legal regulation according to the Data Protection Basic Regulation (DSGVO) and the Federal Data Protection Act (BDSG). The Contractor is obliged to comply with the provisions of the DSGVO and the BDSG as amended. He may only use those persons for the provision of the services who he has trained accordingly and committed to data secrecy.

## (5) Supplier's employees, subcontractors

If the Contractor provides the service at the Client's premises, the Contractor shall comply with the security regulations applicable there, in particular the Information Security Guideline, which the Client shall make available to the Contractor upon request. The Contractor shall also comply with these guidelines when providing the service by remote access.

The Contractor may only use subcontractors for the performance of its contractually owed performance after prior written consent of the Client. The Contractor may not unreasonably withhold his consent. In the event of consent, the Contractor shall be obliged to contractually impose on the subcontractor the same rights and obligations as he has vis-à-vis the Client.

The Contractor shall train the employees and subcontractors employed for the provision of the services in accordance with the safety regulations provided and shall ensure that they are aware of the necessity to comply with the safety regulations. He will ensure that neither his employees nor subcontractors who go beyond the normal approval process gain access and commit them to unconditional compliance.

If the provision of services ends for any reason whatsoever, the Contractor shall ensure that all access options received to the systems, buildings and premises are returned or deleted.

## (6) Confidentiality

The Contractor is obliged to treat the Client's trade secrets confidentially for an unlimited period of time and not to pass them on to any third party. Company secrets include all information obtained within the framework of the execution of the contract. In this context, only employees may be granted access to trade secrets insofar as this is necessary for the execution of the contract. Employees who are entitled to do so are obliged to maintain secrecy in accordance with these conditions.

The foregoing obligations shall not apply to trade secrets which

- (i) were already known to the other party at the time of transmission,
- (ii) have become known through no fault of the other party after transmission,
- (iii) have been developed independently by the other party without the use of trade secrets,
- (iv) which the other party is required by law, regulatory order or court order to publish, provided that the other party has been given sufficient time to defend itself against such measures.

After complete performance and acceptance of the services, the Contractor shall, without being requested to do so, completely destroy all trade secrets obtained, insofar as they exist on data carriers or other physical documents, and confirm their destruction in writing.

Insofar as the Customer or a third party commissioned by the Customer must access the Customer's storage media within the framework of the performance of the contract, the Customer shall ensure that access to personal data is prevented or kept as low as possible.

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The Customer shall oblige his vicarious agents appointed with the execution of the contract to comply with the provisions of data protection law. Should the access exceed the extent described above as a secondary consequence of the execution of the contract, the Client shall conclude an order data processing agreement with the Contractor.

## (7) Information Security

The Contractor is aware of the particular need for comprehensive protection of information and data. He shall protect the data and information of the CUSTOMER and its customers against any unauthorised access, modification, destruction or loss, unauthorised transmission, processing and other misuse in accordance with the state of the art. The security is carried out by means of precautions and measures which correspond to the state of the art and the safety guidelines of the CUSTOMER ("information security measures").

## (8) Duty to provide information, audits

The Contractor is obliged to inform the Client immediately of any incident in connection with information security measures as well as of any suspicion of a feared incident and/or infringement. After consultation with the Client, the Contractor shall take measures to prevent adverse consequences for those affected as well as further incidents and infringements in the future. The same applies to incidents and infringements occurring during performance. Upon request, the Contractor shall be obliged to provide information on compliance with the information security measures.

The Client shall be entitled to have the measures for compliance with the confidentiality, data protection and information security provisions of these Terms and Conditions of Purchase checked by the **Information Security Officer** or by a third party during normal business hours on the premises of the Contractor. For this purpose, the Contractor shall grant the Client inspection, access and information on all necessary documents, financial reports, systems and other materials which are relevant for the Contractor's business operations.

## (9) Quality assurance

The Contractor undertakes to guarantee the performance in compliance with suitable quality assurance systems, e.g. DIN EN ISO 9001 ff, 14001 ff, or equivalent. The client is entitled to demand proof of this quality assurance and to convince himself of the type of implementation by means of on-site inspections and controls.

## (10) Compliance/Export control

The Contractor undertakes not to commit any actions or to refrain from any actions which could lead to criminal liability for fraud and embezzlement, criminal offences against competition or comparable offences committed by persons employed by the Contractor or third parties commissioned by it.

In the event that a Contractor behaves unlawfully, the Client shall be entitled to an extraordinary right of rescission or termination of all existing contracts with the Contractor.

Upon request, the Contractor shall be obliged to submit supplier's declarations which comply with the requirements of Regulation (EC) 1207/2001. He shall make these available in good time, at the latest upon acceptance of the order. If long-term supplier's declarations are used, the Contractor shall inform the Client of any changes in the originating status with the acceptance of the order without being requested to do so. The actual country of origin must always be stated in the delivery documents, even if there is no preferential entitlement.

Upon request, the Contractor shall be obliged to inform the Client in writing of all further foreign trade data relating to the goods and their components and to inform the Client immediately in writing of any changes to such data.

## § 1 Contractual bases

- 1.1 The contractual bases are the contractual bases specified in No. 1 of the Negotiation Protocol (hereinafter referred to as VP) and otherwise the law of the Federal Republic of Germany.
- 1.2 If the requirements for the assertion of amended or additional remuneration, extension of the term or other claims, for documentation, for any evidence required and for the conditions for acceptance differ in the contract bases, they must be fulfilled in their entirety. This applies in particular

to such requirements in the contractual conditions of the CUSTOMER's CUSTOMER. This can also be done by implementing the most far-reaching requirements if and to the extent that these cover the less far-reaching requirements.

- 1.3 The following conditions apply to all measures and actions within the material area of application of DIN 31051 or EN 13306 on service items (in their entirety: complete system).
- 1.4 Contractual conditions of the Contractor including his General Terms and Conditions shall not become part

of the contract. These are expressly excluded and are not recognized by the CUSTOMER. This also applies to all other external general terms and conditions of delivery such as ZVEI, VDI, etc. Possible assembly and service conditions of the Contractor are also excluded.

## § 2 Basis of offers and orders

### 2.1 Scope of performance

If and insofar as the contract does not provide otherwise, the Contractor

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shall owe maintenance, repair, upkeep, analysis of weak points, improvement and inspection of the entire plant (services).

## 2.2 Maintenance / setting

- (1) If and insofar as the contract provides for the provision of maintenance or repair measures (hereinafter both: maintenance), the following shall apply in addition:
- (2) If the maintenance is to be carried out by the Client, the Contractor shall send the object of service to the Client in good time at his own expense and risk.
- (3) Maintenance shall be carried out with due care, taking into account the work defined when the order was placed. However, the Customer reserves the right to carry out additional work which was not specified when the order was placed, insofar as this is necessary to regain the serviceability of the object of service or to carry out maintenance. This work shall be remunerated by the Customer on the basis of the current price list to the Customer, subordinated to § 632 II BGB (German Civil Code).
- (4) If the scope of maintenance is to be extended or changed at the request of the Customer, a separate written agreement shall be required.
- (5) Parts dismantled or replaced during maintenance as well as parts provided as samples shall become the property of the Principal, unless otherwise agreed in individual cases.
- (6) Unless otherwise stipulated in the contract, DIN 1961 shall apply in addition.

## 2.3 Estimate of costs

- (1) A cost estimate shall be provided to the Principal at the latter's request. The Contractor may not demand any remuneration for this.
- (2) Cost estimates are binding unless expressly agreed otherwise in writing. CUSTOMER reserves unrestricted ownership and copyright exploitation rights to drawings or other documents; they may not be made accessible to third parties. Drawings and other documents belonging to offers must be returned immediately upon request if the order is not placed with the Contractor.

## § 3 Responsibilities, powers of attorney

- 3.1 The project manager shall only have power of attorney vis-à-vis the Contractor if his power of representation is affirmed in the minutes of the negotiations.

- 3.2 However, the Project Manager shall under no circumstances be entitled to change or delete any wording or clauses of these special conditions or of the minutes of the negotiations after they have been concluded. Such changes or deletions require the express consent of the CUSTOMER's business or purchasing management.

## § 4 General obligations of the contracting parties

### 4.1 Input inspection

The Contractor is obliged to carry out an initial inspection during which the plant is recorded and the condition of the entire plant is determined. The Contractor must notify any defects discovered in this way without delay before the commencement of the services.

### 4.2 Participation of the CUSTOMER

- (1) Fault report: The Principal shall report damages, failures, malfunctions or more than insignificant impairments to the functionality of service items within a reasonable period of time.
- (2) Access: The Contractor's service personnel shall be granted access to the Service Objects within reasonable limits. The service items are made available for operational tests. This also applies to the required documentation of hardware and software.
- (3) The Contractor shall take the necessary measures to protect persons and property at the service site. He shall also inform the Service Manager of any special safety regulations in force that are of importance to the Service Personnel. He notifies the CUSTOMER of violations of such safety regulations by the service personnel.

## § 5 Special duties of the Contractor

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

- (1) By joining the Global Compact of the United Nations, the CUSTOMER and its employees commit themselves to comply with the Global Compact.
- (2) The 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, responsibility for the environment and the prevention of corruption. Further information on the UN Global Compact Initiative can be found at [www.unglobalcompact.org](http://www.unglobalcompact.org).

- (3) The Contractor undertakes to inform the Client immediately of all infringements of the principles listed in paragraphs 1 and 2 occurring in his business area.
- (4) If the Contractor becomes aware of violations of the conditions mentioned in paragraphs 1 to 3, the Client reserves the right to review and, if necessary, terminate the joint business relationship.

## 5.2 Integrity clause

- (1) The Principal expressly refers to the "VINCI Code of Ethics and Code of Conduct" and the "VINCI Code of Conduct against Corruption" in force in his company, which can be downloaded from the following website: "<http://www.vinci-energies.de/de/nachhaltigkeit/gesellschaftliche-verantwortung/unsere-verantwortung/>".
- (2) The Contractor assures that he, as well as his subcontractors and suppliers, have set up a compliance organisation in their respective companies and have implemented a code of conduct which sets comparable standards for the ethical conduct of the respective bodies and employees and ensures compliance therewith. Should this not be the case for him, a subcontractor or a supplier of his, the Contractor hereby undertakes to impose on his officers and employees and on the respective subcontractors and suppliers their officers and employees compliance with the "VINCI Code of Ethics and Conduct" and the "VINCI Code of Conduct against Corruption" and to ensure compliance therewith.

## 5.3 Violation of Sections 5.1 and 5.2

- (1) The Contractor undertakes to inform the Client immediately of all infringements of the obligations to impose and comply with the obligations set out in Sections 5.1 and 5.2 that arise.
- (2) The Client reserves the right to review any infringements of the duties of imposition and compliance on the part of the Contractor mentioned under Sections 5.1 and 5.2 that become known to the Contractor. If an infringement is established, the Client shall be entitled to terminate all contracts with the Contractor extraordinarily in accordance with § 648a BGB (German Civil Code) or to withdraw from them.

## 5.4 Software usage

- (1) If the performance owed requires the Contractor to perform an action subject to permission in accordance with § 69 c UrhG (Copyright Act) on the software used on the entire system, the Contractor shall be obliged to notify the Client of this without delay. In the event of culpable infringements

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of third-party copyright by the Contractor, the Contractor shall indemnify the Client against all claims without restriction.

- (2) Insofar as the scope of delivery includes the transfer of software to the CUSTOMER, the CUSTOMER is granted a non-exclusive right to use the delivered software including its documentation or to carry out the actions permitted under §§69a ff UrhG (German Copyright Act). The Contractor expressly permits the Client to perform acts in accordance with § 69c UrhG (German Copyright Act).
- (3) The client may only copy, revise, translate or convert the software from the object code to the source code to the extent permitted by law (§§69a ff UrhG).
- (4) All other rights to the software and the documentation including the copies remain with the CUSTOMER.

## 5.5 Service times

The services are provided on workdays, Sundays or public holidays (0 - 24 o'clock), unless regulated by an additional agreement.

## 5.6 Measures other than 2.1 and 5.2

If, during the term of the contract, the Contractor believes that it recognizes a weak point or a measure of repair, maintenance or improvement which is not contractually owed, it may inform the Client thereof. However, he must inform the Principal if their non-execution or non-execution immediately thwarts, excludes or endangers the proper operation or the existence of the entire plant in whole or in part.

## 5.7 Fidelity to tariffs and minimum wage

- (1) The Contractor shall 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 (Employee Secondment Act - AEntG) and the Act on the Regulation of a General Minimum Wage (Minimum Wage Act - MiLoG) as well as other statutory or collectively agreed provisions on minimum wages as amended from time to time.
- (2) Upon first request, the Contractor shall indemnify the Client against all claims arising from or in connection with an infringement of § 5.5, in particular an infringement of the provisions of the AEntG or the MiLoG, by the Contractor or a subcontractor appointed by the Contractor or a lender appointed by the Contractor or a subcontractor or any other subsequent subcontractors or lenders. Further

claims of the CUSTOMER remain unaffected.

- (3) A breach of the obligations arising from this § 5.5 entitles the Client to terminate the contract with the Contractor without notice.
- (4) The Contractor shall provide suitable evidence to verify compliance with the obligations under this Section 5.5 and shall submit such evidence to the Client upon request ("right to information"). CUSTOMER or a third party commissioned by it may inspect these documents in order to enforce its claim to information. The Contractor shall inform his employees in writing of the possibility of such checks.

## 5.8 Disposal

The Contractor shall be obliged to dispose of debris, waste, refuse, hazardous waste (waste requiring special supervision in accordance with the Closed Substance Cycle and Waste Management Act) in a professional manner and in compliance with the law. Disposal in this sense means both the recycling and the disposal of waste. If the Contractor does not comply with this obligation despite a one-off written request to do so within a reasonable period of time, the disposal shall be at the Contractor's expense. In this case, the Principal shall be entitled to deduct the resulting costs from the next invoice. The Contractor's obligation to pay compensation shall lapse if the Contractor proves that it has properly disposed of its own rubble, waste, refuse and special waste.

## 5.9 Services without order

If services are rendered without an order and not in accordance with § 677 BGB ff. or in the case of agreed VOB/B in accordance with § 2.8 VOB/B, the object shall be returned to its original condition, unless it is technically or economically unreasonable. The costs for the return to the original condition shall be borne by the Contractor.

## § 6 Storage and dispatch of accepted service items

- 6.1 Accepted items shall be returned to the Principal after maintenance at the expense and risk of the Contractor.
- 6.2 If collection has been agreed instead of shipment, maintained items must be collected within 30 days of notification to the Principal. If this does not occur, they shall be returned to the Customer in accordance with § 6.1 at the Customer's expense and risk.

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

- 7.1 Subsequent claims by the Contractor after conclusion of the contract which are based on ignorance of the construction site or the contents of the order shall not be recognised by the Client.
- 7.2 If the Client is commissioned by his CUSTOMER with subsequent orders within the scope of his order, the CO shall be obliged to execute the order. Settlement is performed according to the unit prices of the main order.
- 7.3 The Contractor may not reject the preparation of the offer to be made by him pursuant to Section 7.2 of the VP and the execution of an amendment which is necessary to achieve the agreed success, and may only reject an amendment to the agreed success if it is unreasonable for him in the individual case. If the Contractor asserts internal reasons for unreasonableness, he shall bear the burden of proof.
- 7.4 If the preparation of an offer by the Contractor requires planning services, the Contractor shall also owe these, insofar as this is reasonable for the Contractor, e.g. because the Contractor's business is equipped for them.
- 7.5 In the supplementary offer, the foreseeable temporal consequences with regard to the dates of the trade-related rough schedule or the detailed construction schedule of this contract replacing it, as well as possible acceleration measures including the resulting additional or reduced costs shall be specified in good time before execution (at the latest 5 working days after the order has been issued) - in updating of the offer calculation. Otherwise, the relevant schedule remains unaffected.
- 7.6 Within the scope of the CUSTOMER project, the CLIENT may also procure material from the Contractor without assembly services under the conditions of the order, insofar as the material to be procured or the type of material is included in the scope of delivery of the main order.

## § 8 Deadlines, times

- 8.1 A contractually agreed response time shall be deemed to have been met if the Contractor has commenced services in the agreed manner at the place of performance within the agreed period.
- 8.2 The deadline for the provision of a service shall be deemed to have been met if the service is ready for acceptance by the time it expires.

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## § 9 Contractual penalty

- 9.1 If the Contractor culpably delays the commencement or completion of the performance, the Contractor shall pay the Client a contractual penalty. It shall amount to 0.2% for each calendar day of culpable default, but in total not more than 5% of the respective net remuneration (in the case of services against recurring remuneration of the annual net remuneration, in the case of default with a divisible partial performance, however, only with the net remuneration for this partial performance).
- 9.2 For each case in which the Contractor violates one of the obligations regulated in § 22, the Contractor shall forfeit a contractual penalty in the amount of € 25,000.00 unless the parties agree otherwise in the minutes of the negotiations.
- 9.3 A forfeited contractual penalty can be claimed until the last settlement of the services for the agreed term.

## § 10 Acceptance/Commissioning

- 10.1 Unless otherwise agreed in writing, formal acceptance shall be deemed to have been agreed. Acceptance must be applied for by the Contractor in writing to the representative named by the Client in the minutes of the negotiations and to the Client's site management, setting a deadline for acceptance.
- 10.2 The Contractor may only demand acceptance by the Client once completion without defects has taken place. The Principal may refuse acceptance if there is a defect. The contractor can only demand a new acceptance once he has proven that the defect has been remedied.
- 10.3 Acceptance of the Contractor's performance, which presupposes complete completion of the work to be performed, shall only take place at the time of overall acceptance by the 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 are part of the acceptance procedure. Missing documentation shall forfeit the acceptance of the service due to incompleteness.
- 10.5 Insofar as the services owed by the Contractor also concern necessary official approvals, certificates etc., the Contractor shall obtain them on its own responsibility on time and hand them over to the Client on the acceptance date.
- 10.6 All other forms of acceptance, whether through use or commissioning or through expiry of the deadline

after notification of completion or payment of the final payment, etc., shall be excluded. are excluded.

## § 11 Transfer of ownership/risk

- 11.1 The Contractor warrants that he and his subcontractors are entitled to dispose of his deliveries/services. In particular, the Contractor shall deliver all items and goods (reserved goods) to be delivered within the scope of the performance owed free of encumbrances. Otherwise he shall indemnify the CUSTOMER against all disadvantages and damages.
- 11.2 The transfer of ownership has no significance for the transfer of risk and the warranty.

## § 12 Remuneration

- 12.1 The services are invoiced according to the contractual agreement. The amounts do not include value added tax.
- 12.2 Prices for deliveries shall be DDP at the contractually agreed place of performance (Incoterms 2010), packaging shall be taken back free of charge. If the Principal does not exercise the right to return the packaging, he shall be entitled to reimbursement of his disposal costs.

## § 13 Changes in remuneration

- 13.1 The Contractor shall be obliged to disclose its calculation at the request of the Client if it 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 The Contractor shall be obliged to disclose the calculation of certain unit prices if the Client requests this in order to prepare supplements to the CUSTOMER. The Contractor shall submit these within 12 working days of being requested to do so.

## § 14 Cost sharing by the contractor

Agreed allocations pursuant to Sections 14.1. and 14.2 VP shall be offset against the partial invoices and the final invoice respectively.

## § 15 Hourly labour

- 15.1 Hourly wage work shall only be recognised by the client after prior, separate supplementary written agreement and after submission of a time sheet to the local construction management of the client within 24 hours.

- 15.2 Confirmation of working time does not mean recognition for accounting purposes.
- 15.3 The normal working time is 50 hours per week. Saturdays are considered normal working days. Unless otherwise agreed, 70 % of the value of the agreed hourly rates shall serve as the basis for calculating overtime pay.
- 15.4 The basis for the remuneration of hourly wage work is the pure working time. Supervision, driving and travel times as well as trips etc. are not remunerated. Site manager hours are not regarded as hourly wage work. The billing is accurate to 0.25 hours.
- 15.5 In the case of fixed-price orders, the invoicing of hourly wage work including overtime surcharges shall be limited to a minimum - a maximum of 5% of the order total.

## § 16 Settlement

- 16.1 In the case of flat-rate orders, the Contractor shall be obliged to provide evidence of the performance status asserted in his respective invoice. The inspection of the performance status and the proofs is incumbent on the construction management of the client.
- 16.2 If a flat-rate remuneration has been agreed according to time periods, the invoice shall be issued immediately after expiry of this time period.
- 16.3 Measurements shall be taken once a week and submitted to the CUSTOMER construction management for inspection.
- 16.4 The Contractor shall draw up a detailed, verifiable measurement report assigned to plant components and submit it to the Client's construction management for verification of correctness. The checked and countersigned measurement record is a condition for the Contractor's demand for payment on account or for the presentation of the final invoice.
- 16.5 A measurement inspection, regardless of whether it is a partial or total measurement, shall be carried out in any case subject to the final inspection by the CUSTOMER. If inspections by the CUSTOMER result in claims for restitution to the CLIENT, the CO shall be fully liable.
- 16.6 The Contractor shall invoice his services in a verifiable manner. He shall 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. The quantity calculations, drawings and other documents required to prove the type and scope of the service must be

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enclosed. 4 Amendments and supplements to the contract shall be specially marked on the invoice; they shall be invoiced separately upon request.

16.7 The findings necessary for invoicing shall be made together as far as possible in accordance with the progress of the service. The accounting provisions in the Technical Terms of Contract and the other contract documents must be observed. For services which are difficult to determine when the work is continued, the Contractor must apply for joint findings in good time.

16.8 The final invoice must be submitted no later than 10 working days after completion for 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.

16.9 If the Contractor does not submit a verifiable invoice although the Client has set him a reasonable deadline for this, the Client may draw it up itself at the Contractor's expense.

## § 17 Payments

17.1 An invoice is due within 15 calendar days less 3% discount, within 15 to 29 calendar days less 2% discount or optionally after 30 calendar days after receipt of the invoice.

17.2 § 17.1 shall apply mutatis mutandis to other acts of performance by the Customer as well as the justified assertion of rights to refuse performance and rights of retention.

17.3 If the Customer allows the discount period for an advance payment or the advance payment to expire, this shall not affect the right to deduct a discount for the remaining payments or performance.

17.4 All prices do not include sales tax. Value added tax shall be invoiced separately at the applicable rate in accordance with the applicable tax regulations.

17.5 Cheques or bills of exchange shall be accepted in lieu of performance.

## § 18 Securities

18.1 If security deposit by the Contractor has been agreed, the Client may retain 10% of the respective payment amount for each advance payment until the security amount has been reached (cash retention) in order to simplify processing.

18.2 Unless the cash retention has already been used in a justified manner, the Contractor may demand payment

concurrently with the provision of a guarantee by a credit institution or credit insurer permissible in accordance with § 17 (2) VOB/B for 10 % of the order amount, which corresponds to the sample enclosed with the minutes of the negotiations as an attachment, referred to as a "guarantee".

18.3 The statute of limitations for claims arising from the collateral begins with the assertion of the secured claim. The statute of limitations for claims arising from the collateral ends with the statute of limitations for the last secured claim.

18.4 The Principal shall return a security after the statute of limitations for all claims arising from the security has expired.

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

19.1 Services which are already recognised during execution as defective or contrary to contract shall be replaced by the Contractor at his own expense by services free of defects. If the Contractor is responsible for the defect or the lack of conformity with the contract, he shall also compensate for the resulting damage. If the Contractor does not comply with the obligation to remedy the defect, the Client may set him a reasonable deadline for remedying the defect and declare that he will terminate the contract after fruitless expiry of the deadline.

19.2 In the event of improper assembly, the Contractor shall be granted a reasonable period of time to remedy the defect. If no satisfactory result is achieved within this period, the client can carry out the execution himself or have it carried out by commissioning third parties according to time and effort. All resulting costs shall be borne by the Contractor.

19.3 In urgent cases, the Client may, after consultation with the Contractor, carry out the rectification itself or have it carried out by a third party. Minor defects can be remedied by the Principal himself in fulfilment of his duty to mitigate damage without prior agreement and without affecting the warranty obligation. The Principal may then charge the Contractor with the necessary expenses. The same applies if unusually high damage is imminent. In any case, the Customer shall have the right to choose between rectification of defects and new production.

19.4 Should damage or defects of any kind occur which have arisen as a result of work carried out by the Contractor or which affect its scope of delivery, the warranty period shall be 5 years and 6

months after acceptance by the Client. Acceptance / commissioning of the plant by the CUSTOMER.

19.5 In the event of subsequent performance, the agreed warranty period shall commence anew from the time of subsequent performance.

19.6 The Contractor hereby assigns to the Customer, who accepts the assignment, all his claims for defects, warranty claims, product liability claims as well as claims arising from securities he can assert against his subcontractors and suppliers (NU). The assignment shall not affect the Client's own claims for defects against the Contractor.

19.7 The Contractor shall be authorised by the Client until revoked to enforce the assigned claims against its Subcontractor itself. In addition, the Contractor may demand that the assigned claims be reassigned in the event that the Contractor successfully remedies the defect or otherwise fulfils the Client's claims based on defects, provided that the Contractor's fulfilment of the Client's claims based on defects is sufficient.

19.8 At the latest two weeks before acceptance, the Contractor shall provide the Client with a list of all Subcontractors used, including their address and precise details of the trades to be performed, agreed defect claims/guarantees and delivered items. At the Client's request, the Contractor shall be obliged to hand over and provide the Client with all documents and information necessary to enforce the assigned claims.

19.9 The Contractor warrants that all deliveries and services within the meaning of the German Civil Code (BGB) are guaranteed and essential characteristics. The reversal of the burden of proof lies with the Contractor in accordance with § 477 BGB. If the Contractor does not fulfil his guarantee obligation within a reasonable period set by the Client, the Client may take the necessary measures himself or have them taken by third parties at the expense and risk of the Contractor without prejudice to the Contractor's guarantee obligation.

19.10 In all other respects the statutory warranty shall apply.

## § 20 Liability/Insurance

20.1 Unless otherwise stipulated above, the Client shall only be liable to the Contractor in cases of intent and gross negligence. Liability for consequential damages is excluded.

20.2 The Contractor shall be obliged to take out sufficient business liability insurance at his own expense and to maintain this for the duration of the

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contract, whereby the amounts specified below for the respective type of damage shall be available at least twice per insurance year in the event of several claims:

Type of damage:	in EUR:
Personal injury	2,000,000.00
Damage to property	2,000,000.00
Financial losses	1,000,000.00
Activity damage	500,000.00

The number of claims must be unlimited.

- 20.3 The Contractor shall submit the copies of the insurance contracts to the Client at the latest at the start of construction. The Contractor shall not be entitled to benefits from the Client prior to proof of insurance cover. The Principal may make payments dependent on proof of the existence and continued existence of the insurance cover.
- 20.4 The Contractor authorises the Client to contact the insurance company directly in the event of damage, to request information from the insurance company or to conduct negotiations. The Customer shall be irrevocably authorized to assert and accept indemnification payments from the insurance company in its own name, insofar as the indemnification payments are attributable to damages in the property of the Customer.

## § 21 Termination of contract

### 21.1 Duration of the contract,

If a term is contractually agreed, this shall apply.

### 21.2 Notice

- (1) The CUSTOMER may terminate the entire contract or parts thereof at any time.
- (2) If the Contractor is responsible for the reasons for termination, only the services provided up to that point in time in accordance with the contract, self-contained and proven, shall be remunerated, insofar as these are usable by the Client. Claims for damages of the CUSTOMER remain unaffected. The Contractor shall be responsible for the reasons for termination, in particular in the following cases:
  - The Contractor shall not provide a service free of objections despite a warning and setting of a deadline.
  - The Contractor shall not comply with the contractually agreed deadlines and dates despite a warning and setting of a deadline.
- (3) If the Contractor is not responsible for the reasons for termination, the Client

shall reimburse the services demonstrably rendered up to the termination date and the unavoidable costs. The Contractor shall not be entitled to any further claims for performance or damages on the occasion of the termination. The Contractor shall agree a corresponding regulation with its subcontractors.

- (4) The rights to the work results created up to the termination are transferred to the CUSTOMER.

### 21.3 Continuation of services

If the contract between the Client and the Contractor is terminated by unilateral declaration of intent or agreement or otherwise (but not by performance §§ 362, 364 BGB) (hereinafter: termination of contract), the Contractor shall make available all funds required by the Client for the continuation of the services. This includes in particular: the use of equipment, materials, plant components, drawings, know-how and industrial property rights. The Contractor is obliged to comprehensively support the Client in this use. The Contractor is obliged to immediately hand over the complete project documents to the Client free of charge and hereby assigns all rights to these documents to the Client under the condition precedent of termination of contract, which the Client accepts. The Contractor waives any rights of retention to the surrender of the documents, for whatever legal reason, and the Client accepts the waiver. Project documents are all objects in physical form as well as any computer-based data, files and other information which are (directly) indirectly connected with the project and its execution.

### 21.4 Insolvency and insolvency petition against the Contractor

- (1) The Client shall be entitled to terminate the contract pursuant to Section 21.2 (2) in particular if the Contractor ceases payments or files a petition for the opening of insolvency proceedings or comparable proceedings or if insolvency proceedings or comparable proceedings are opened against his assets.
- (2) Subject to a condition precedent in the case of paragraph 1, the Contractor hereby assigns its present and future claims for performance and rectification existing at the time of the occurrence of the condition, which the Contractor has under a legal relationship with a third party.
- (3) The object of this legal relationship must be the fulfilment or subsequent improvement of a service which is also to be regarded as fulfilment or subsequent improvement in the legal relationship between the Client and

the Contractor. Insofar as that legal relationship also concerns the performance or repair of services which are not to be regarded as performance or repair in the legal relationship between the Client and the Contractor, these claims shall be excluded from assignment.

### 21.5 Subcontractors and suppliers of the Contractor

- (1) The Contractor already now enters into the contract subject to the condition precedent of the termination of the contract.
  - all his present and future claims against his subcontractor, existing or arising, including all claims for performance, claims for non-performance or defective performance, repayment claims arising from overpayments, claims for damages, warranty claims, claims on and from securities as well as claims for insurance benefits arising from him or his Subcontractor, as well as
  - all claims to and from related securities and guarantees (e.g. prepayment, performance of contract and warranty guarantees)

to the CUSTOMER who accepts the assignment.

- (2) The Contractor shall be obliged to include in all contracts to be concluded with its subcontractor or the declaration of the subcontract that the subcontract agrees that the Contractor may assert all its claims against the subcontract (in particular: The Customer shall assign to Subcontractor any claims for performance, repayment claims arising from overpayments, claims for damages, warranty claims, claims for insurance benefits arising from damages incurred by subcontract, claims to and from guarantees provided by subcontract) subject to the condition precedent that the contract is terminated.
- (3) Upon request, the Contractor shall provide the Client with evidence of this.

## § 22 Confidentiality, copyrights and industrial property rights, customer protection

- 22.1 The Contractor is obliged to maintain confidentiality. He may not pass on information about the construction project to third parties not involved in the construction project without the consent of the Principal.
- 22.2 Publications about the construction project by the Contractor or its employees shall only be permitted with the prior written consent of the Client. Publication in this sense also includes

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the description of the construction work, the publication of drawings, calculations and other documents, as well as photographs, films, radio and television recordings and publications on the Internet. The Contractor shall bring about a corresponding obligation on the part of the Subcontractor engaged by it vis-à-vis the Client.

- 22.3 The Contractor shall ensure that, with regard to the services rendered, neither the Contractor nor any subcontractors employed assert copyrights or other industrial property rights which prevent the Client from unrestricted use and exploitation of the Contractor's services.
- 22.4 Until the end of the project or the construction project, the Contractor may not conduct any "direct business" of any kind with the Client's CUSTOMER without the consent of the Client. Accordingly, he may not enter into any direct or indirect business relations with CUSTOMERS of the CUSTOMER or their legal successors via the work in question and the associated additional or follow-up orders which are technically related to them.
- The above obligation exists beyond the end of the project or construction project for a period of 1 year after termination of the contract (rescission, termination or acceptance). Direct subsidiary agreements between the Contractor and the Client's CUSTOMER are generally prohibited for the Contractor. In the event of disregard, the Contractor shall be liable.
- 22.5 The CUSTOMER shall also mean any direct or indirect customer of the CUSTOMER, insofar as this customer is related to the project/construction project supplied by the CLIENT.
- 22.6 Plant equipment, 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 shall be kept secret from third parties even beyond the term of the contract; the respective employees shall be subject to corresponding obligations.
- 22.7 Neither party will recruit employees from the other. A violation of this provision entitles the party concerned to terminate the contract without notice.

- 22.8 The obligations regulated in the above paragraphs are subject to contractual penalties in accordance with § 9.

## § 23 Assurances / Other agreements

- 23.1 An assignment or collection assignment or pledging of claims against the Principal arising for the Contractor from and in connection with the construction project is only permitted with the prior consent of the Principal.
- 23.2 The Client shall be entitled to set off claims to which the Contractor is entitled against the Client against claims to which he or other companies affiliated with the Client within the meaning of §§ 15 AktG are entitled against the Contractor. Furthermore, the Client shall be entitled to set off its claims against the Contractor against claims to which the Contractor is entitled against one of the aforementioned companies.
- 23.3 The Contractor may only offset claims of the Client against undisputed claims against the Client which have been established as final and absolute or are ready for decision.
- 23.4 The documents (plans, drawings, documentation, data etc.) produced or procured by the Contractor and to be handed over to the Client shall become the property of the Client. The Contractor's right of retention after the end of performance (acceptance, termination or cancellation of the contract) is fundamentally excluded, unless the claims of the Contractor on which the right of retention is based have been recognised by the Client or have been legally established.
- 23.5 The documents of the Client handed over to the Contractor shall be given to the Client at the latest after completion of his services.
- 23.6 The Principal shall be entitled to claim compensation from the Contractor for the damage incurred by him as a result of the CUSTOMER being held liable by him for culpable infringements by the Contractor against statutory or official regulations, or as a result of the 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 all amendments and supplements must be in writing in order to be effective. This also applies to a waiver of the agreed written form.

- 23.8 Additional agreements have not been made.

## § 24 Conflict resolution

Insofar as the parties have agreed on mediation or any other form of out-of-court settlement of conflicts in the minutes of the negotiations, the provisions specified therein shall be observed.

## § 25 Jurisdiction, law and applicable severability clauses

- 25.1 Place of performance for all obligations of the contractor is the place of performance stated in the order confirmation, or alternatively the location of the project.
- 25.2 In the event of a defect in his deliveries, the Contractor shall be obliged to take back the defective item without disassembly at the place where the item is located as intended (location) (place of performance for rectification of defects).
- 25.3 Place of jurisdiction is Frankfurt/Main. However, the Principal shall be entitled to sue the Contractor at any admissible place of jurisdiction.
- 25.4 All rights and obligations arising from this contract shall be 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 Terms and Conditions for the provision of services by the Contractor or parts of other provisions be invalid, this shall not affect the validity of the remaining provisions.

The ineffective clause shall be replaced by the closest permissible clause according to law and jurisdiction, which regulates the economic and legal sense in the closest, maximum permissible manner.