

# General Purchasing Conditions for Services by CONTRACTOR

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## (1) Purpose and validity

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

## (2) Definitions:

CUSTOMER

CONTRACTOR = CONTRACTOR and all its vicarious agents

CLIENT = CUSTOMER's customer and Client's customer

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

## (3) Value-added tax

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

## (4) Data protection

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

### § 1 Basis of contract

1.1 The basis of the contract is specified in section 1 of the minutes of negotiations and in addition by the laws of the Federal Republic of Germany.

1.2 In as far as the basis of contract contains different requirements for claims for changed or additional remuneration, for extension of the term or other claims, for documentation, for any evidence that may be required and for the conditions for acceptance, all such requirements must be fulfilled in their entirety. This applies, in particular, to such requirements in terms of contract of CUSTOMER's CLIENT. This can also be achieved by way of implementing the most far-reaching requirements if and to the extent that these cover the less far-reaching requirements.

1.3 The following conditions apply to all measures and actions within the material area of application of DIN 31051 or EN 13306 on service items (in their entirety: overall system).

1.4 CONTRACTOR's terms of contract, including CONTRACTOR's General Terms and Conditions will not become part of the contract. Such terms of CONTRACTOR are expressly waived and are not accepted by CUSTOMER. This also applies to all other external general terms and conditions of delivery, including, but not limited to, those laid down by ZVEI, VDI, etc. CONTRACTOR's assembly and service conditions, if any, are also excluded.

1.5 The VINCI Group's 'Code of Ethics and Code of Conduct' and the 'Anti-corruption Code of Conduct', which can be downloaded from the website shown below, are additionally applicable:

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

### § 2 Basis of offers and orders

#### 2.1 Scope of work

If and in as far as the contract does not provide otherwise, CONTRACTOR is obliged to perform maintenance, repair, upkeep, analysis of weak points, improvement and inspection of the overall system (services).

#### 2.2 Maintenance/repair

(1) If and in as far as the contract provides for the provision of maintenance or repair measures (hereinafter both: maintenance), the following is additionally applicable:

(2) If maintenance is to be carried at CONTRACTOR's factory, CONTRACTOR will send the item to be maintained to CUSTOMER in due time at CONTRACTOR's own expense and risk.

(3) Maintenance will be performed with due care, taking into account the work defined when the order was placed. However, CUSTOMER reserves the right to perform additional work that was not specified when the order was placed, in as far as this is

necessary in order to restore the suitability for use of the item to be maintained or to carry out maintenance. CUSTOMER must remunerate CONTRACTOR for this work on the basis of the current price list or, subordinated to this, on the basis of section 632 (2) of the German Civil Code (BGB, *Bürgerliches Gesetzbuch*).

(4) If the scope of maintenance is to be extended or changed at CUSTOMER's request, a separate written agreement will be required.

(5) Parts dismantled or replaced during maintenance as well as parts provided as samples will become CUSTOMER's property, unless otherwise agreed upon in individual cases.

(6) Unless otherwise stipulated in the contract, DIN 1961 is additionally applicable.

#### 2.3 Cost estimate

(1) A cost estimate will be submitted to CUSTOMER at its request. CONTRACTOR is not entitled to remuneration therefor.

(2) Cost estimates are binding unless expressly agreed otherwise in writing. CUSTOMER reserves unrestricted ownership and copyright exploitation rights to drawings or other documents; these may not be made accessible to third parties. Drawings and other documents belonging to offers must be returned immediately upon request if CONTRACTOR does not win the order.

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## § 3 Responsibilities, powers of attorney

- 3.1 The project manager is only authorised to issue instructions to CONTRACTOR if such authority is affirmed in the minutes of negotiations.
- 3.2 However, the project manager is never authorised to change or delete any wording or clauses of these special conditions or of the minutes of negotiations following their adoption. Any such changes or deletions are subject to express approval by CUSTOMER's executive management or purchasing director.

## § 4 General duties of the parties

### 4.1 Incoming inspection

CONTRACTOR is obliged to carry out an initial inspection during which the facility is recorded and the condition of the overall system is determined. CONTRACTOR must immediately report any defects discovered in this way before commencing its services.

### 4.2 CUSTOMER's participation

- (1) Fault and error reports: CUSTOMER will report damage, failures, malfunctions or more than insignificant impairments to the functionality of service items within a reasonable period of time.
- (2) Access: CONTRACTOR's service personnel must be granted reasonable access to the service items. The service items will be made available for operational tests. This also applies to the required hardware and software documentation.
- (3) CONTRACTOR is obliged to take the necessary measures to protect persons and property at the service site. CONTRACTOR is also obliged to inform the service manager about any special safety regulations in force that are of importance for service personnel. CONTRACTOR must report to CUSTOMER any violations of such safety regulations by service personnel.

## § 5 Special duties of CONTRACTOR

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

- (1) By joining the United Nations' Global Compact, CUSTOMER and its employees commit themselves to comply with the Global Compact.
- (2) CONTRACTOR undertakes to observe the principles of the UN Global Compact Initiative. These essentially concern the protection of international human rights, the right to collective bargaining, the abolition of forced and child labour, the elimination of discrimination in recruitment and employment, as well as responsibility for the environment and the prevention of corruption. Further information on

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

- (3) CONTRACTOR undertakes to inform CUSTOMER immediately of any and all infringements of the principles listed in subsections 1 and 2 occurring in CONTRACTOR's business sphere.
- (4) In the event that CUSTOMER becomes aware of any violation of the conditions mentioned in subsections 1 to 3, CUSTOMER reserves the right to review and, if necessary, terminate the joint business relationship.

### 5.2 Use of software

- (1) If the performance owed requires CONTRACTOR to perform an action subject to permission in accordance with section 69 c of the Copyright Act (UrhG, *Urheberrechtsgesetz*) on the software used in the overall system, CONTRACTOR must immediately notify CUSTOMER thereof. In the event of culpable infringements of third-party copyright by CONTRACTOR, CONTRACTOR is obliged to indemnify CUSTOMER against any and all claims without any restriction.
- (2) In as far as the scope of delivery includes the provision of software to CUSTOMER, CUSTOMER will be granted a non-exclusive right to use the software provided, including its documentation, and/or to perform the acts permitted under sections 69a et seqq. UrhG. CONTRACTOR expressly permits CUSTOMER to perform acts in accordance with section 69c UrhG.
- (3) CUSTOMER may only copy, revise, translate or convert the software from object code to source code to the extent permitted by law sections 69a et seqq. UrhG.
- (4) Any other rights to the software and the documentation, including copies thereof, remain with CUSTOMER.

### 5.3 Service times

Services will be provided on working days, Sundays or public holidays (24-hour service), unless separately agreed upon otherwise.

### 5.4 Measures deviating from 2.1 and 5.2

Should CONTRACTOR, during the term of the contract, believe that it has identified a weak point or a repair, maintenance or improvement measure that is not contractually owed, it may inform CUSTOMER thereof. However, CONTRACTOR is obliged to inform CUSTOMER if non-performance or failure to immediately perform such a measure thwarts, prevents excludes or endangers the correct operation or existence of the overall system as a whole or in part.

### 5.5 Compliance with collective agreements and minimum wage

- (1) CONTRACTOR is obliged to observe and comply with the relevant provisions of the Act on Mandatory Working Conditions for Employees Posted Across Borders and for Employees Regularly Employed in Germany (AEntG, *Arbeitnehmerentdeggesetz*) and the Act on the Regulation of a General Minimum Wage (MiLoG, *Mindestlohngesetz*) as well as other statutory or collectively agreed provisions on minimum wages as amended from time to time.
- (2) CONTRACTOR is obliged on first demand to indemnify CUSTOMER against all claims arising from or in conjunction with an infringement of section 5.5, in particular, an infringement of the provisions of the AEntG or the MiLoG, by CONTRACTOR or a subcontractor appointed by CONTRACTOR or a temporary work agency appointed by CONTRACTOR or a subcontractor or any other subsequent or temporary work agencies. Further claims which CUSTOMER may have remain unaffected.
- (3) A breach of the obligations under this section 5.5 entitles CUSTOMER to terminate the contract with CONTRACTOR without notice.
- (4) CONTRACTOR is obliged to provide suitable evidence in order to verify compliance with the obligations under this section 5.5 and to submit such evidence to CUSTOMER when requested ('right to information'). CUSTOMER or a third party commissioned by it may inspect these documents in order to enforce its right to information. CONTRACTOR must inform its employees in writing of the possibility of such checks.

### 5.6 Waste disposal

CONTRACTOR is obliged to dispose of debris, waste, refuse, hazardous waste (waste requiring special supervision in accordance with the Closed Substance Cycle and Waste Management Act (*Kreislaufwirtschafts- und Abfallgesetz*)) in a professional and law-compliant manner. Disposal in this sense means both recycling and disposal of waste. If CONTRACTOR fails within a reasonable period of time to comply with this obligation despite a one-off written request to do so, disposal will be carried out at CONTRACTOR's expense. CUSTOMER will then be entitled to deduct the resulting costs from the next invoice. CONTRACTOR's obligation to pay compensation will be obsolete if CONTRACTOR proves that it has properly disposed of its own rubble, waste, refuse and special waste.

### 5.7 Services without an order

If services are performed without an order and not in accordance with sections 677 BGB et seqq. or, if the Awarding and Contract Regulations for Construction Services, Part B: Gen-

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eral Terms and Conditions of Contracts for the Execution of Construction Services (VOB/B, *Vergabe- und Vertragsordnung für Bauleistungen Teil B: Allgemeine Vertragsbedingungen für die Ausführung von Bauleistungen*) were agreed upon, in accordance with section 2.8 VOB/B, the item must be restored to its original condition, unless this is technically or economically unreasonable. CONTRACTOR must then bear the costs of restoring the original condition.

## § 6 Storage and transport of service items taken over

- 6.1 Items taken over must be returned to CUSTOMER after maintenance at CONTRACTOR's expense and risk.
- 6.2 If collection has been agreed upon instead of sending back, items that were maintained must be collected within 30 days after CUSTOMER's notification. If this does not happen, such items will be returned pursuant to section 6.1 to CUSTOMER at its expense and risk.

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

- 7.1 Any subsequent claims by CONTRACTOR after conclusion of the contract which are based on lack of knowledge of the construction site or the contents of the order will not be accepted by CUSTOMER.
- 7.2 In the event that CUSTOMER receives from its CLIENT any subsequent orders within the scope of its order, CONTRACTOR will then be obliged to execute such order. Accounts will then be settled according to the unit prices of the main order.
- 7.3 CONTRACTOR is not entitled to refuse preparation of an offer to be prepared by it pursuant to section 7.2 of the minutes of negotiations and the execution of a change that is required in order to achieve the agreed success or to refuse a change in the agreed success unless CONTRACTOR cannot be reasonably expected to do so under the circumstances of the particular case. In as far as CONTRACTOR claims internal reasons for unreasonableness, it must bear the burden of proof.
- 7.4 In the event that preparation of an offer by CONTRACTOR requires planning services, CONTRACTOR is also obliged to perform such services in as far as it can be reasonably expected to do so, for instance, because CONTRACTOR's business has the required resources.
- 7.5 The supplementary offer must identify the foreseeable consequences for the time schedule with regard to dates and deadlines of the trade-specific gross time schedule or the detailed construction schedule of this

contract replacing the trade-specific gross time schedule, as well as possible acceleration measures, including any resulting additional or reduced costs well in advance before performance (at least 5 working days after the request has been issued) by way of an updated offer cost calculation. Otherwise, the relevant schedule will remain unaffected.

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

## § 8 Deadlines, times

- 8.1 A contractually agreed response time will be deemed to have been met if CONTRACTOR has commenced its services in the agreed manner at the place of performance within the agreed period.
- 8.2 The deadline for the performance of a service will be deemed to have been met if the service has been performed in a condition ready for acceptance before expiry of the deadline.

## § 9 Penalty

- 9.1 If CONTRACTOR culpably delays the commencement or completion of performance, CONTRACTOR is obliged to pay a penalty to CUSTOMER. It amounts to 0.2% for each calendar day of culpable default, but in total no more than 5% of the respective net remuneration (in the case of services against recurring remuneration of annual net remuneration, in the case of default with a divisible partial performance, however, only to the amount of net remuneration for this partial performance).
- 9.2 For each case in which CONTRACTOR violates one of the obligations contemplated in section 22, CONTRACTOR is obliged to pay a penalty amounting to €25,000.00, unless the parties agree otherwise in the minutes of negotiations.
- 9.3 A penalty, once due, can be claimed until the last settlement of accounts or the services for the agreed term.

## § 10 Acceptance

- 10.1 Unless otherwise agreed in writing, formal acceptance is deemed to be agreed upon. Acceptance and a date therefor must be requested by CONTRACTOR in writing from the representative named by CUSTOMER in the minutes of negotiations and from CUSTOMER's site manager.

- 10.2 CONTRACTOR can only request acceptance by CUSTOMER after completion has taken place without any defects. CUSTOMER can refuse acceptance if no defects exist. CONTRACTOR can only request repeat acceptance after it has proven that the defect has been remedied.

- 10.3 Acceptance of CONTRACTOR's performance, presupposing full completion of the work to be performed, will only take place at the time of overall acceptance by CUSTOMER.

- 10.4 The documentation as well as all necessary approvals and certificates must be available at the time of acceptance in accordance with the contract. They form part of the acceptance procedure. Missing documentation will forfeit acceptance of performance due to incompleteness.

- 10.5 In as far as the services to be performed by CONTRACTOR also concern necessary official approvals, certificates etc., CONTRACTOR is responsible for obtaining these on time and for handing them over to CUSTOMER on the day of acceptance.

- 10.6 Any other forms of acceptance, be it through use or commissioning or through expiry of the deadline after notification of completion or payment of the final payment, etc., are excluded.

## § 11 Transfer of title/risk

- 11.1 CONTRACTOR warrants that it and its subcontractors are entitled to dispose of its deliveries/services. CONTRACTOR is, in particular, obliged to deliver all items and goods (goods subject to reservation of title) to be delivered within the scope of the services to be performed by it free of any rights of third parties. Otherwise it must indemnify CUSTOMER against any and all disadvantages and damage.

- 11.2 Transfer of title has no relevance for the transfer of risk and warranty.

## § 12 Remuneration

- 12.1 The services are invoiced according to the provisions of the contract. The amounts are exclusive of value-added tax.

- 12.2 Prices for deliveries are quoted DDP at the contractually agreed place of performance (Incoterms 2010), packaging must be taken back free of charge. If CUSTOMER does not exercise the right to return packaging, it is then entitled to reimbursement of its disposal costs.

## § 13 Changes in remuneration

- 13.1 CONTRACTOR is obliged to disclose its calculation when requested by CUSTOMER if CONTRACTOR de-

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mands remuneration for services rendered as a result of a change in the agreed work success or in order to achieve the agreed work success.

- 13.2 CONTRACTOR is obliged to disclose its calculation of certain unit prices if CUSTOMER demands this in order to prepare amendments for CLIENT. CONTRACTOR is obliged to submit such calculation within 12 working days after being requested to do so.

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

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

## § 15 Work paid by the hour

- 15.1 Work paid by the hour will only be recognised by CUSTOMER after prior separate supplementary written agreement and after submission of a time sheet to CUSTOMER's local site manager within 24 hours.
- 15.2 Confirmation of working time is not to be deemed to constitute acceptance for accounting purposes.
- 15.3 The normal working time is 50 hours per week. Saturdays are considered to be normal working days. Unless otherwise agreed, the basis for the calculation of overtime pay is 70% of the value of the agreed hourly wage.
- 15.4 The basis for remuneration of work paid by the hour is the pure working time. Supervision, driving and travel times as well as allowances for absence from home, etc. will not be remunerated. Site manager hours do not qualify as work paid by the hour. Such work will be billed on a quarterly-hour basis.
- 15.5 In the case of fixed-price orders, billing of work paid by the hour, including overtime surcharges, will be kept to a minimum, i.e. no more than 5% of the order sum.

## § 16 Billing

- 16.1 In the case of flat-rate orders, CONTRACTOR is obliged to provide evidence of the performance status as claimed in the respective invoice. CUSTOMER's site manager is responsible for verifying performance status and documents submitted as proof.
- 16.2 If a flat-rate remuneration has been agreed upon according to time periods, the invoice must be issued immediately after expiry of this time period.
- 16.3 Measurements must be taken at least once a week and submitted to CUSTOMER's site manager for verification.

- 16.4 CONTRACTOR is obliged to draw up a detailed, verifiable measurement report broken down according to facility components and to submit such report to CUSTOMER's site manager for verification. The checked and countersigned measurement report is a precondition for CONTRACTOR's claim for down payment or for presentation of the final invoice.

- 16.5 Verification of measurements, regardless of whether these are partial or total measurements, will be carried out in any case subject to CLIENT's final inspection. CONTRACTOR is fully liable for any payments which CLIENT may claim back from CUSTOMER as a result of CLIENT's inspections.

- 16.6 CONTRACTOR is obliged to render verifiable accounts for its services. CONTRACTOR is obliged to draw up the invoices in a clear and concise manner, observing the order of the items and using the descriptions contained in the constituent parts of the contract. Calculations of quantities, drawings and other documents required to prove the type and scope of the service must be enclosed. Amendments and supplements to the contract must be specially marked in the invoice; they must be invoiced separately when requested.

- 16.7 The facts necessary for rendering accounts should, if possible, be established jointly in accordance with the progress of work. The accounting provisions in the Technical Terms of Contract and the other contract documents must be observed. In the case of services that are difficult to determine while work is underway, CONTRACTOR is obliged to request the joint establishment of facts in due time in advance.

- 16.8 The final invoice must be submitted no later than 10 working days after completion of services with a contractual execution period of no more than 3 months, unless otherwise agreed; this period is extended by 6 working days for each additional 3-month execution period.

- 16.9 In the event that CONTRACTOR fails to submit a verifiable invoice despite CUSTOMER having set a reasonable deadline for this, CUSTOMER can then draw up such an invoice itself at CONTRACTOR's expense.

## § 17 Payments

- 17.1 Payment will be made within 15 calendar days minus 3 % discount, within 15 to 29 calendar days minus 2 % discount or optionally after 30 calendar days after receipt of the invoice net without any discount

- 17.2 Section 17.1 applies mutatis mutandis to other acts of performance by CUSTOMER as well as the justified assertion of rights to refuse performance and rights of retention.

- 17.3 If CUSTOMER allows the discount period for a down payment or the advance payment to expire, this will not affect the right to deduct discount for remaining payments or activities equivalent to performance.

- 17.4 All prices are exclusive of value-added tax. Value-added tax will be invoiced separately at the applicable rate in accordance with applicable tax regulations.

- 17.5 Cheques or bills of exchange are accepted as equivalent to performance.

## § 18 Security

- 18.1 If a security deposit by CONTRACTOR has been agreed upon, CUSTOMER may withhold 10% of the respective payment amount for each advance payment until the security amount has been reached (cash amount withheld) in order to simplify processing.

- 18.2 CONTRACTOR may, unless the cash amount withheld has not already been used for a justified purpose, demand payment of such cash amount withheld against simultaneous provision of a guarantee to be issued by a credit institution or credit insurer that is permitted in accordance with section 17 (2) VOB/B and covering 10% of the order amount, corresponding to the sample attached to the minutes of negotiations and referred to as 'guarantee'.

- 18.3 The limitation period for claims arising from security begins when the claim secured is asserted. The limitation period for claims arising from security ends when the last claim secured becomes time-barred.

- 18.4 CUSTOMER is obliged to return security after the limitation period for all claims arising from such security has expired.

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

- 19.1 Services which during execution are already found to be defective or not in conformity with the contract must be replaced by CONTRACTOR at its own expense. If CONTRACTOR is responsible for the defect or non-conformity with the contract, it is also obliged to compensate for any resulting damage. If CONTRACTOR fails to comply with the obligation to remedy a defect, CUSTOMER can set to CONTRACTOR a reasonable deadline for remedying the defect and warn CONTRACTOR that CUSTOMER will terminate the contract after fruitless expiration of the deadline.

- 19.2 In cases of incorrect assembly/installation, CONTRACTOR will be granted a reasonable period of time in order to remedy the defect. If no satisfactory result is achieved within this period, CUSTOMER can carry out the

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work itself or have it carried out by retaining third parties on the basis of time spent and costs incurred. CONTRACTOR must bear any resultant costs.

- 19.3 In urgent cases, CUSTOMER itself can, after consultation with CONTRACTOR, carry out the remedial work or have such remedial work carried out by a third party. Minor defects can, without prior agreement and without affecting the warranty obligation, be remedied by CUSTOMER itself in order to fulfil its duty to mitigate damage. CUSTOMER can then bill CONTRACTOR for the necessary expenses. The same applies if unusually high damage is to be expected. CUSTOMER has in any case the right to choose between rectification of defects and new production.
- 19.4 Should any damage or defects of any kind occur as a result of work carried out by CONTRACTOR or affecting CONTRACTOR's scope of delivery, the warranty period will total 5 years and 6 months after acceptance by CUSTOMER. Acceptance/commissioning of the facility by CLIENT
- 19.5 In the event of remedial action or replacement delivery, the agreed guarantee period will begin at the time of such remedial action or replacement delivery.
- 19.6 CONTRACTOR hereby assigns to CUSTOMER, which accepts this assignment, all of CONTRACTOR's claims for defects, warranty claims, product liability claims as well as any claims arising from securities that it may assert against its subcontractors and suppliers (subcontractors) in this respect. This assignment does not affect CUSTOMER's own claims for defects which it has against CONTRACTOR.
- 19.7 CUSTOMER hereby authorises CONTRACTOR until revocation of this authority to enforce the assigned claims against its subcontractors itself. Furthermore, CONTRACTOR can demand that the assigned claims be reassigned in the event that CONTRACTOR successfully remedies the defect or otherwise fulfils CUSTOMER's claims based on defects, provided that CONTRACTOR's fulfilment of CUSTOMER's claims based on defects is sufficient.
- 19.8 No later than two weeks before acceptance, CONTRACTOR is obliged to provide CUSTOMER with a list of all subcontractors retained, including their addresses and precise details of the trades to be performed, defect claims/guarantees agreed upon as well as items delivered. At CUSTOMER's request, CONTRACTOR is obliged to hand over and to provide to CUSTOMER all documents and information necessary to enforce the assigned claims.

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

## § 20 Liability/insurance

- 20.1 Unless otherwise stipulated above, CUSTOMER is only liable to CONTRACTOR for intent and gross negligence. Liability for consequential damage is excluded.
- 20.2 CONTRACTOR is obliged to take out at its own expense adequate business liability insurance, to maintain this during the term of the contract, wherein the following amounts for the respective types of loss must be available at least twice per insurance year in the event of several claims:
- |                          |              |
|--------------------------|--------------|
| Personal injury          | 2,000,000.00 |
| Damage to property       | 2,000,000.00 |
| Financial loss           | 1,000,000.00 |
| Active contributory loss | 500,000.00   |
- The number of claims must be unlimited.
- 20.3 CONTRACTOR will submit copies of the insurance contracts to CUSTOMER at the time of commencement of construction at the latest. CONTRACTOR is not entitled to any payments from CUSTOMER until insurance cover is proven. CUSTOMER can make payments contingent upon proof of existence and continued existence of insurance cover.
- 20.4 CONTRACTOR authorises CUSTOMER to contact the insurance company directly in the event of damage, to request information from the insurance company or to conduct negotiations. CUSTOMER is in this context irrevocably authorised to claim and accept compensation payments from the insurance company in its own name, in as far as such compensation payments are attributable to damage to CUSTOMER's property.

## § 21 Termination of contract

### 21.1 Term

If a term is contractually agreed, such term will then apply.

### 21.2 Termination

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

### 21.3 Continuation of services

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

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## 21.4 Insolvency and insolvency petition against CONTRACTOR

- (1) CUSTOMER is, in particular, entitled to terminate the contract in accordance with section 21.2 (2) if CONTRACTOR suspends payments or files a petition for the opening of insolvency proceedings or comparable proceedings or if insolvency proceedings or comparable proceedings are opened against its assets.
- (2) Subject to a condition precedent should the case contemplated in subsection (1) occur, CONTRACTOR now already assigns its present and future performance and rectification claims which exist at the time the condition precedent occurs and which CONTRACTOR has from a legal relationship with a third party.
- (3) The object of this legal relationship must be the performance or rectification of a service which is also to be regarded as performance or rectification in the legal relationship between CUSTOMER and CONTRACTOR. In as far as that legal relationship also concerns the performance or rectification of services which are not to be regarded as performance or rectification in the legal relationship between CUSTOMER and CONTRACTOR, assignment of such claims is not possible.

## 21.5 CONTRACTOR's subcontractors

- (1) CONTRACTOR now already assigns to CUSTOMER, with CUSTOMER accepting such assignment, subject to termination of the contract as a condition precedent,
  - any and all of CONTRACTOR's current and future claims against subcontractors, including any and all claims for performance, non-performance or defective performance, repayment claims arising from overpayments, claims for damages, warranty claims, claims for security and claims for insurance payments based on damage suffered by CONTRACTOR or its subcontractors, as well as
  - any and all claims to and from related securities and guarantees (such as advance payment guarantees, performance and warranty bonds).
- (2) CONTRACTOR is obliged to include in all contracts to be concluded with each of its subcontractors a statement by the subcontractor in which the subcontractor agrees to CONTRACTOR assigning to CUSTOMER all of CONTRACTOR's claims that may exist against the subcontractor (in particular: claims for performance, repayment claims arising from overpayments, claims for damages, warranty claims, claims for insurance payments with regard to damage suffered by the subcontractor, claims against and

from the guarantees provided by the subcontractor) subject to termination of the contract as a condition precedent.

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

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

- 22.1 CONTRACTOR is obliged to maintain confidentiality. Without CUSTOMER's consent, CONTRACTOR is not permitted to pass on any information regarding the construction project to third parties not involved in the construction project.
- 22.2 Publications about the construction project by CONTRACTOR or its employees are not permitted without CUSTOMER's prior written consent. Publications in this sense also include the description of the construction work, the publication of drawings, calculations and other documents, as well as photograph, film, radio and television recordings and publications on the Internet. CONTRACTOR will obtain ensure that the subcontractors retained by it issue a corresponding obligation to CUSTOMER.
- 22.3 CONTRACTOR will ensure that, with regard to the services performed, neither CONTRACTOR itself nor any subcontractor retained by it will assert any copyright or other intellectual property rights which would prevent CUSTOMER's unrestricted use and exploitation of CONTRACTOR's services.
- 22.4 Until completion of the project and/or the construction project, CONTRACTOR may not conduct any 'direct business' of any kind with CUSTOMER's CLIENT without CUSTOMER's consent. This means that CONTRACTOR may not enter into any direct or indirect business relations with CUSTOMER's CLIENTS or their legal successors with regard to the work being the subject matter hereof and any associated additional or follow-up orders which are technically related to this work.

The obligation as aforesaid will survive completion of the project and/or construction project for a period of 1 year after termination of the contract (withdrawal, termination or acceptance). CONTRACTOR is generally prohibited from making and entering into any direct ancillary agreements between CONTRACTOR and CUSTOMER's CLIENT. CONTRACTOR will be liable for any violation.
- 22.5 CLIENT is any direct or indirect customer of CUSTOMER in as far as this customer is related to the project/construction project for which CUSTOMER is working.
- 22.6 Resources, business transactions and working methods of one party which

come to the knowledge of the other party within the framework of the execution of the order must be kept secret in relation to third parties even beyond the term of the contract; the respective employees must be obliged to assume corresponding obligations.

- 22.7 No party will recruit the other party's employees. Violation of this provision will entitle the party concerned to terminate the contract without notice.
- 22.8 The obligations contemplated in the above subsections are subject to a penalty in accordance with section 9.

## § 23 Assurances/other agreements

- 23.1 Any assignment or collection assignment or pledging of claims against CUSTOMER arising for CONTRACTOR from and in conjunction with the construction project is only permitted with CUSTOMER's prior consent
- 23.2 CUSTOMER is entitled to set off claims which CONTRACTOR has against CUSTOMER against claims which CUSTOMER or other related companies of CUSTOMER within the meaning of sections 15 et seqq. of the German Stock Corporation Act (AktG, Aktiengesetz) have against CONTRACTOR. CUSTOMER is also entitled to set off its claims against CONTRACTOR against any claims to which CONTRACTOR is entitled against one of the aforementioned companies.
- 23.3 CONTRACTOR may only set off undisputed claims against CUSTOMER which have been established as final and absolute or which are ready for a decision against CUSTOMER's claims.
- 23.4 The documents (plans, drawings, documentation, data etc.) produced or procured by CONTRACTOR and to be handed over to CUSTOMER will become CUSTOMER's property. CONTRACTOR's right of retention after the end of performance (acceptance, termination or cancellation of the contract) is generally excluded unless CONTRACTOR's claims on which the right of retention is based have been accepted by CUSTOMER or established as final and absolute.
- 23.5 CUSTOMER's documents which are made available to CONTRACTOR must be handed over to CUSTOMER after completion of CONTRACTOR's services at the latest.
- 23.6 CUSTOMER is entitled to claim compensation from CONTRACTOR for any damage suffered by CUSTOMER as a result of CUSTOMER, for its part, being held liable by CLIENT for CONTRACTOR's culpable infringement of statutory or official regulations, or as a result of CUSTOMER being prevented from continuing with the work, or as a result of a delay in the construction process.

# General Purchasing Conditions for Services by CONTRACTOR

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23.7 This contract itself as well as any and all modifications and amendments must be in writing in order to be effective. This is also applicable to a waiver of the written form requirement.

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

## § 24 Dispute resolution

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

## § 25 Jurisdiction, applicable law and

### severability clauses

25.1 The place of performance for all of CONTRACTOR's obligations is the place of performance specified in the confirmation of order, or alternatively the location of the project.

25.2 In the event of a defect in its deliveries, CONTRACTOR is obliged to take back the defective item without disassembly at the place where the item is located in accordance with its intended purpose (location) (place of performance for rectification of defects).

25.3 The place of jurisdiction is Frankfurt/Main, Germany. However, CUSTOMER is entitled to sue CONTRACTOR at any admissible place of jurisdiction.

25.4 All rights and obligations arising from this contract are governed exclusively by German law to the exclusion of international private law and the UN Convention on Contracts for the International Sale of Goods.

25.5 Should individual parts of these General Purchasing Conditions for Services by Contractors or parts of other provisions referred to and included herein by reference be legally invalid, the validity of the remaining provisions will not be affected thereby.

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