

# Special Terms and Conditions for Construction and Assembly Services

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- (1) All our orders and contracts for construction and/or assembly services shall be based exclusively on the following Special Terms and Conditions for Construction and Assembly Services.

All individually agreed provisions shall have priority, particularly those contained in the order or the Minutes of Negotiations, as well as provisions of our customer, if and insofar as they have been agreed as a basis, as well as the specifications, including their preliminary remarks.

- (2) **Definitions:**
- |              |   |   |
|--------------|---|---|
| Customer     | = | the Customer under the contract   |
| Contractor   | = | the Contractor under the contract as well as all of his performing agents                 |
| End Customer | = | the Customer's customer and the End Customer's clients                                    |
| Employees    | = | representatives, agents, performing or vicarious agents of the Customer or the Contractor |
- (3) If machines or manufacturing equipment is to be supplied by the Contractor, the "Special Terms and Conditions of Ordering for Machines and Manufacturing Equipment" shall apply in addition but shall have lower priority.
- (4) Additionally, the "Provisions on the Prevention of Illegal Employment" and the "VINCI Charter" shall apply.
- (5) These Special Terms and Conditions for Construction and Assembly Services are applicable for the following companies: Elektro Stiller GmbH, Frankenluk AG, Omexom Frankenluk GmbH, Omexom GA Nord GmbH, Omexom GA Süd GmbH, Omexom Hochspannung GmbH, Axians GA Netztechnik GmbH, Omexom Service GmbH, Martin Bohsung GmbH, Ing 3E GmbH, Omexom Umspannwerke GmbH, Actemium BEA GmbH, Actemium Fördertechnik Rheinland GmbH, Omexom Ebehako GmbH, Actemium Cegelec GmbH, Actemium Cegelec Services GmbH, Actemium Controlmatic GmbH, Actemium EMR GmbH, Actemium H&F GmbH, Actemium Kappelhoff GmbH, Cegelec Contracting GmbH, Controlmatic Industrieinstandhaltung und Service GmbH, LMR – Technik GmbH Ingenieurbüro für Prozeßautomation, Omexom Kraftwerk Service GmbH, Petrochemicals Maintenance Services GmbH (PMS), Langer GmbH.

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## § 1 Performance of Contract, General Conditions

- (1) The Customer shall provide the Contractor with all information necessary for the preparation of an offer and/or the performance of the contract. Where required, technical documentation such as design drawings, system plans, program flow descriptions or models etc. shall be provided, insofar as they are available.
- (2) The Contractor shall not be entitled to subcontract the contract, or any portion thereof, without the Customer's written consent. If the Customer consents to the subcontracting, the Contractor undertakes to make the integral parts of the contract between him and the Customer subject matters of the contract between him and the third party to their full extent (except for the pricing). The Contractor shall ensure the third party's professional qualification for the portion to be subcontracted.
- (3) The Customer reserves the right to check the quality of the work and services provided. Each check shall take place in the presence of the Contractor wherever necessary and possible.
- (4) The place of performance shall be defined by each contract. The Contractor may not use, remove or alter any equipment at the place of performance without an appropriate permission.
- (5) When entering or leaving the place of performance, the Contractor must undergo the checks of the Customer and/or the End Customer, if any. In the case of any approved subcontracting, the Contractor shall impose the same obligation on his subcontractors.
- (6) All work and services to be provided by the Contractor must be performed in a workmanlike manner and in compliance with applicable standards and must correspond to the state of the art. In addition, any rules, specifications and company standards of the End Customer or the operator of the system to be built shall be taken into account. Any performance of the assembly work in deviation from the rules shall be considered as a defect and shall be corrected by the Contractor at his expense. The same shall apply, mutatis mutandis, to all deliveries performed by the Contractor.
- (7) The Contractor undertakes to comply with all provisions of financial and tax law applicable at the place of performance. In particular, the Contractor shall be responsible for the compliance with any and all registration and approval procedures under trade, residence and labour law at the place of performance. Said obligation concerns the Contractor's enterprise as well as his Employees and other performing agents. The Contractor shall be liable under criminal and civil law for all consequences of violations of any provisions of financial, tax, trade, residence or labour law.
- (8) The Contractor must ensure strict adherence to the rules and regulations for securing the construction work, accident prevention and protection against construction noise which are generally accepted for the work and services concerned. In particular, he shall obligate his performing agents to observe the industrial safety regulations. The equipment used by the Contractor must comply with the requirements of the relevant DIN safety standards, the German Product Safety Act, the VDE regulations and any other applicable regulations.
- (9) The Contractor must take precautions, give instructions and take any other appropriate measures compliant with the Accident Prevention Regulation BGV A1, "General Provisions", and any other accident prevention regulations applicable to the Contractor as well as the relevant generally accepted rules of safety and occupational health. Insofar as requirements are imposed by other legal provisions, such requirements shall remain unaffected.
- (10) All quantities on which the contract between the Customer and the Contractor is based shall be estimates, with upward and downward deviations being possible. Besides, positions may be omitted. However, the Contractor shall provide the related capacities. Quantity increases by up to 20% shall not result in any postponement of dates. The work and services to be performed shall always be coordinated with the Customer's representative on the building site. The order value / value of any blanket order shall not be binding upon the Customer. However, each individual request shall be binding.

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- (11) The Customer reserves the right to exclude portions of the work and services, of whatever scope, from the entire scope of work and services due to changes of due dates, technical changes or changes requested by the End Customer. If in such case, overlaps occur between the Contractors concerned, the work shall be coordinated carefully by said Contractors. No remuneration shall be paid for any waiting times.
- (12) Generally, the services which the Customer provides to his End Customer shall be provided as part of the End Customer's entire building activity. It is common practice that other building activities take place during the building or assembly work. The interests of the companies performing such work shall be taken into account.
- (13) No claim for an uninterrupted period of work shall exist. No special remuneration for multiple journeys to the place of performance shall be paid; the remuneration for them shall be included in the unit prices and lump sums.
- (14) Any necessary documentation which the Contractor has prepared in his own responsibility shall be supplied by the Contractor checked and error-free, or with no more than the usual error rate of a complete, checked document. Formats, execution, drawing numbers, folder structures etc. must be agreed with the Customer before the documents are prepared.
- (15) All approvals of public authorities, attestations and certificates which are necessary for the commissioning or operation of the work/system produced by the Contractor shall be provided by the Contractor.
- (16) The Contractor may also perform work for third-party customers. No prior consent of the Customer shall be required, unless the Contractor also intends to perform work for competitors of the Customer.
- (17) If the proper execution of the contract by the Contractor is jeopardised, the Contractor shall inform the Customer immediately.

## § 2 Bases of Offers and Contracts

- (1) The Contractor's General Terms and Conditions shall not become a subject matter of the contract. They shall be excluded expressly and will not be accepted by the Customer. This shall also apply to all other General Terms of Delivery of third parties such as ZVEI, VDI etc. The Contractor's terms and conditions of assembly or service, if any, shall also be excluded.
- (2) With the submission of any offer, the Contractor will confirm to the Customer that, on the basis of the documentation received, he has considered and understood all deliveries and work and services required for the execution of the contract completely – as regards their subject matter and from a technical point of view.
- (3) In addition, the Contractor will confirm that he has informed himself thoroughly in his own responsibility about all details of the work and services to be performed. The characteristics of the building object and the circumstances on site are known to the Contractor.
- (4) Generally, the Contractor will be required to inform himself of the state of construction on site before submitting the offer. If the Contractor submits an offer without having performed a site inspection, the costs of any detriments shall be borne by him.
- (5) The Customer must be informed in writing of any risks inherent in the Contractor's quotation costing. If no restrictions are made, all risks inherent in the potential contract shall be considered to have been taken into account.
- (6) Additional charges e.g. for difficult circumstances, several technical crews working simultaneously, heights, long distances on the building site etc. may not be claimed.
- (7) The Contractor's offers for deliveries and services shall always be binding upon the Contractor; they shall not be binding upon the Customer and shall be free of charge for him. They shall always be based on these Special Terms and Conditions for Construction and Assembly Services of the Customer.

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- (8) By the Contractor's submission of an offer to the Customer, the terms and conditions referred to in Paragraph 7 above shall be accepted by the Contractor. Any written reference to the Contractor's terms and conditions in his offer shall become invalid.
- (9) Any demands of the Contractor for amendments after the conclusion of the Contract which are based on the fact that the Contractor does not know the building site or the contents of the contract shall not be accepted by the Customer.

## § 3 Responsibilities, Authorisations, Site Management

- (1) The Customer shall be represented by his project manager, who shall have responsibility for the project. He shall have authority to act in relation to the Contractor. However, he shall not be authorised to change contracts after their conclusion. Changes to contracts shall require the express consent of the Customer's management or the management of his purchasing department.
- (2) No later than the commencement of the work, the Contractor shall name a responsible site manager in writing. He shall be authorised to represent the Contractor vis-à-vis the Customer in a legally effective manner. He shall be responsible for quality, work preparation and the deployment of personnel as well as the compliance with the provisions of labour and industrial safety law on the building site.
- (3) The deployment of the Contractor's site manager on the building site shall end at the end of the project. His dismissal shall only be permitted with the Customer's consent. The Customer shall be informed of the site manager's temporary absence during working hours, for whatever reason, immediately in each case. In any such case, the Contractor shall name an equivalent deputy.
- (4) The Contractor shall perform the work assigned to him independently, in his own responsibility, professionally and diligently. In doing so, he shall also take into account the Customer's interests. The Contractor shall not be subject to any right of the Customer to give instructions or directions; however, he shall take into account technical requirements of the Customer insofar as this is necessary for the proper performance of the contract.

## § 4 Materials Administration, Materials Management

- (1) The Contractor shall be in charge of materials administration in his own responsibility for the scope of deliveries and services under his contract. Delivery periods, if any, shall be taken into account.
- (2) If the Customer provides the materials and delivers them himself or through a supplier, the Contractor shall be obliged to accept the materials against written confirmation and to check the correctness and completeness of the delivery. If any part of a delivery does not correspond to an order, the Contractor must inform the Customer immediately. The Customer shall be informed of any damage to the outer packaging within 24 hours. The Customer's site management shall be informed of any missing materials as early as possible for the purpose of procuring them. No remuneration shall be paid for waiting times resulting from shortage of materials.
- (3) Upon the acceptance by the Contractor of materials provided by the Customer, the risk shall pass to the Contractor. However, he shall not be liable if he has not acted in a grossly negligent manner in relation to the materials. It is therefore his duty to hold the materials in safe custody until the acceptance of the completed work and services so that no parts will be damaged, stolen or otherwise treated improperly.
- (4) If the Contractor fails to confirm the check and acceptance of any delivery of materials on the related delivery note, the materials specified on said delivery note shall be considered to have been handed over completely. The Contractor shall then be fully responsible for the administration of the materials as described above. The materials provided by the Customer shall be marked as materials of the Customer and stored separately. Evidence of the location of the materials shall be provided in the form of measurements. The bearing of the risk shall only be governed by Art. 644 of the German Civil Code (BGB).

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- (5) The Contractor shall unload any incoming delivery vehicles delivering materials intended for him and shall transport said materials to the appropriate warehouse, where he shall store them until they are used. If materials are removed, the Contractor shall transport them to the place of use, and back to the warehouse at the end of the working day. The renewed storage of the remaining materials shall be performed by the Contractor, with the exact quantities being indicated. The Customer shall load the empty transport containers such as pallets, racks, crates, tanks, cable reels, cardboard boxes etc. and shall be responsible for reporting their readiness for transport back to the supplier or for waste disposal, respectively.

### § 5 Personnel Planning and Deployment

- (1) No later than the commencement of the work, the Contractor shall provide the Customer's site management with the names of the Employees to whom he intends to assign the execution of the contract.
- (2) For the execution of the contract, the Contractor shall only deploy his own personnel from the states of the European Community which is employed with his company. All Employees must hold a social security card and carry it with them on the premises.
- (3) Foreign employees may only be deployed with the Contractor if such employees have a valid residence and work permit which covers the place and time of the work to be performed. Before the commencement of such employees' work, the Contractor shall convince himself of the fulfilment of said prerequisites.
- (4) For the granting of access to the place of performance, the Contractor shall provide the names of the Employees deployed by him in good time and inform the Customer of any changes in advance.
- (5) The Contractor shall be responsible for the Employees' registration with the plant security (ID card office) and the procurement of any necessary documents and/or permits for the deployment of the Employees. The Employees shall carry the plant ID card issued by the End Customer with them at any time. If the ID cards provided by the End Customer are lost, the Contractor shall bear any costs incurred.
- (6) The Contractor and his Employees shall inform themselves about the company regulations applicable at the place of performance without being requested and shall observe said regulations.
- (7) The Contractor shall have the work assigned to him performed only by suitable workers and supervise them during their work.
- (8) If any Employees of the Contractor are not qualified – professionally or personally – to perform the work and services requested by the Customer, the Contractor shall replace them. If an employee of the Contractor is found with alcohol or other intoxicating substances, or if grossly negligent or wilful acts directed against health, safety and environment are found to have occurred, the replacement of personnel is mandatory. In such cases, all consequences and/or costs shall be borne by the Contractor.
- (9) The transport of personnel from the building site car park or the break rooms shall be ensured by the Contractor through group transport.
- (10) The Contractor and his performing agents shall not be employees of the Customer. The Contractor shall not have any claims against the Customer for leave, fixed wages, continued wage payment in the case of sickness, overtime pay, or any other benefits.
- (11) The Contractor's only task is to provide a sufficient number of employees at the agreed times for the performance of the work taken over, taking into account absences due to leave, sickness or the like.

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## § 6 Building Site Equipment, Tools

- (1) The Contractor shall provide all building site equipment necessary for the performance of his work, e.g. staff containers, tools and machines of all kinds as well as scaffolding up to a height of 6 metres. The costs for this shall be included in the contract value and/or the unit prices.
- (2) If scaffolding of a height of more than 6 metres is necessary, it shall be provided by the Customer free of charge, unless otherwise agreed.
- (3) The preparation of the building site shall be included in the contract prices.
- (4) Generally, the Customer's site management shall be informed of the need to erect scaffolding as described in § 6.2 in good time. The coordination with other trades shall always be necessary and shall be the Contractor's task primarily.
- (5) The Customer's site management must be informed of any removal of personnel, building site facilities and tools, including the large equipment, in good time. The consent of the Customer's site management to the removal shall be necessary in any case.
- (6) For any equipment and tools taken over from the Customer, the Contractor shall take full responsibility and provide replacement for any loss or any damage going beyond normal wear and tear. The Contractor shall be responsible for loading and unloading the equipment.
- (7) In exceptional cases, it may be necessary to move the building site equipment and the tools to a different place on the building site. In such cases, the Contractor shall organise the process and the equipment necessary for the move. The costs shall be borne by the Contractor. The same shall apply to any items provided to the Contractor by the Customer. If the Customer receives compensation from the End Customer, he shall pass it on to the Contractor accordingly.

## § 7 Occupational Safety, Work Guidelines

- (1) The Contractor and his employees shall be obliged to observe all applicable guidelines and legal requirements for employers, particularly those concerning occupational safety, accident prevention and working time regulations. The Customer shall not have any supervisory function. The Contractor shall act in his own responsibility and, in the case of any misconduct, shall be fully responsible for any consequences under civil or criminal law.
- (2) If the End Customer has issued his own rules (e.g. company regulations) in addition to the legal requirements, such rules shall be observed on the premises. If as a result of any non-observance, damage occurs or personnel is banned from the premises, the Contractor shall be responsible for all resulting damage claims.
- (3) At the commencement of his work, the Contractor's site manager shall be given an instruction on occupational safety on the basis of the Customer's occupational safety instructions and the End Customer's company regulations; said instruction shall be recorded in the files. The instruction to the Contractor's employees shall be given by his site manager. With their signatures, the persons who have been instructed shall undertake to comply with the occupational safety regulations. Any violations shall result in a ban from the premises. The Contractor shall be responsible for all resulting damage claims.
- (4) Before the commencement of the work, the Contractor shall provide all of his Employees with personal protective equipment and clothing which is in perfect condition and complies with the applicable standards. It shall at least consist of a protective helmet (white), safety shoes (S3), protective gloves, safety goggles with splatterproof glasses, and blue, fireproof work clothes covering the whole body. With regard to wearing personal protective equipment, the guidelines of the trade associations and the End Customer shall be complied with.
- (5) Before the commencement of the work, the Contractor shall name at least one safety officer and provide the Customer's site management with the names of first aiders on the

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building site, the number of which shall comply with the requirements of the BGV A1 regulation.

## § 8 Environmental Protection (Hazardous Substances, Waste)

- (1) Hazardous substances shall be substances which – due to their nature, their properties or their state – may cause risks for the life and health of people, for the environment or for objects.
- (2) When handling such substances, the Contractor shall strictly adhere to all relevant provisions (e.g. the German Ordinance on Hazardous Substances, provisions concerning hazardous goods and transport, the German Ordinance on Flammable Liquids, provisions of the law on water or waste), as amended from time to time.
- (3) If the Customer prescribes the use of certain substances, only such substances may be used.
- (4) If said substances are provided by the Contractor under the contract, the following environmental protection requirements shall apply:
  - a. Halocarbons must not be contained.
  - b. Other solvents (e.g. hydrocarbons, alcohols, esters) may only be used if it is ensured that even in the case of unforeseen incidents, they cannot enter bodies of water, the sewer system or the ground.
  - c. Acid and alkaline preparations may only be used if it is ensured that when they are handled, they cannot enter bodies of water, the sewer system or the ground.
  - d. Preparations containing heavy metals which must be marked pursuant to the German Ordinance on Hazardous Substances may not be used.
  - e. If a risk exists that, contrary to the provisions of § 8.4 b or 4 c hereof, substances may enter bodies of water, the sewer system or the ground, or if substances must be used whose use is prohibited under the above provisions of this § 8, the Customer's approval shall be required before the substances are brought to the premises of the plant / building site at the place of performance.
  - f. If the End Customer prescribes an approval process for the use of substances, the Contractor may only bring substances to the premises of the plant / building site at the place of performance and use them there after the required approval has been given.
  - g. If required, the Contractor shall present an up-to-date safety data sheet for each substance to the purchasing agent in charge. Substances which have not been approved by the Customer (under § 8.4 e hereof) or by the End Customer (under § 8 Abs. 4 f hereof) may not be brought to the premises of the plant / building site at the place of performance.
- (5) Any waste which is produced during the execution of the contract and caused by the Contractor or his performing agents shall be disposed of by the Contractor at his own expense and risk. The form of disposal shall be determined by the Contractor in his own responsibility before the commencement of the work. A disposal of waste material through the ground water shall not be permitted. Generally, the use of any collecting containers existing on the premises of the plant / building site shall not be permitted. Any deviating regulations shall require the Customer's written approval. Upon completion of the work, the workplace shall be vacated and left in a clean condition. Any rubble and waste material shall be removed by the Contractor. If he does not fulfil said obligation, the removal shall be carried out at the Contractor's expense after the expiry of a deadline which he has been given.

## § 9 Construction Cleaning, Disposal of Building Rubble

- (1) The Contractor shall carry out the construction cleaning, which shall also include the disposal of the building rubble which he has caused, independently on a daily basis and continuously by the end of each calendar week at the latest.



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- (2) The Contractor shall provide the appropriate proofs of the waste disposal to the Customer immediately upon request.
- (3) If the Contractor fulfils said obligation improperly or late, the Customer may grant the Contractor a grace period, which shall be connected to the announcement that he will reject the Contractor's performance of the cleaning after the fruitless expiry of said period.
- (4) If the Contractor still does not fulfil his obligation by the expiry of the grace period, the Customer may have the cleaning performed by third parties on the Contractor's expense without any partial termination of the contract being necessary in this respect.

## **§ 10 Periods for Performance, Dates, Duty to Ensure Compliance with Dates**

- (1) By accepting the contract, the Contractor agrees to push the execution of the contract so that there will be no obstacles to the completion of the work in compliance with the agreed dates. However, the Customer's site management shall be informed immediately in writing of any construction-related difficulties for which the Contractor is also responsible if they jeopardise compliance with a date.
- (2) All milestones shall be considered as contractually agreed dates binding upon the Contractor.. The same shall apply to due dates for documentation.
- (3) If the commencement of performance is delayed, the Contractor shall not be entitled to demand compensation for additional expenses, waiting times or the like, nor damages. This shall not apply if the Customer receives compensation for the delay from the Client or the End Customer or if he has caused the delay himself wilfully or in a grossly negligent manner. The agreed dates shall be updated according to the delay which has occurred. This shall also apply to any contractual penalties agreed for such dates.
- (4) The Customer's schedule shall be binding upon the Contractor. The Contractor shall be responsible for planning the deployment of the assembly crew to be provided by him. In any case, the number of crew members shall be adjusted to the circumstances on the building site in order to comply with the due dates for completion pursuant to the schedule. The Customer reserves the right to agree, at a later date, special dates for the completion of certain portions of the work. The Contractor shall be responsible for any damage resulting from the provision of insufficient personnel.
- (5) The Customer reserves the right to make changes to the schedule in connection with the overall project schedule. Such changes, if any, shall be binding upon the Contractor. It is considered as agreed that an adequate period will be granted according to the work to be performed.
- (6) If dates are changed by mutual agreement, the agreed contractual penalty shall also apply to the newly agreed dates.
- (7) In the case of delays for which the Contractor is responsible, the Contractor shall take all necessary action on a timely basis in order to comply with the fixed dates nevertheless or to keep delays as short as possible. If necessary, he shall be obliged to work overtime or to perform shift work and/or work on Sundays / public holidays at his own expense. The Contractor shall be responsible for obtaining the required special permissions in coordination with the Customer.
- (8) In the case of the Contractor's delay in delivery or performance, the Contractor shall be liable for all damage and disadvantages suffered by the Customer as a result. Any contractual penalties which shall be paid by the Customer in such case shall be passed on to the Contractor completely.
- (9) If the Contractor does not comply with agreed dates, the Customer may terminate the contract and/or order for cause without notice and require the Contractor to reimburse any additional costs of awarding the contract to a third party.

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## § 11 Remuneration, Follow-up Contracts, Price Maintenance

- (1) The remuneration may be paid either as a fixed price or on a time-and-expense basis. The following methods for calculating a fixed price may be applied:
  - a. **Lump-sum fixed price.** A fixed amount is paid for the entire scope of work and services or defined portions thereof.
  - b. **Fixed price based on a unit price.** A particular amount is agreed for a defined type of work or service; the total if its items multiplied by the agreed amount will be the remuneration.
- (2) If in individual cases, fixed prices cannot be calculated due to special circumstances, the billing and payment shall be performed on a time-and-expense basis by special agreement. The remuneration shall be paid according to the agreed base and charge rates.
- (3) All base and charge rates shall be based on the fact that the Contractor or his performing agents work the weekly hours agreed in the contract. Unless expressly agreed otherwise, they shall comprise any and all costs. The reimbursement of surcharges requires an express agreement in the contract.
- (4) If a fixed price has been agreed for a particular work or service, remuneration on a time-and-expense basis shall not be permitted.
- (5) If fixed prices have been agreed for any individual deliveries and/or work and services, they shall include the costs of building site equipment, tools and appliances, wage costs, per diems, all travel costs, non-wage labour costs and any other additional costs which are necessary for the contractually agreed performance, up to the complete performance of the contract. Charge rates shall be fixed prices.
- (6) If the Customer is awarded follow-up contracts by the End Customer as part of his contract, the Contractor shall be obliged to perform the related work and services. The billing shall be based on the unit prices under the main contract.
- (7) The Contractor shall perform calculations for any additional work and services not defined in the scope of work and services using the same calculation basis as under the main contract. To any additions, the terms of the main contract shall apply. A written offer shall be sent to the Customer's project management immediately. The offered work or service may not be performed by the Contractor until a written order is placed by the Customer and will only be remunerated if said prerequisite is fulfilled.
- (8) The Contractor undertakes to disclose the calculation of certain unit prices if the Customer requires him to do so in order to prepare additions to the contract with his customer. The Contractor shall present said calculations within a period of 12 working days after the request.
- (9) Any increases or decreases in quantities shall be reported by the Contractor in writing in good time before the execution. For any items of requirements, the Customer's approval shall be obtained before their execution.
- (10) As part of the project with the End Customer, the Customer may also purchase materials from the Contractor without any assembly services at the terms of the contract insofar as the material to be purchased or the type of material is included in the scope of delivery under the main contract.
- (11) All prices under the contract and all unit prices shall be fixed prices. Unless otherwise agreed, price maintenance shall apply to them until the completion of the project / building project by the Customer's End Customer. They shall include any and all transportation costs, even if they are changed on the basis of legal provisions.
- (12) No remuneration shall be paid for increases in wages or material prices which occur after the conclusion of the contract.
- (13) Work charged on an hourly basis shall only be recognised by the Customer after a prior separate additional agreement and after the presentation of a work performance record to the local site management within 24 hours.

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- (14) The confirmation of the working hours shall not mean any recognition for accounting purposes.
- (15) The normal working time shall be 50 hours per week. Saturdays shall be considered as normal working days. Unless otherwise agreed, the calculation base for the overtime surcharge shall be 70% of the amounts of the agreed hourly rates.
- (16) The actual working time shall be the basis of the remuneration for work charged on an hourly basis. No remuneration shall be paid for supervision times, travel times, per diems and the like. Site managers' working hours shall not be considered as work charged on an hourly basis. The accounting shall be performed per 0.25 hours.
- (17) For fixed-price contracts, the accounting of work charged on an hourly basis, including overtime surcharges, shall be limited to a minimum (no more than 5% of the contract sum).
- (18) Additional work and services which are not part of any work and services under the contract must be agreed in writing by the site managements of the Customer and the Contractor and confirmed by both Parties' signatures before they are performed.
- (19) All documentation costs – including, but not limited to, the costs of approvals of public authorities, certificates, attestations etc. – shall be included in the prices under the contract.

## § 12 Contractual Penalty

- (1) If the End Customer requires the Contractor to pay a contractual penalty due to the Customer's delay in delivery and/or performance, the full amount of such costs shall be passed on to the Contractor.
- (2) Any late delivery of primary materials, or bad materials and/or weather conditions, shall not release the Contractor from his obligation to pay the contractual penalty.
- (3) The Contractor may only refer to the fact that documents to be provided by the Customer have not been submitted if the Contractor has sent us a written reminder about the documents and has not received them within an adequate period.
- (4) In the case of any delay caused by force majeure or by the Customer, the periods for performance shall be extended by the duration of the delay. A prerequisite for the recognition of such delays with regard to the contractual penalty is that, in the case of force majeure, the Contractor informs the Customer immediately after the cause of the delay has emerged and provides proof of the cause.

## § 13 Acceptance

- (1) The acceptance of the Contractor's assembly services shall be performed formally – unless agreed otherwise in writing – through the preparation of a written Customer's or End Customer's record by the Customer's site manager. All acceptances must be applied for to the Customer's site manager.
- (2) Unless otherwise agreed, formal acceptance shall be considered as agreed. The acceptance shall be applied for to the Contractor in writing, with a period being fixed.
- (3) The Contractor may not request acceptance by the Customer until a zero-defect completion has taken place. The Customer may refuse acceptance if a defect exists. The Contractor may only request a renewed acceptance if he has proved that the defect has been remedied.
- (4) The acceptance of the Contractor's performance, which shall require the completion of all work to be performed, shall only take place at the time of the complete acceptance by the end customer.
- (5) The documentation as well as all necessary permits and attestations must be available and in conformity with the contract at the time of acceptance. They shall be included in the acceptance. Any missing documentation shall result in the work and services not being accepted due to incompleteness.

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- (6) Insofar as the work and services owed by the Contractor also comprise required approvals, certificates etc. from public authorities, the Contractor shall be responsible for obtaining them in compliance with the acceptance date and submitting them to the Customer on the acceptance date.
- (7) All other forms of acceptance – whether by use or commissioning, or as a result of the expiry of the period for acceptance after completeness has been reported, or by making the final payment etc. – shall be excluded.
- (8) The provision contained in Art. 640.1, Sentence 3, of the BGB shall remain unaffected.

## § 14 Accounting, Measurements

- (1) In the case of contracts with lump sums, the Contractor shall owe the Customer proof of the compliance with any agreed terms of payment. The Customer's site management shall be responsible for checking the Contractor's compliance with the terms.
- (2) Measurements shall be obtained once per week and presented to the Customer's site management for verification. The detailed, clearly verifiable measurement record and the signature of the Customer's site management shall be prerequisites for the payment of the work and services.
- (3) The Contractor shall prepare a detailed, verifiable measurement record structured according to system parts and submit it to the Customer's site management for the verification of its correctness. The verified and countersigned measurement record shall be a prerequisite for the Contractor's request for down payment or issue of the final invoice.
- (4) In any case, a verification of a measurement – regardless whether it is a partial or complete measurement – shall be subject to the final verification by the End Customer. If verifications by the End Customer result in claims for repayment against the Customer, the Contractor shall be fully liable.

## § 15 Provision of Security, Guarantee Bonds

- (1) At the time of the acceptance of the contract, the Contractor shall provide a directly enforceable performance guarantee bond of a financial institution licensed in the European Communities for **10 %** of the contract sum; such bond shall be free of defences and for an unlimited period.
- (2) The provision of security in the amount of **10 %** of the account sum shall be agreed for the duration of the period of limitation applicable to claims for defects.
- (3) The guarantee bond under Paragraph 1 may not contain any deposit clause. It shall also serve as security for any claims against the Customer for the reimbursement of any excess payment or damages. The same shall apply if the security for warranty under Paragraph 2 above is replaced by a bank guarantee. The claim for the satisfaction of a claim through the security (also in the form of a guarantee bond) shall not lapse before the lapse of the secured claim.

## § 16 Requests for Down Payment / Invoices, Turnover Tax

- (1) The Customer, as a recipient of performance, shall be a tax debtor under Art. 13b.1, Sentence 1, No. 3, of the German Turnover Tax Act (UStG).
- (2) The Contractor shall not be entitled to indicate any turnover tax in requests for down payment or in invoices. Requests for down payment or invoices in which turnover tax is indicated nevertheless shall not be permitted. In such case, the Contractor's request for payment shall be considered not to have been made.
- (3) The Contractor's invoices and requests for down payment must indicate the work and services concerned precisely in accordance with the Contract. They must contain all accounting data which has been provided by the Customer.
- (4) Each request for down payment shall be submitted to the Customer upon the achievement of the relevant building progress.

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- (5) All documents necessary for verification – e.g. measurement records, calculations, diagrams, drawings etc. – shall also be submitted in duplicate.
- (6) Until the end of the building activities, the Contractor shall submit requests for down payment in accordance with his partial measurements. The Customer shall accept neither interim nor partial invoices.
- (7) Should interim or partial invoices be paid by the Customer nevertheless, they shall be subject to claims for repayment in any case. This shall apply even if no reference is made to said reservation in the payment. In such case, the payment shall not be considered as a recognition or acceptance of the work and services.
- (8) The final invoice shall be submitted by the Contractor within 4 weeks after the completion of the building project and shall be based on the final measurement and the acceptance record or the Customer's declaration of acceptance, respectively. If the application of the German Construction Contract Procedures, Part B (VOB/B) has been agreed, Art. 14 of the VOB/B shall apply instead.
- (9) The claim shall be satisfied in accordance with the mutual agreement on payment.
- (10) The recognition and/or payment of the final invoice shall not preclude any claims for repayment due to incorrectly calculated work and services and accounts receivable. Lapse of unjust enrichment (Wegfall der Bereicherung) cannot be asserted.

### **§ 17 Construction Tax Deduction, Clearance Certificate**

- (1) Pursuant to the German legal provisions, the Customer shall retain and pay to the Revenue Office 15% of the invoice amounts for construction services to be paid to the Contractor. This shall apply if German tax law applies to the Contractor.
- (2) The Customer may only disregard said tax deduction at source if the Contractor has presented a valid tax deduction and clearance certificate to the Customer.

### **§ 18 No Direct Business with the End Customer, Secrecy**

- (1) Until the end of the project and/or the building project, the Contractor may not do any direct business of whatever nature with the Customer's End Customer without the Customer's consent.
- (2) The term "End Customer" shall include each direct or indirect client of the End Customer insofar as he is related to the project / building project supplied by the Customer.
- (3) Any company facilities, business transactions and methods of either Party which come to the other Party's knowledge in connection with the execution of the contract shall be kept secret from third parties even after the term of the contract; the Employees concerned shall be obligated accordingly.
- (4) Neither Party shall recruit Employees of the other Party. Any violation of said provision shall entitle the Party concerned to terminate the contract without notice.

### **§ 19 Warranty, Rights in the Case of Defects**

- (1) In the case of any improper assembly, the Contractor shall be granted an adequate period for subsequent performance. If no satisfactory result is achieved within such period, the Customer may perform the work himself and/or have the work performed by placing orders with third parties on a time-and-expense basis. All resulting costs shall be borne by the Contractor. The Customer shall therefore be entitled to offset any other work and services which the Contractor has provided to him and to withhold any other claimed payments up to the amount of the damage.
- (2) In urgent cases, the Customer may, in coordination with the Contractor, perform the subsequent improvement himself or have it performed by third parties. Minor defects may be eliminated by the Customer himself without prior coordination in compliance with his obligation to reduce damage, without the warranty obligations being affected. The Customer may then charge the necessary expenses to the Contractor. The same shall apply if unusually severe damage is imminent. In any case, the Customer shall have the right to choose between the elimination of defects and new manufacturing.

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- (3) In the case of any damage or defects of whatever nature which result from the Contractor's work or concern his scope of delivery, the warranty period shall be 5 years from the acceptance/commissioning of the system by the End Customer.
- (4) Unless otherwise agreed, the commissioning shall take place 6 months after the successful acceptance of the work and services by the Customer.
- (5) In the case of any supplementary performance, the agreed warranty period shall recommence at the time of the supplementary performance.
- (6) The Contractor hereby assures that all deliveries and services will be guaranteed and essential features within the meaning of the BGB. Pursuant to Art. 476 of the BGB, the supplier/Contractor shall be responsible for the reversal of the burden of proof. If the Contractor does not fulfil his obligations under the warranty within an adequate period fixed by the Customer, the Customer may take the necessary measures himself or have them taken by third parties, at the cost and risk of the Contractor and without prejudice to the Contractor's warranty obligations.
- (7) Unless otherwise agreed, the Customer shall, after the completion of the work and services, retain 5% of the Contractor's total settlement value, i.e. including all follow-up contracts. Said amount may be redeemed through the provision of a warranty bond issued for an unlimited period.

## § 20 Liability, Insurance

- (1) The Contractor shall be obliged to take out sufficient business liability insurance at his own expense, to maintain it during the entire term of the contract and to prove it to the Customer no later than the commencement of the building/assembly work, with the limits of liability per event being at least
  - EUR 1,000,000.00 (lump sum) for personal injury or property damage
  - EUR 500,000.00 for financial or processing loss
  - EUR 50,000.00 for damage to work in progressThe number of insured events may not be limited.
- (2) The Contractor shall present copies of the insurance contracts to the Customer no later than the commencement of the building work.
- (3) The Contractor shall be liable for any subcontractors like he is for his own personnel.
- (4) Any liability of the Customer for the Contractor's material and equipment shall be excluded.
- (5) The Contractor shall be liable within the framework of the legal provisions.
- (6) If the Customer or the End Customer takes out builder's all-risk insurance for the building project which also provides insurance cover for the Contractor's work and services, the Contractor agrees to take over a pro-rata share of the due premium in the ratio of the contract sum and to reimburse it to the Customer. In such case, the Customer shall present the terms of insurance to the Contractor upon request.
- (7) If the Contractor brings substances to the premises of the plant / building site of the place of performance which – due to their nature, their properties or their state – may cause risks for the life and health of people, for the environment or for objects and of which the handling (e.g. transport, storage, transshipment, use, consumption, disposal) is therefore governed by special provisions (e.g. the German Ordinance on Hazardous Substances, provisions concerning hazardous goods and transport, the German Ordinance on Flammable Liquids, provisions of the law on water or waste), as amended from time to time, the Contractor shall be liable for the full and strict compliance with said provisions.
- (8) If claims are made against the Customer due to any violation of official regulations or laws which is due to the Contractor's performance, the Customer shall be entitled to demand damages from the Contractor in the amount of such claim.

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- (9) By signing the contract, the Contractor declares that he is a member of the trade association competent for his business, that he has fulfilled his obligations to pay social insurance contributions so far – and will continue to fulfil them – and that he has paid – and will continue to pay – his ongoing tax liabilities.
- (10) Until the time of the acceptance of the deliveries and work and services, the Contractor shall bear the risk for his deliveries and work and services exclusively and in an unrestricted sense.
- (11) Generally, the Contractor shall not be permitted to make direct additional agreements with the Customer's End Customer. In the case of any non-compliance, the Contractor shall be liable.

### § 21 Worsening of the Financial Situation and Insolvency

- (1) If the Contractor ceases his payments or if insolvency proceedings concerning his assets or settlement proceedings in or out of court are applied for, the Customer shall be entitled to withdraw from the contract or part of it.
- (2) If the Customer has declared his withdrawal from the contract due to a breach of contract by the Contractor, the work and services performed by then shall be invoiced at the contract prices only insofar as they can be used by the Customer for the intended purpose. The damage suffered by the Customer shall be taken into account for the invoicing.
- (3) Any assignment for collection, other assignment or pledge of claims of the Contractor against the Customer which arise from or in connection with the building project shall only be permitted with the Customer's prior consent.
- (4) If the contract between the Customer and the Client is terminated by a unilateral declaration of intent, by mutual agreement or otherwise (but not by fulfilment of Art. 362, 364 of the BGB) (hereinafter referred to as "Termination of Contract"), the Contractor shall provide all means which are needed by the Customer for continuing the work and services. This shall include, but not be limited to: the use of equipment, materials, system parts, drawings, know-how and industrial property rights. The Contractor shall be obliged to give the Customer comprehensive support with said use. The Contractor shall be obliged to surrender the complete project documentation to the Customer free of charge and hereby assigns all rights to said documentation to the Customer subject to the suspensive condition of the Termination of Contract, which the Customer hereby accepts. The Contractor hereby waives all withholding rights related to the surrender of the documents, regardless of the legal cause, and the Customer hereby accepts said waiver. The project documentation shall include all corporeal items as well as any and all electronic data, data files and any other information related directly or indirectly to the project and its execution.
- (5) The Contractor hereby, subject to the suspensive condition of the Termination of Contract, assigns to the Customer
  - all of his claims which he has at present, or which may arise in the future, against suppliers and subcontractors, including all claims for performance, claims due to non-performance or defective performance, claims for the refund of excess payments, damage claims, claims under a warranty, claims for, or arising from, the provision of security, or claims for insurance benefits due to damage suffered by him or his subcontractors, and
  - all claims for, or arising from, related securities and guarantee bonds (e.g. advance payment or performance guarantee bonds and warranty bonds), and the Customer hereby accepts the assignment.

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- (6) In all contracts which he will conclude with his suppliers and subcontractors ("Subcontractors"), the Contractor shall include a declaration of the Subcontractor that he agrees to the Contractor assigning all of his claims against the Subcontractor (including, but not limited to: claims for performance, claims for the refund of excess payments, damage claims, claims under a warranty, claims for insurance benefits due to damage suffered by him or his subcontractors, claims for, or arising from, guarantee bonds provided by the Subcontractor) to the Customer subject to the suspensive condition of the Termination of Contract.
- (7) The Contractor shall provide the Customer with evidence thereof on request.

## § 22 Termination

- (1) Apart from the rights to terminate provided in Art. 649 of the BGB, the Customer hereby reserves the right to withdraw from the contract in the following cases:
- The work or part of it becomes impossible due to force majeure.
  - The End Customer requests that the work or part of it be discontinued and/or changes the basis of the contract between him and the Customer.
  - The Contractor does not perform faultless work and services despite a warning and the fixing of a deadline.
  - The Contractor does not comply with the contractually agreed deadlines and dates despite a warning and the fixing of a deadline.
- (2) If the Customer makes use of the above right of withdrawal, the Contractor may only claim payment for the work and services actually performed on the building site, insofar as they can be used for the continuation of the work. Any compensation for lost profit shall be excluded.

In addition, the Customer may claim compensation for the remaining construction services not provided in compliance with the Contract, including, but not limited to, compensation for the additional costs incurred, and consequential damage suffered, due to the completion of the work by the Customer himself or by a third party, and set said counterclaim against the Contractor's claims for payment.

## § 23 Completion of the Project

A project / building project shall be considered to have been completed no earlier than the date on which the main contract and all follow-up contracts of the Customer with his End Customers are considered to have been fulfilled.

## § 24 Applicable Rules and Order of Priority

- (1) All relevant rules, stipulations, specifications, standards and documents of the End Customer.
- (2) The Parties' minutes of negotiations.
- (3) The provisions contained in the contract.
- (4) The Customer's description of services and specifications.
- (5) The provisions contained in these Terms and Conditions.
- (6) The law of the Federal Republic of Germany.



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## § 25 Severability

Should individual parts of these Special Terms and Conditions for Construction and Assembly Services or parts of any other provisions referred to be legally ineffective, the effectiveness of the remaining provisions shall not be affected. The ineffective clause shall be replaced by the closest provision (according to the law and jurisdiction) permitted which regulates the economic and legal purpose of the ineffective clause in the closest and maximally permitted manner.

## § 26 Miscellaneous

- (1) The place of performance for all obligations of the Contractor shall be the place of performance mentioned in the order confirmation, or, alternatively, the location of the project.
- (2) In the case of any defect, the Contractor shall be obliged to take back the item at the place at which the item is located for its intended use (situs) as it is installed (place of performance for subsequent improvement).
- (3) The place of jurisdiction for all disputes arising from this Contract shall be Frankfurt/Main. However, the Customer shall be entitled to sue the Contractor at any other permitted place of jurisdiction.
- (4) All rights and obligations arising from this Contract shall be governed exclusively by German law, with international private law and the United Nations Convention on Contracts for the International Sale of Goods being excluded.