

# General Purchasing Conditions for Construction and Assembly Services by Contractor

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## (1) Purpose and validity

All our orders and commissions for construction and assembly services are based exclusively on the following General Purchasing Conditions for construction and assembly 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

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| <p>1.1 The contractual bases are the contractual bases specified in No. 1 of the Negotiation Protocol (VP) and otherwise the law of the Federal Republic of Germany.</p> <p>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 can also be done by implementing the most far-reaching requirements if and to the extent that these cover the less far-reaching requirements.</p> | <p>1.3 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 AG. 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.</p> | <p>writing of any contradictions, ambiguities and/or inaccuracies in individual contract components relating to the type and scope of the services to be rendered.</p> |
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## § 2 Basis of offers and orders

- 2.1 The Contractor shall be obliged to conscientiously examine the performance description, the submitted planning documents and the other contract documents (in particular with regard to dimensions and measurements) and to inform the Client in

- 2.2 The contractor confirms that he has clarified all details of the services to be rendered on his own responsibility and that he is either aware of the nature of the construction object and the local conditions or has refrained from obtaining the necessary knowledge at his own risk. If the Contractor offers without site inspection, any disadvantages shall be borne by him.

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2.3 The Client must be informed in writing of any risks in the Contractor's offer calculation. If no restrictions are made, all risks of the possible order are considered included.

2.4 The Principal may open the Contractor's stored calculation to examine the Contractor's supplementary claims. The Contractor shall be given the opportunity to be present at the opening of the calculation. After inspection, the calculation shall be closed again in the presence of the Contractor and then stored securely.

2.5 Additional costs e.g. for difficult circumstances, simultaneous work by several trades, heights, distances on the construction site etc. cannot be claimed.

2.6 The service owed also includes all ancillary services within the meaning of Clause 4.1 of any relevant provision of the VOB/C, legally prescribed or contractually agreed tests and acceptances, measuring and testing equipment, commissioning and trial operation.

2.7 Offers for delivery and services of the Contractor are always binding for the Contractor and non-binding and free of charge for the Client. They are always based on the present General Terms and Conditions of Purchase for Construction and Assembly Services of the Principal.

2.8 By the act of submission of the Offer by the Contractor to the Client, the conditions of § 2.7 are accepted by the Contractor. A possible written reference to the AGB's of the contractor in his offer will and is invalid.

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

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.

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.

3.2 The Contractor shall designate a responsible specialist site manager in writing at the latest at the start of

work. The latter shall be entitled to legally represent the Contractor vis-à-vis the Client. He is responsible for quality, work preparation and personnel deployment as well as for compliance with labour law and labour protection regulations on the construction site.

3.3 The construction site assignment of the CONTRACTOR site supervisor ends at the end of the project. His dismissal is only permissible with the approval of the Customer. Any temporary absence during the assembly times, however justified, must be reported to the Principal immediately. In this case, the Contractor shall nominate an equivalent deputy.

3.4 The Contractor shall indemnify the Client against all damages, losses, disadvantages and claims of third parties which should result from the non-availability of the specialist construction manager. This also applies if employees of the Contractor should turn to the Client for advice on the construction site and an unavoidable reaction of the Client should be interpreted as an instruction to the employees not provided for in a contract for work and services.

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

4.1 The contractor has the complete delivery and / or service obligation for the object / trade named on p. 1 VP. This includes everything that is necessary for a complete and professional execution of the service and for its intended use, even if individual deliveries / services are not listed in the service description or are not listed completely, but are technically necessary.

4.2 The Contractor shall perform the deliveries or services described by the contractual bases and by the delivery and service description in Clause 1 VP in accordance with the contractual circumstances, usable and fit for purpose, free from legal or actual obstacles to usability for the Client, at the agreed time of performance in the agreed manner (scope of performance of the Contractor).

4.3 The Contractor's scope of services corresponds in particular 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 The Contractor shall carry out the work assigned to him independently, under his own responsibility, properly and carefully. At the same time, it must also take into account the interests of the CUSTOMER. The Contractor is not subject to any right of the Client to instruct or direct; however, he shall observe the Client's technical specifications to the extent that this is necessary for the proper execution of the contract.

4.5 The Principal shall provide the Contractor with the information and data required to prepare an offer or execute the order. If necessary, technical documents such as design drawings, plant plans, program sequence descriptions or models etc. shall be made available, insofar as these are available.

4.6 The Contractor shall at all times independently and on its own responsibility check whether the scope of performance of the Contractor can be rendered usable, fit for purpose and free of legal or actual obstacles as agreed by the Contractor on the basis of the contractual bases specified in § 1 and the information otherwise available to the Contractor. The Contractor must notify any obstacles immediately, i.e. without culpable delay (duty to notify).

4.7 Objections based on new knowledge must be notified to the Customer in writing at the latest before the start of the execution of the contractual services. A breach of this obligation will result in the loss of any additional claims.

4.8 The client reserves the right to check the quality of the services provided. The inspections shall always be carried out in the presence of the Contractor, as far as necessary and possible.

4.9 All services to be rendered by the Contractor must be performed in perfect craftsmanship, in accordance with the generally recognised rules of technology and in accordance with valid standards. Further technical requirements, regulations, specifications and factory standards of the CUSTOMER or of the operator of the plant to be erected agreed with the Contractor as the basis of the contract pursuant to Clause 1.1 VP shall be taken into account by way of extension and in the order of priority specified in the negotiation protocol.

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- Any installation deviating from the regulations shall be deemed a defect and shall be corrected by the Contractor at the Contractor's expense. This shall also apply mutatis mutandis to all deliveries made by the Contractor.
- 4.10 Unless expressly agreed otherwise, the Contractor shall bindingly observe the specifications for materials, makes, products, deliveries etc. laid down in the contract, including the contract components. Deliveries or services of "equivalent nature" are only permitted with the express written consent of the Principal.
- 4.11 The Contractor may only use brand-new, flawless building materials, components and equipment which comply with the relevant standards and test marks. Only materials for which a subsequent delivery period of at least 10 years is guaranteed may be used. Upon request, the Contractor shall provide proof of the quality and serviceability of his deliveries and services at his own expense.
- 4.12 The Customer must be invited in good time to the sampling dates. The invitation must state which services are to be sampled and which products or materials the Contractor intends to present to the Client. The Contractor may only sample products and materials in conformity with the contract; supplementary claims of the Contractor shall be excluded if the Client has decided in favour of a specific product or material in the course of sampling without prior notification of the Contractor of additional costs.
- 4.13 Each sampling shall be recorded by the Contractor; the Client shall receive a copy of the sampling record within one week of the sampling date. The costs of sampling and any evidence requested by the Client shall be borne by the Contractor. The approval of sampled materials does not release the Contractor from his responsibility with regard to the quality of these materials.
- 4.14 The Contractor undertakes to provide the Client, at the latter's request, with a reasonable number of the items to be delivered free of charge for the purpose of sampling.
- 4.15 The respective place of performance shall be determined by the respective order. The Contractor may not use, remove or alter any plant equipment at the place of performance without corresponding permission.
- 4.16 Upon entering and leaving the place of performance, the Contractor must submit to the resulting inspections of the Client and / or the CUSTOMER. The Contractor shall oblige his vicarious agents to do so in the case of an approved subcontracting.
- 4.17 The Contractor undertakes to comply with all financial and tax regulations applicable at the place of performance. In particular, the Contractor is responsible for compliance with all trade law, residence law and labour law registration and approval procedures at the place of performance. This obligation applies both to the Contractor's company and to its employees and other vicarious agents. The Contractor shall be liable under criminal and civil law for all consequences resulting from infringements of financial, tax, trade, residence and labour law regulations.
- 4.18 The masses on which the contract between the Client and the Contractor is based are always estimates which may change upwards and downwards. Items can also be omitted. The Contractor shall, however, maintain corresponding capacities. A quantity increase of up to **20%** does not result in a date shift. The services to be rendered are constantly coordinated with the CUSTOMER representative on the construction site. The order value / value of a framework order is not binding for the Customer. However, the respective individual call-off is binding.
- 4.19 The Principal reserves the right to remove partial services - to whatever extent - from the total scope of scheduled or technical changes or changes requested by the CUSTOMER and to transfer them to other Contractors. If, in this case, points of contact arise with these Contractors, the work shall be carefully coordinated with them by the Contractor. Resulting waiting periods are not remunerated.
- 4.20 In principle, the services of the CLIENT are rendered to his CUSTOMER as part of an overall construction activity of the CUSTOMER. It is common for other construction activities to take place during the construction and assembly work. The interests of these companies must be taken into consideration.
- 4.21 There is no entitlement to continuous work. Multiple arrivals are not remunerated and are included in the unit prices or the packages.
- 4.22 The Contractor shall produce the necessary documentation, which he has produced under his own responsibility, in checked quality, free of errors, but at most with the usual error rate of a finished, checked document. Formats, execution, drawing numbers, folder structures etc. must be agreed with the client before the documents are created. All costs in this respect are to be included in the unit prices by the Contractor.
- 4.23 All official approvals, certificates and attestations required for commissioning and operation of the plant / installation created by the Contractor shall be provided by the Contractor.
- 4.24 The Contractor shall have the right to act for third parties as well. A prior consent of the Client is not required for this unless the Contractor also wishes to work for a competitor on the same project of the Client.
- 4.25 If the proper execution of the order by the contractor is at risk, the contractor must inform the client immediately.
- 4.26 Advertising by the Contractor or its subcontractors of any kind whatsoever on the construction site is not permitted without the Client's consent. The Client may also use any construction fence or construction crane as an advertising medium for his own advertising and have large-scale advertising mounted on scaffolding, without the Contractor being able to derive any claims from this, in particular claims for remuneration.
- 4.27 Advertising by the Contractor in connection with the project must be agreed with the Client prior to publication.

## § 5 Special duties of the Contractor

### 5.1 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

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UN Global Compact Initiative can be found at [www.unglobalcompact.org](http://www.unglobalcompact.org).

## 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 warrants 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 that sets comparable standards for the ethical conduct of the respective bodies and employees, and shall ensure 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 to 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 Planning

- (1) The Client's release and approval notes on the Contractor's execution documents, workshop and assembly drawings etc. do not lead to any joint responsibility on the part of the Client and do not limit the Contractor's unlimited responsibility with regard to his services.
- (2) The Principal shall be entitled to make amended planning specifications to

the Contractor. In this case, the Contractor is obliged to independently check which further plans (e.g. TGA) are to be adjusted accordingly and to make the necessary planning adjustments.

## 5.5 Personnel planning, personnel deployment

- (1) The Contractor shall inform the Client's construction management at the latest at the start of the work of his employees scheduled to carry out the order.
- (2) The Contractor shall employ its own personnel from the countries of the European Community employed by it for order processing. All employees must be in possession of a social security card and carry it with them on the plant premises.
- (3) Foreign employees may only be employed by the Contractor if these employees are in possession of a valid residence and work permit which applies to the spatial and temporal area of the work to be performed. The Contractor must satisfy himself of the existence of these prerequisites before these employees perform any work.
- (4) The Contractor shall name the employees deployed by him in good time for the purpose of access regulation to the place of performance and shall notify the Client in advance of any changes.
- (5) The Contractor shall be responsible for the registration of the employees with the plant security (identification office) as well as for the procurement of necessary documents or permits for the deployment of the employees. The works ID card issued by the CUSTOMER must be carried at all times. In the event of loss of ID cards provided by the CUSTOMER, the Contractor shall bear all possible costs incurred.
- (6) The Contractor and its employees must inform themselves of their own accord of the operational regulations applicable at the place of performance and observe them.
- (7) The Contractor shall have the work assigned to him carried out only by suitable personnel and shall supervise this during the work.
- (8) If the Contractor's employees are not professionally or personally qualified to perform the services commissioned by the Client, the Contractor shall replace them. If an employee of

the Contractor is encountered with alcohol or other intoxicating substances or if grossly negligent or intentional acts against safety, environment and health are detected, the exchange of personnel is mandatory. All consequences and / or costs in these cases shall be borne by the Contractor.

- (9) The Contractor shall ensure the transport of personnel from the building site car park or the social rooms to the assembly site by means of collective transports.
- (10) The contractor and his vicarious agents are not employees of the client. The Contractor shall have no claim against the Client for vacation, fixed wages, continued payment of wages in the event of illness, overtime payments or other social benefits.
- (11) It is the sole responsibility of the Contractor to procure the employees required to carry out the work taken on in sufficient numbers and at the agreed times and to plan for absences due to holidays, rotation, illness and the like.
- (12) The Contractor undertakes to be financially responsible for the success of the work to be carried out using its own work equipment and personnel or using subcontractors approved by the Client. In order to fulfil its contractual obligations, the Contractor shall exclusively use its employees or subcontractors approved by the Client. The Contractor shall ensure an independent organisation of the actions necessary for the performance of the contract. The parties agree that no contractual relationship, in particular no employment relationship, exists or will exist between the Client and the Contractor's employees and/or the employees of any Contractor's subcontractors approved by the Client. The Client shall have no contractual right to issue instructions to the Contractor's employees and/or the employees of any Contractor's subcontractors approved by the Client. The employees of the Contractor and/or any subcontractors approved by the Client shall exclusively have an employment relationship with the Contractor and/or any subcontractors approved by the Client and shall perform their work exclusively in fulfilment of their employment contract with the Contractor and/or any subcontractors of the Contractor approved by the Client.
- (13) If employees of the Contractor and/or employees of any subcontractors of the Contractor approved by the Client

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assert against the Client the existence of an employment or service relationship or assert claims against the Client arising from or in connection with an employment or service relationship, the Contractor shall indemnify the Client against such claims in full.

## 5.6 Occupational safety, work guidelines

- (1) The 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. The CUSTOMER does not perform any monitoring function. The Contractor acts on his own responsibility and is fully liable for civil and criminal consequences in the event of misconduct.
- (2) If the CUSTOMER has issued his own rules supplementing the statutory requirements (e.g. factory regulations), these must be observed on the factory premises. If non-observance results in damage or work prohibitions for personnel, all resulting claims for damages shall be borne by the Contractor.
- (3) Prior to commencing the work, the Contractor shall name the Client or its representative a person who shall ensure the mutual coordination of the necessary occupational safety and security measures (*coordination*). The Contractor shall ensure through suitable organisational measures that all its employees behave accordingly. The responsibility of the Contractor's superiors remains unaffected.
- (4) At the beginning of his work, the Contractor's site manager shall receive a briefing on safety at work on file on the basis of the Client's safety at work instructions and the CUSTOMER's factory regulations. The Contractor's employees shall be instructed by his site manager. By signing, the instructed person undertakes to comply with the work safety regulations. Violations will be punished with a work ban. All resulting claims for damages shall be borne by the Contractor.
- (5) The Contractor must make facilities, arrangements and corresponding further measures which comply with the provisions of the accident prevention regulation DGUV 1 "Principles of Prevention" and the accident prevention regulations otherwise applicable to the Contractor as well as the relevant generally recognised safety and occupational health regulations. Insofar as requirements are made in other legal

provisions, these provisions shall remain unaffected.

- (6) The Contractor must ensure strict compliance with the rules and regulations recognised for the respective service in order to ensure construction operation, accident prevention and protection against construction noise. He shall oblige his vicarious agents in particular to observe the industrial safety regulations. The devices used by the Contractor must meet the requirements of the relevant DIN standards for safety, the Product Safety Act, the VDE regulations and other regulations.
- (7) If work is outsourced to third parties (e.g. another subcontractor), the Contractor shall take all appropriate measures to ensure compliance with the industrial safety and security regulations of these third parties and for the necessary instructions of and instructions to the employees of these third parties. The Contractor shall pass on to these third parties the industrial safety and security obligations agreed in this contractual clause and shall monitor their compliance by the third parties - in particular the obligations pursuant to § 5.4 paragraphs 1 to 3.
- (8) The use of working and auxiliary materials or other materials provided by the Client shall be at the risk of the Contractor. The Contractor shall be obliged to inspect all means and materials for their functionality and safety before they are used for the first time and then regularly to the extent necessary. The Contractor shall inform the Client without delay if the means or materials made available are not in the required functional or safety-compliant condition. For the entire period of the provision, the Contractor shall assume the duty to ensure the safety of the auxiliary and work equipment and materials on the road and shall take all necessary measures to avert danger.
- (9) The Contractor shall provide the Client with support to the extent necessary and reasonable in fulfilling the obligations to the Client's Client with regard to occupational safety and security. This refers both to the planning and the execution phase and in particular to a required safety and health protection plan in accordance with the Construction Site Ordinance.
- (10) The Client is entitled at any time to demand information about the industrial safety and security measures taken by the Contractor, about the instructions and instructions given to its

employees and the supervisory and monitoring measures and to inspect the documentation documents. The Contractor is obliged to submit these documents at the request of the Client or any person commissioned by him. If the review shows that

- a) If there are deficiencies in the expertise, qualification or reliability of an employee, the Principal shall be entitled to demand the replacement of the employee,
  - b) If there are deficiencies in the instruction or supervision of the employees, the Principal shall be entitled, after setting a reasonable deadline, to demand that the deficiencies be remedied and to prohibit further work for the interim period. The Contractor shall then be in default due to the resulting delay or non-execution of the order. In particularly serious cases or if the order is repeated, the Principal shall be entitled to terminate the order without notice.
- (11) The Principal reserves the right to intervene and issue instructions to coordinate in the event of mutual danger, imminent danger and to maintain general security. In particular, activities may be prohibited if the necessary personal protective equipment or clothing or other safety equipment (e.g. fall protection) is not worn or used. The Contractor shall then be in default due to the delay or non-execution of the order. In particularly serious cases or if the order is repeated, the Principal shall be entitled to terminate the order without notice.
  - (12) The Client shall also be entitled to the rights referred to in § 5.4 (10) and (11) directly vis-à-vis the Contractor's subcontractors. The Contractor shall anchor this authorisation of the Client in his contracts with the subcontractors and oblige the subcontractors to accept the sanctions in accordance with § 5.4 paragraphs 10 and 11 and shall provide the Client with unsolicited proof of this by submitting the contracts.
  - (13) The Contractor shall provide all its employees with faultless, personal and standard-compliant protective equipment and clothing prior to commencing work. This consists at least of a protective helmet, safety shoes (S3), protective gloves, protective goggles with shatterproof lenses and fire-resistant, body-covering work clothing. The guidelines of the employers' liability insurance associations and

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those of the CUSTOMER must be observed when wearing personal protective equipment.

- (14) In the event that the Contractor culpably breaches the obligation incumbent upon him pursuant to § 5.4 paragraphs 1 to 6, he shall be obliged to pay compensation to the Client; §§ 280 ff BGB shall apply. In particular, the Principal shall be reimbursed as damages for all reasonable times which the Principal spends on the discovery, investigation, processing and monitoring as well as the initiation of the resulting measures while maintaining the economic and reasonable (§ 254 BGB) management, at an hourly rate of EUR 80.00 net plus any VAT, but at least a flat rate of 10% of the other damage arising from the breach of duty. The 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 lump sum.
- (15) The Contractor is aware that the Client is responsible to his Client for compliance with all occupational safety and security regulations in the execution of the order and that in the event of breaches of duty the Client may be deprived of the order and a blocking period may be granted for further orders. The Contractor undertakes to carry out his work with the greatest possible care, also to protect possible disadvantages arising from this contractual relationship. In this respect the Contractor has special duties of care, protection and care. If the order is withdrawn, the CUSTOMER is threatened with high damages. In the event of a breach of duty, the Contractor shall be liable for damages.

## 5.7 Compliance with tariffs and minimum wage

- (1) By signing the contract, the Contractor declares that he is a member of the professional association responsible for him, that he has fulfilled his contribution obligations to the social insurance funds to date and will continue to do so, and that he has fulfilled and will fulfil current tax obligations.
- (2) 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.

- (3) The Contractor shall ensure that the obligations under this § 5.5 are also transferred in writing to the subcontractors commissioned by him and the lenders commissioned by him or by a subcontractor, each with an obligation to pass them on to further subcontractors and lenders. He must prove this to the CUSTOMER upon request.
- (4) Upon first request, the Contractor shall indemnify the Client against all claims arising from or in connection with an infringement of this § 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.
- (5) A breach of the obligations arising from this § 5.5 entitles the Client to terminate the contract with the Contractor without notice.
- (6) 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"). The 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.
- (7) The Contractor shall comply with all relevant and applicable labour and remuneration law and related public and social law provisions 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 the Contractor's employees and the granting of all their rights, and shall pass on these obligations to its subcontractors approved by the Client. In addition, the Contractor shall oblige its employees and subcontractors approved by the Client to comply with all applicable statutory regulations. In the event of a breach of the above obligations, the Contractor shall indemnify the Client upon first request against all claims of third parties.

- (8) The Contractor hereby assigns all information claims against the subcontractors or lenders employed by him to the Client who accepts the assignment by way of security. The Client shall only notify the subcontractors or lenders of the assignment and make use of it if an insolvency petition has been filed against the Contractor, the Contractor itself has filed such a petition or the Contractor does not properly fulfil its obligations under this Section 5.5, in particular if the Contractor is in default of performance. Up to this point in time, the Contractor shall remain authorised and obliged to assert claims for information against subcontractors or lenders in his own name and for his own account. It is clarified that the disclosure obligation pursuant to § 5.5 (3) also includes the assignment of the right to information.

## 5.8 Construction site equipment, tools

- (1) The construction site setup is included in the contract prices.
- (2) The contractor shall provide all construction site equipment required for the performance of his work, such as crew containers, tools and machines of all kinds as well as scaffolding up to a working height of **6 metres**. The costs for this are included in the order value or in the unit prices.
- (3) If scaffolding with a working height of more than 6 metres is required, it shall be made available by the Principal free of charge, unless otherwise agreed.
- (4) In principle, the required scaffolding must be registered in good time with the AG's construction management in accordance with § 5.6 paragraph 3. Coordination with other trades is always necessary and primarily the CONTRACTOR's task.
- (5) The withdrawal of personnel, construction site equipment and tools, including large-scale equipment, must be reported to the Principal's construction management in good time. The approval of the AG construction management for the deduction is absolutely necessary.
- (6) The Contractor shall assume full responsibility and compensation for any losses and damage exceeding normal wear and tear for any operating resources and tools taken over by the Client. Unloading and loading of the equipment shall be at the expense of the Contractor.

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- (7) In exceptional cases it may be necessary to move the site equipment and tools to another location within the site area. In such cases, the Contractor shall organise the procedure and the necessary aids. The costs shall be borne by the Contractor. The same shall apply to provisions made by the Principal to the Contractor. If the Client is compensated by the CUSTOMER, this shall be passed on to the Contractor accordingly.

## 5.9 Environmental protection (hazardous substances, wastes)

- (1) Dangerous substances are those which, by reason of their nature, properties or condition, may pose risks to human life and health, the environment or property.
- (2) When handling these substances, the Contractor is obliged to strictly observe all relevant regulations (e.g. Ordinance on Hazardous Substances, Dangerous Goods and Transport Regulations, Ordinance on Flammable Liquids, Water and Waste Regulations) in their respective valid version.
- (3) If certain substances are prescribed by the CUSTOMER, only these may be used.
- (4) If these materials are provided by the Contractor within the scope of the order, the following environmental protection requirements shall apply:
- Halogenated hydrocarbons (HKW) must not be contained.
  - Other solvents (e.g. hydrocarbons, alcohols, esters) may only be used if it is ensured that even in the event of unforeseen incidents no penetration into water, the sewage system or the soil is possible.
  - Acids or alkaline preparations may only be used if it is ensured that no transition into water, the sewage system or the soil is possible during handling.
  - Preparations with heavy metals that must be labelled according to the Ordinance on Hazardous Substances may not be used.
  - If there is a risk that substances may enter waters, the sewage system or the ground contrary to the provisions of § 5.7 paragraph 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

§ 5.7, the Principal must give his approval before they are brought into the plant / construction site of the place of performance.

- If the CUSTOMER prescribes a release procedure for the use of working materials, working materials may only be brought to or used on the plant / construction site of the place of performance by the Contractor after the necessary releases have been issued.
  - If necessary, the Contractor shall submit an up-to-date safety data sheet for each substance to the responsible purchaser. Substances which have not been released by the Principal (pursuant to § 5.7 paragraph 4 e) or by the CUSTOMER (pursuant to § 5.6 paragraph 4 f) may not be brought to the plant / construction site of the place of performance.
- (5) Waste arising during the execution of the order and caused by the Contractor or its vicarious agents shall be disposed of by the Contractor at its own expense and risk. The type of disposal shall be determined by the Contractor prior to the commencement of the work. The disposal of residual materials via waste water is not permitted. The use of collection containers available at the plant / construction site of the place of performance is generally not permitted. Deviating regulations require the written approval of the CUSTOMER. After completion of the work, the place of work must be cleared clean. Debris and residual materials must be removed by the Contractor. If he does not comply with this obligation, the clearance shall be carried out at his expense after expiry of a reasonable period set for the Contractor.

## 5.10 Cleaning of buildings, removal of building rubble

- The Contractor shall carry out the building cleaning, which shall also include the removal of the building rubble caused by him, daily independently and continuously at the latest by the end of each calendar week.
- Upon request, the Contractor shall submit the corresponding proofs of disposal to the Client without delay.
- If the Contractor does not comply with this obligation in due time or in an orderly manner, the Client may set the Contractor a grace period, together with a declaration that he will

refuse the Contractor's cleaning service after the deadline has expired without result.

- (4) If the Contractor does not fulfil his obligation even by the expiry of the grace period, the Client may have the cleaning service carried out by third parties at the Contractor's expense without the need for partial termination of the order.

## § 6 Materials Planning, Materials Management

- 6.1 The Contractor undertakes an independent material disposition for the scope of delivery and services on his behalf. Possible delivery times have to be considered.
- 6.2 In the case of materials provided by the Principal, unloading and delivery to the place of use shall be carried out by the Contractor. These services are included in the unit prices. The same shall apply to transport costs invoiced by a third party at the place of use to the Contractor or the Client.
- 6.3 In the case of materials provided by the Principal, the Contractor is obliged to accept the materials against written confirmation and to check that they are correct, complete and free of defects. If a part of the deliveries does not correspond to the orders, the contractor must inform the client immediately. § Section 377 HGB applies accordingly. Damage to the outer packaging must be reported to the Principal within **24 hours**. Missing material must be reported to the CUSTOMER construction management for procurement at an early stage. Waiting times resulting from lack of material will not be reimbursed. Defective material may under no circumstances be used.
- 6.4 The risk shall pass to the Contractor upon acceptance by the Contractor of materials provided by the Client. However, the Contractor shall only be responsible for the accidental loss or accidental deterioration of the material supplied by the Client in the event of default.
- 6.5 If the Contractor fails to check and confirm acceptance of the material on the relevant delivery note, the material listed therein shall be deemed to have been handed over in full. The Contractor now bears full responsibility for the administration in the above sense. The material provided by the Principal shall be marked as Principal material and stored separately. The whereabouts shall be evidenced by measurements.

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The transfer of risk is governed exclusively by § 644 BGB (German Civil Code).

- 6.6 The Contractor unloads incoming delivery vehicles that deliver material intended for him and transports the material to the warehouse designated for this purpose, where it is stored until it is used. On removal, the Contractor shall transport the material to the place of use and back to the warehouse after the end of work. The re-storage of the residual material shall be carried out by the Contractor with an exact indication of the quantity. The Contractor loads the empty means of transport such as pallets, racks, crates, tanks, cable drums, cartons, etc. and is responsible for the release for return transport to the Supplier or for disposal.

## § 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 Contractor 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 time schedule or the detailed arrangement plan 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 arrangement has been made) - in updating the calculation of the offer. 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, Dates

- 8.1 With the acceptance of the order, the Contractor undertakes to accelerate the processing of the order in such a way that nothing stands in the way of completion of the work in accordance with the agreed deadlines. Difficulties on the part of the contractor, but also for which the contractor is responsible, which jeopardize a deadline, must be reported immediately in writing to the client's construction management.
- 8.2 If the order is placed on the basis of the "Negotiation Protocol for Work Contracts", all interim deadlines in accordance with Clause 8.3 of the same shall be binding contractual deadlines for the Contractor. This also applies to documentation appointments.
- 8.3 If the start of execution is delayed, the Contractor shall not be entitled to demand compensation for additional expenses, waiting times or the like or damages. This shall not apply if the Client receives services from the client or main client (CUSTOMER) for the delay in the execution of construction or if he himself caused the delay intentionally or through gross negligence. The agreed dates shall be fixed in accordance with the delay that has occurred. This shall also apply to any contractual penalties agreed upon.
- 8.4 The Client's schedule is binding for the Contractor. The contractor undertakes an independent deployment planning for the assembly team to be provided by him. In any case, the size of the team must be adapted to the needs of the construction site in order to meet the completion dates according to the schedule. The Principal reserves the right to subsequently agree special dates for a sectional completion. The Contractor shall be liable for any damage resulting from the insufficient availability of personnel.

- 8.5 The Client shall be entitled to make changes to the schedule within the framework of the overall project schedule at its own discretion. It shall be deemed agreed that a reasonable period of time shall be granted in accordance with the work to be performed and that the right to order unilateral acceleration orders shall be subject to the CUSTOMER's right of modification pursuant to Section 7.1 VP.

- 8.6 If dates are changed by mutual agreement or in compliance with the aforementioned § 8.5, the contractual penalty agreed for this shall also apply to the newly determined dates.

- 8.7 The Contractor shall be obliged to immediately notify the Client in writing of any hindrances in 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 be. This shall also apply in the event of imminent hindrance or endangerment of the proper and timely performance of the services. The Principal shall point out to the Contractor that the latter must take counter-measures against possible operational disruptions.

- 8.8 The Contractor shall be obliged to request cooperation services from the Client or from third parties in a foresighted and timely manner, so that disruptions to operations are avoided as far as possible.

- 8.9 The timely and proper fulfilment of the obligations of paragraphs 7 and 8 by the Contractor has no influence on the rights of the Client from other clauses, in particular with regard to the assertion of damages caused by default as well as contractual penalties.

- 8.10 In the event of delays for which the Contractor is responsible, the Contractor shall take all necessary measures in good time in order to comply with the agreed deadlines or to keep delays to a minimum. If necessary, he must work shifts, overtime and/or Sundays/holidays at his own expense. The obtaining of the necessary special permits shall be the responsibility of the Contractor in consultation with the Client.

- 8.11 In the event of a delay in delivery or performance by the Contractor, the Contractor shall be liable for all damages and disadvantages incurred by the Client as a result. Contractual penalties, which in this case are to be paid by the Client, shall be passed on to the Contractor in full.

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8.12 In the event of a delay in delivery or performance by the Contractor, the Client shall be entitled to terminate the order without notice for good cause and to demand from the Contractor any additional costs of a different award. Otherwise, the consequences of delayed services and deliveries shall be governed by the statutory provisions.

## § 9 Contractual penalties

9.1 If the CUSTOMER imposes a contractual penalty on the CLIENT as a result of a delay in delivery and/or performance by the Contractor, these costs shall be passed on to the Contractor in full.

9.2 Delayed receipt of input material, material and/or unfavourable weather conditions shall not release the Contractor from the contractual penalty.

9.3 The Contractor may only invoke the absence of necessary documents to be supplied by the Client if the Contractor has sent a written reminder for the documents and has not received them within a reasonable period of time.

9.4 In the event of a delay due to force majeure or caused by the Principal, the deadlines for performance shall be extended by the duration of the delay. A prerequisite for recognition of such delays with regard to the contractual penalty is that the Contractor notifies the Client in writing immediately after the cause of the delay has occurred in the event of force majeure and furnishes proof.

9.5 For each case in which the Contractor violates one of the obligations regulated in § 22, the Contractor shall pay a contractual penalty in the amount of € 25,000.00, unless the parties agree otherwise in the negotiation protocol.

## § 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 Payment can be made 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 for a defined ser-

vice; the sum of the services multiplied by the agreed monetary value results in the remuneration.

12.2 If a fixed price has been agreed for a service, the remuneration of time / effort shall be inadmissible.

12.3 If fixed prices are agreed for individual deliveries and / or services, these shall apply including all costs for construction site equipment, tools, equipment, labour costs, allowances, all travel costs, ancillary wage costs and other ancillary costs which are necessary for the fulfilment of the contractual service until the order has been completed in full. Charging rates are fixed prices.

12.4 All contract or unit prices are fixed prices. Unless otherwise agreed, they are subject to a fixed price until the completion of the project/construction project by the CUSTOMER of the CLIENT. They include all transport costs, even if these are changed by law.

12.5 If the order is placed on the basis of the "Negotiation Protocol for Contract for Work and Services", deliveries and services which are rendered after expiry of the fixed price in accordance with Clause 12.5 thereof shall only lead to a price adjustment if this is the responsibility of the Customer and if a claim for price adjustment arises from the other contractual or statutory provisions. In such cases, the parties shall agree on a price adjustment for the delivery/service still to be rendered prior to delivery or performance.

12.6 A possible claim due to disturbance of the basis of business remains unaffected.

12.7 The basic and settlement rates are always based on the fact that the contractor or his vicarious agents work the weekly working hours specified in the contract. Unless expressly agreed otherwise, these include all costs. The reimbursement of surcharges requires express agreement in the order.

12.8 Mass increases or reductions must be notified in writing by the Contractor in good time before execution. Requirement items must be released by the PLC before execution.

12.9 Wage and material price increases which occur after the conclusion of the contract for work and services shall not be remunerated.

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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 formation

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 (Negotiation Protocol) 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 - unless there is

a contractual change in the invoicing type.

## § 16 Billing, Site measuring

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 Measurements must be taken at least once a week and submitted to the AG construction management for inspection.

16.3 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.

16.4 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 Contractor shall be fully liable.

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

16.6 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.

16.7 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.

16.8 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 According to the statutory provisions in Germany, **15 % of** the invoice amounts to be paid to the Contractor shall be withheld by the Client for construction services and paid to the tax office. This shall apply if the Contractor is subject to German tax law. The Client may only refrain from this deduction of source if the Contractor has submitted a valid tax deduction and harmlessness certificate to the Client.

17.2 If § 13 b UStG is applied in accordance with the declaration in the negotiation protocol, the Contractor is not entitled to show turnover tax for partial claims or invoices. Advance payment claims or invoices which nevertheless contain a sales tax statement are inadmissible. In this case, the Contractor's payment claim shall be deemed not to have been made.

17.3 The Contractor's invoices and instalment claims must precisely describe the respective service on the basis of the order. They must contain all accounting data provided by the CUSTOMER.

17.4 The requirements for partial payments are to be submitted to the CUSTOMER in each case after a significant construction progress has been achieved.

17.5 All necessary inspection documents - e.g. measurement reports, calculations, sketches, drawings, etc. - must also be submitted in duplicate.

17.6 The components specially manufactured and provided for the required service as well as the materials and components delivered to the construction site shall also be deemed to be billable services if ownership of them has been transferred to the Principal or appropriate security has been provided, at the Principal's option.

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17.7 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.

17.8 The CUSTOMER accepts neither interim nor partial invoices.

17.9 If the CUSTOMER nevertheless pays interim or partial invoices, these shall in any case be subject to reclaim. This shall also apply if payment is made without a reservation of title. In this case, payment shall not constitute recognition or acceptance of the service.

17.10 The Contractor shall submit the final invoice within 4 weeks of completion of the construction project on the basis of the final measurement and acceptance protocol or the Client's acceptance declaration. If the VOB/B has been agreed, § 14 VOB/B applies instead.

17.11 The payment of receivables shall be made in accordance with the agreed payment agreement.

17.12 The acknowledgement and / or payment of the final invoice do not exclude claims for repayment due to incorrectly invoiced services and claims. A loss of enrichment cannot be asserted.

17.13 The unconditional acceptance of the final payment excludes subsequent claims if the contractor has been informed in writing of the final payment and the exclusion effect has been pointed out.

A final payment shall be deemed to have been made if the Principal finally and in writing rejects further payments with reference to payments made.

Any claims which have been made earlier but which have not been settled shall also be excluded if they are not reserved again.

17.14 A reservation must be declared within 28 days of receipt of the notification of the final payment in accordance with Clause 17.13. It shall lapse if an auditable invoice for the reserved claims is not submitted within a further 28 days - starting on the day following the expiry of the 28 days referred to in sentence 1 - or, if this is not possible, the reservation is substantiated in detail.

17.15 The exclusion periods shall not apply to a request for correction of the final invoice and payment due to measurement, calculation and transfer errors.

## § 18 Securities/Guarantees

### 18.1 Contract performance security

(1) As security for the performance of the contract, the Contractor shall provide the Client with a security amounting to 10% of the order value ("Contract Performance Security"), unless the parties have agreed on a different security amount in the negotiation protocol. The contractual performance security secures the claims of the Customer for the contractual performance of the service, warranty claims and the payment claims of the Customer which are not connected with defects (in particular due to contractual penalty, damages, reimbursement of additional costs and repayment of overpaid wages).

(2) Insofar as claims for defects are also secured by the contractual performance security, the security shall only cover claims for defects ascertained before or during acceptance. The contractual performance security does not secure any claims due to defects which are discovered for the first time after the beginning of the warranty period.

(3) Insofar as the Principal does not require the Contractor to provide security for loyalty to collective bargaining agreements in accordance with § 18.3, the security for performance of the contract shall also serve to secure recourse claims of the Principal against the Contractor on the basis of a claim asserted by the Principal in the event of violations of § 14 AEntG by the Contractor (payment of the minimum wage to the employees and payment of the contributions to a joint institution of the parties to the collective bargaining agreement), § 28e (3a) to (3f) SGB IV (payment of social security contributions) and § 150 (3) SGB VII (payment of the contributions for the construction professional association).

(4) To simplify processing, the CUSTOMER may retain 10% of the respective payment amount for each advance payment until the security

amount has been reached (cash retention).

(5) The Contractor may, insofar as the cash retention has not already been used in a justified manner, demand its payment step by step against the provision of a contractual performance guarantee by a credit institution or credit insurer permissible in accordance with § 17 (2) VOB/B for more than 10% of the order amount, which corresponds to the model attached to the minutes of the negotiations as an annex, referred to as a "contractual performance guarantee".

(6) In the event of a change in the order value due to an increase in quantities, changes, assignment of requirement items, etc., the amount of the security for performance of the contract shall change accordingly. If the Contractor has submitted a performance bond, the amount of the bond shall be adjusted to the changed amount of the order at the request of one of the parties in the event of a change in the amount of the order. If the contract amount has increased, the CUSTOMER may make a cash retention in the amount of the currently unsecured difference until the amount of the guarantee is adjusted; this cash retention may be replaced by an adjustment of the amount of the guarantee under the conditions of § 18.1 (5).

(7) The performance guarantee may not contain a deposit clause. It also serves to secure any claims of the CUSTOMER for reimbursement of overpayments and damages. The same shall apply if the guarantee security pursuant to paragraph 2 above is replaced by a bank guarantee. The claim to fulfilment of the security (also in the form of a guarantee) does not expire before the expiry of the limitation period for the secured claim.

(8) The Contractor may reclaim the contractual performance guarantee after acceptance and expiry of the inspection period for the final invoice, as well as concurrently against the provision of security in accordance with § 18.2. If, however, claims secured by the security have not yet been met, the Principal may retain a corresponding part of this security for these claims. If a contractual performance guarantee has not been handed over, a cash retention made after acceptance and expiry of the inspection period for the final invoice shall be reduced to the amount of the

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warranty retention plus any claims already asserted by the Principal but not yet fulfilled.

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

## 18.2 Security for claims for defects by the CUSTOMER

- (1) In order to secure the Client's claims for defects due to defects discovered after acceptance (including damages), the Contractor shall provide security amounting to 5% of the invoiced sum ("warranty security") for the "full duration of the warranty", unless the parties have agreed a different amount of security in the negotiation protocol.
- (2) Insofar as the Principal does not require the Contractor to provide a guarantee of loyalty to collective bargaining agreements in accordance with § 18.3, the guarantee security shall also serve to secure recourse claims of the Principal against the Contractor on the basis of a claim asserted by the Principal in the event of violations of § 14 AEntG by the Contractor (payment of the minimum wage to the employees and payment of the contributions to a joint institution of the parties to the collective bargaining agreement), § 28e (3a) to (3f) SGB IV (payment of the social security contributions) and § 150 (3) SGB VII (payment of the contributions for the building trade association).
- (3) In order to simplify processing, the Principal may retain 5 % of the invoiced amount as security for the final payment (cash retention).
- (4) The Contractor may, insofar as the cash retention pursuant to § 18.2 (3) has not been used in a justified manner, demand payment of this cash retention concurrently with the lodging of a guarantee for defect claims by a credit institution or credit insurer permissible pursuant to § 17 (2) VOB/B in the amount corresponding to the request for payment, which corresponds to the sample attached to the minutes of the negotiations as an attachment, referred to as a "warranty guarantee".
- (5) The Principal is obliged to return the security due to claims for defects under the conditions of § 17 Para. 8 No. 2 VOB/B, but with the proviso that instead of the period of two years specified therein in sentence 1, the periods of limitation contractually agreed by

the parties for claims for defects are decisive.

- (6) If the parties have agreed on a limitation period of 10 years in the minutes of the negotiations, without having made a separate agreement to reduce the security after the expiry of the standard limitation period of 5 years, the security shall be reduced to 20% of the security previously provided, unless a claim has been made beforehand. After 10 years, the security shall be returned in full, unless previously claimed. If the security has been claimed and the claim asserted in each case has not yet been fulfilled, the Principal may retain a corresponding part of this security for these claims.
- (7) Otherwise § 17 VOB/B and § 18.1 Section 7 apply.

## 18.3 Security for fidelity to tariffs

- (1) The Principal shall be entitled to demand from the Contractor an irrevocable, unlimited, unconditional and directly enforceable guarantee from a credit institution or credit insurer complying with the requirements of § 17 (2) VOB/B (German Construction Contract Procedures), which corresponds to the model attached to the minutes of the negotiations as an annex, referred to as a "tariff loyalty guarantee". The amount of the security shall be "5% of the order value", unless the parties have agreed on a different amount of security in the negotiation protocol.
- (2) This guarantee serves to secure recourse claims of the Principal against the Contractor based on a claim by the Principal against the Contractor in the event of violations of § 14 AEntG by the Contractor (payment of the minimum wage to the employees and payment of the contributions to a joint institution of the parties to the collective agreement), § 28e (3a) to (3f) SGB IV (payment of social security contributions) and § 150 (3) SGB VII (payment of the contributions for the building trade association).
- (3) If the Client makes use of this right to demand a guarantee, the Contractor undertakes to provide such a guarantee within 14 days of receipt of the request.

## 18.4 Security for advance payments by the CUSTOMER

- (1) In order to secure any agreed advance payment by the Client (including damages), the Contractor shall provide a guarantee from a credit institution or credit insurer permissible pursuant to § 17 (2) VOB/B in the agreed advance payment corresponding to the amount, which corresponds to the model attached to the minutes of the negotiations as an annex, referred to as an "advance payment guarantee". The handover to the CUSTOMER is a prerequisite for the due date of the advance payment.
- (2) The guarantee must be returned if the conditions laid down in the security agreement are fulfilled.
- (3) Otherwise § 17 VOB/B and § 18.1 Section 7 apply.

## 18.5 Securities in favour of the Contractor

- (1) Insofar as the Contractor justifiably demands security in accordance with § 650f BGB (German Civil Code), the parties agree on a "reasonable period" of at least 10 working days. § 650e BGB is excluded.
- (2) In cases in which the Contractor has a fundamental right to refuse performance in accordance with the contractual and statutory provisions, the Principal shall be entitled to avert the suspension of performance by the Contractor by handing over an indemnity bond in the amount of any disputed payment claim which has not yet been secured. For the form of security and the bearing of costs, § 650f BGB in conjunction with § 650f BGB in conjunction with § 650f BGB shall apply. § 232 BGB corresponding application. The Contractor shall only be entitled to exercise any right to refuse performance to which he may be entitled if he has announced the suspension of performance at least 12 working days prior to the complete or partial suspension of his work.

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

- 19.1 Services which are already recognized during execution as defective or contrary to contract shall be replaced by the Contractor at his own expense and in accordance with Clause 19.1 VP. 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,

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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.

19.5 If the acceptance/commissioning of the building or plant into which the Contractor's services have been incorporated does not take place at the latest 6 months after acceptance by the Client, the warranty period shall be 5 years and 6 months either from the date of commissioning by the CUSTOMER or from the date of acceptance by the CUSTOMER, insofar as this takes place prior to commissioning.

19.6 In the event of subsequent performance, the agreed warranty period or warranty period shall recommence from the time of subsequent performance.

19.7 The Contractor hereby assigns to the Client, who accepts the assignment, all his claims for defects, warranty claims, product liability claims as well as claims arising from securities he may assert against his suppliers and subcontractors in this respect. The assignment shall not affect the Client's

own claims for defects against the Contractor.

19.8 The contractor is authorised by the client until revoked to enforce the assigned claims against his subcontractors and suppliers himself. 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.

19.9 At the latest two weeks before acceptance, the Contractor shall provide the Client with a list of all subcontractors and suppliers employed, including their addresses 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.

19.10 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 supplier / 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.

## § 20 Liability, insurance

20.1 The transfer of risk is governed by § 644 Section 1 BGB.

20.2 Until acceptance, the Contractor shall be responsible for the obligation to ensure road safety with regard to its scope of services, indemnifying the Client. During the execution of the construction work, the Contractor shall in particular ensure 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 may the Contractor invoke the fact that he was not or not sufficiently supervised.

20.3 The Contractor assumes liability for third-party damage of all kinds, i.e. he is responsible for all damage caused by him or his vicarious agents to persons and property on the building site, on the building, on neighbouring sites, on roads and paths, etc. The Contractor shall not be liable for any damage caused by him or his vicarious agents.

20.4 The Contractor shall be liable for subcontractors employed as for its own personnel.

20.5 The Principal shall not be liable for the Contractor's materials and equipment.

20.6 The Contractor shall indemnify the Client against all claims for damages by third parties arising in the course of the execution of the construction project and associated therewith, insofar as these are based causally on the performance of the Contractor or its vicarious agents. This also applies to consequences of product liability.

20.7 The Contractor shall be obliged to take out sufficient business liability insurance at his own expense, to maintain this for the duration of the contract and to prove this to the Client by the start of construction/assembly at the latest, whereby these amounts must be available at least twice per insurance year in the event of several cases of damage:

Type of damage and amount of cover:

Personal injuries	EUR 2.000.000,00
Damage to property	EUR2,000,000.00
Financial losses	EUR1,000,000.00
Activity damages	EUR500,000.00

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.

20.8 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.

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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.

20.9 Unless otherwise specified in the minutes of the negotiations, the Contractor undertakes to take out a construction performance insurance policy at his own expense.

20.10 If the Client or the CUSTOMER takes out a construction insurance policy for the construction project which also provides insurance cover for the Contractor's services, the Contractor agrees to pay the premiums in proportion to the order value and to reimburse the Client. In this case, the Principal shall submit the insurance conditions to the Contractor on request.

## § 21 termination of contract

### 21.1 Termination and withdrawal

- (1) The CUSTOMER is entitled to terminate the contract in accordance with §§ 648 and 648 of BGB.
- (2) Furthermore, the CUSTOMER is entitled to withdraw from the contract in whole or in part in the following cases:
  - The work shall become impossible in whole or in part due to force majeure.
  - The CUSTOMER shall have the work discontinued in whole or in part and/or change the basis of the contract existing between him and the Client .
  - 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.
  - The Contractor shall cease payments or file a petition for the opening of insolvency proceedings or other comparable proceedings or insolvency proceedings or comparable proceedings

against his assets shall be opened.

### 21.2 Consequences of termination of the contract

- (1) If the Client terminates or withdraws from the contract due to a breach of contract for which the Contractor is responsible, the services performed up to that point shall only be invoiced at contract prices to the extent that they can be used by the Client as intended.
- (2) In addition, the Client may claim damages for the remaining construction work not performed in accordance with the contract, in particular compensation for the additional costs and consequential damages incurred as a result of the completion of the work by the Client itself and/or a third party, and offset these counterclaims against the Contractor's remuneration claims.
- (3) The damage incurred by the Principal shall be taken into account in the settlement.
- (4) 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.
- (5) The Contractor already now enters into the contract subject to the condition precedent of the termination of the contract.

- all his current and future claims against subcontractors and suppliers ("NU"), including all claims for performance, claims for non-performance or defective performance, repayment claims arising from overpayments, claims for damages, warranty claims, claims for security and claims for insurance benefits arising from him or his Subcontractors, as well as any damages incurred by him or his Subcontractors, and

- assigns all claims to and from related securities and guarantees (e.g. prepayment, performance of contract and warranty guarantees) to the Principal who accepts the assignment.

- (6) The Contractor shall be obliged to include in all contracts to be concluded with its Subcontractor the declaration of the Subcontractor that the Subcontractor agrees that the Contractor may assert all its claims against the Subcontractor (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 Subcontractor, claims to and from guarantees provided by Subcontractor) subject to the condition precedent that the contract is terminated.
- (7) Upon request, the Contractor shall provide the Client with proof of this.

### 21.3 End of project

A project/construction project is deemed to be completed at the earliest when the main order and all subsequent orders of the Principal with its CUSTOMER are deemed to have been fulfilled.

## § 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 the description of the construction work, the publication of drawings,

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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 itself nor any Subcontractor employed asserts copyrights or other industrial property rights which prevent the Client from using and exploiting the Contractor's services without restriction.

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 with regard to 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).

22.5 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.

22.6 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.

22.7 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.

22.8 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 Client arising for the Contractor from and in connection with the construction project is only permitted with the prior consent of the Client.

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 returned 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. The conditions of this contract also apply to supplements and additional orders.

23.8 Collateral agreements have not been made.

## § 24 Mediation

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, applicable law and severability clauses

25.1 The place of performance for all obligations of the Contractor shall be the contractually agreed place of performance, or alternatively the location of the project.

25.2 In the event of a defect, the Contractor shall be 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. However, the Principal shall be entitled to sue the Contractor at any other 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 of Purchase for Construction and Assembly Services or parts of other provisions be legally 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.