

ISG Deutschland GmbH

General Terms and Conditions and Construction Site Regulations for Contractors (Contractor)

Rev.: 21/2018

1. Contractual basis

- 1.1 The contractual basis described in clause 1 of the MINUTES OF NEGOTIATIONS form integral parts of the contract. Insofar as not otherwise stipulated there, the contractual components apply in the following order:
 - a) The purchase order together with the individual agreements according to the contract award protocol.
 - b) These General Terms and Conditions and Site Requirements for Contractors.
 - c) The Annexed 'Safety and Health Protection - Performance Standards for Subcontractors in the CEE Region'
 - d) The list of performances / the performance specification including the preliminary comments and the developer's building specification as well as the underlying technical drawings, samples, preliminary technical remarks, insofar as handed over to the Contractor pursuant to the purchase order.
 - e) Working and detailed drawings that contradict the performance specification shall replace the performance specification if explicitly countersigned by the developer.
 - f) The contract schedule. The Contractor is to submit a schedule of individual milestones based on the agreed completion milestones prior to commencement of works, but no later than five days after the date of the order, which shall become the contract schedule upon approval by the Client.
 - g) The developer's terms and conditions, which are available from the Client (hereinafter the "Client").
- 1.2 In the case of contradictions, the preceding provisions take precedence over the following provision.
- 1.3 If there are inconsistencies in the requirements for the assertion of changed or additional compensation, extensions of due dates or other claims, documentation, any necessary proofs and the conditions for acceptance in the contractual basis, these requirements are to be fulfilled in their entirety. This can also be achieved by implementing the most extensive requirements if and to the extent that the former cover the less far-reaching requirements.
- 1.4 The Contractor's terms and conditions do not form part of the contract, not even if reference is made to them in the quotation. These are expressly excluded and are not recognised by ISG or the Client. Any terms and conditions for installation and performance of the Contractor are likewise excluded.

2. Basis of quotations and orders

- 2.1 The Contractor is obliged to review the performance specification, the submitted planning documents, as well as the other contract documents (in particular with regard to dimensions and masses) and inform the Client in writing of any contradictions, ambiguities and/or inaccuracies in the individual contractual components which relate to the type and scope of the performances to be provided.
- 2.2 The Contractor confirms that it has clarified the details of the performances to be provided under its own responsibility and that it is aware of the condition of the property and the local conditions or that it has refrained from obtaining the required knowledge at its own risk. If the Contractor submits a quotation without visiting the site, any resulting disadvantages are to be borne by it.
- 2.3 The Client may open the Contractor's presented costings for the purpose of verifying the Contractor's supplementary claims. The Contractor is to be given the opportunity to be present at the opening of the costings. After inspection, the costings must be resealed in the presence of the Contractor and then deposited securely.
- 2.4 Additional costs for e.g. difficult circumstances, simultaneous work of several trades, heights and distances on the site, etc. cannot be claimed.
- 2.5 The performance owed also includes all subsidiary performances in the meaning of clause 4.1 of any relevant regulation of VOB/C (General Technical Contractual Conditions for Construction), legally prescribed or contractually agreed tests and acceptance procedures, measuring and test equipment, commissioning and trial operation.
- 2.6 The Contractor's quotations for deliveries and performances are always binding for the Contractor, whereas for the Client they are non-binding and free of charge. These quotations are always based on these General Terms and Conditions and Construction Site Regulations for Contractors.
- 2.7 By the act of submission of the quotation by the Contractor to the Client, the conditions of the above clause 2.6 are implicitly accepted by the Contractor. Any written reference to the Contractor's terms and conditions in its quotation is and will be invalid.

3. Responsibilities, powers of representation, site management

- 3.1 The project manager only has powers of representation with respect to the Contractor insofar as this right of representation is affirmed in clause 3.1 of the MINUTES OF NEGOTIATIONS.
- 3.2 However, the project manager shall under no circumstances have the right to alter or delete any formulations or clauses of these General Terms and Conditions or of the MINUTES OF NEGOTIATIONS after signing of the contract. Such changes or deletions require the express consent of the Client's management or purchasing department.

- 3.3 Before commencing work, the Contractor is to appoint a competent and experienced site manager, who is authorised to submit and accept declarations pursuant to the contract. This person must be constantly present on the construction site during the works. The Client shall provide a telephone number for emergencies, via which the site manager shall be permanently available. The responsible site management appointed by the Contractor in accordance with the relevant building regulations of the respective federal state, is also compensated by the contractually agreed compensation.
- 3.4 The Contractor and all of its employees are obliged to maintain secrecy regarding all information related to the construction work.
- 3.5 The Contractor is to attend the weekly project meetings, report on work progress, plan its work in advance and coordinate with all those involved in the construction project. It must submit a written progress report at the weekly construction meetings.
- 3.6 The Contractor's performance will be verified weekly for compliance with the contract schedule.
- 3.7 The Contractor indemnifies the Client against all damages, losses, detriments and claims from third parties, which result from the unavailability of the Contractor's site manager. This also applies if the Contractor's employees should seek advice from the Client on the construction site and then an unavoidable reaction of the Client is construed as an instruction to the employees not foreseen in a contract for work & services.

4. The Contractor's obligations

4.1 General obligations

- (1) The complete obligation for delivery and/or performance for the object/trade stated on p. 1 of the MINUTES OF NEGOTIATIONS reside with the Contractor. This includes everything that is required for a complete and professional execution of the performance and its intended use, even if individual deliveries/performances in the performance specification are not listed or not listed in full, but are technically necessary.
- (2) The Contractor is to provide the deliveries and performances described by the contractual bases and the description of deliveries and performances in clause 1 of the MINUTES OF NEGOTIATIONS according to the contract circumstances, in a usable and functional form, free of legal or actual obstacles of usability by the Client, at the agreed time of performance in the agreed manner (scope of performance of the Contractor).
- (3) The Contractor's scope of performance shall comply in particular with the recognised technical rules, the relevant environmental protection, accident prevention and other health and safety regulations as well as the generally recognised safety and occupational health regulations that apply at the place of performance.
- (4) The Contractor is to carry out the work assigned to it independently, under its own responsibility, professionally and carefully. At the same time, it is to give due consideration to the interests of the Client. The Client is not entitled to issue instructions and directives to the Contractor; however, the latter has to observe the Client's technical specifications to the extent that this is required for the proper execution of the contract.
- (5) Within 14 days of placing the order as well as after any future requests by the Client, whereby the latter not entitled to issue such requests without justifiable cause until 11.5 months at the earliest after the last request, the Contractor must present clearance certificates from the competent tax office, professional association and the local health insurance fund and provide proof of registration in the register of craftsmen. The submission of these clearance certificates after placing the order and justified requests of the Client are a prerequisite for interim payments becoming due.

4.2 Execution

- (1) The Contractor warrants that it and any subcontractors engaged by it, exclusively employ persons who are duly registered and insured and it therefore provides a declaration of compliance collective bargaining agreements for itself and, if applicable, for its subcontractors. Employees from EU countries must be in possession of a valid residence permit, and employees from third countries must have a valid work permit. For each case of the infringement, the Contractor undertakes to pay a contractual penalty of € 1,500.00 per employee concerned. The Client is entitled to withhold compensation for wages/work. The Client is also entitled to draw down existing securities (sureties).
- (2) The German Minimum Wage Act (MiLoG), which provides for a statutory minimum wage, has been in force since 1 January 2015. In order to ensure that MiLoG has the widest possible effect, § 13 MiLoG provides for so-called Client liability with a reference to §14 of the Act on Posted Workers (AEntG).

Accordingly, a contractor that commissions another contractor to provide work and/or performances is liable for the obligation of the second contractor or of a subcontractor or an agency engaged by the contractor or subcontractor, to pay the minimum wage to employees pursuant to § 1 (1) MiLoG.

The Contractor warrants to the Client that it will always comply with the statutory minimum wage requirements in accordance with MiLoG and to grant and pay the minimum wage applicable to all employees engaged in the implementation of the contractual relationship. The Contractor also undertakes to obligate subcontractors and agencies to comply with the obligations contained in this declaration and to monitor their compliance. It further undertakes to obtain the approval of the Client for the engagement of subcontractors or providers of temporary employees. Proof of the payment of a minimum wage in the amount of the binding German provisions of MiLoG and/or AEntG and the applicable generally binding collective bargaining agreement as well as vacation fund contributions according to the binding German provisions of AEntG and the applicable generally binding collective agreement must be submitted by the Contractor to the Client before award of contract.

In the event of a claim arising from a breach of the above declaration obligation, the Contractor agrees to indemnify the Client in full against third party claims and to reimburse the Client for all costs of legal defence as well as any

further damages caused by the claim. The Contractor also undertakes to hold the Client harmless from unjustified claims of third parties with regard to the above-mentioned rights. If the Contractor refuses to hold the Client harmless and therefore leaves the Client to decide whether the third party is entitled to claims, the Contractor shall reimburse the costs resulting from this decision.

- (3) The Contractor must make all safety precautions in relation to its performances; in particular observe the walking route and flow of traffic safety obligations, in order to avert personal injury and property damage. It must take all damage prevention measures that are necessary in connection with its performance before and after work and during work breaks. The Contractor expressly indemnifies the Client against claims for damages that are made in connection with its performance or delivery or that are the fault of the Contractor or its vicarious agents, unless the Client has been intentionally or grossly negligent. The Client does not have to impose safety obligations of its own on the Contractor.
- (4) For scaffolds more than 5m high, the Contractor must provide proof of stability prior to installation. The Client can order verification of the stability certificate and, depending on the degree of difficulty, also order supervision and acceptance by an expert. All scaffolding must be erected and dismantled by trained personnel.
- (5) The Contractor must identify and protect pipes, conduits etc. in construction components before any work is carried out.
- (6) The provision of performances by subcontractors requires the prior written consent of the Client. A breach of these contractual provisions entitles the Client to withdraw from the contract in accordance with § 8 (3) VOB/B, without prior notice.
- (7) The members of a consortium are jointly and severally liable to the Client. For a consortium, the lead company for the technical and commercial areas must be named. The consortium contract must be presented to the Client upon request.

4.3 Planning

- (1) The Client's acceptance and approval notices on the Contractor's design documents, workshop and assembly drawings, etc. do not result in joint liability for the Client and do not limit the Contractor's unrestricted liability for its performance.
- (2) The Client is entitled to submit modified planning specifications to the Contractor. In this case, the Contractor is obliged to independently determine which further plans (e.g. TGA) are to be adapted accordingly and the necessary planning adjustments must be made.
- (3) If a project online portal is or will be set up for the document and design management, the Contractor will be obliged to use it in accordance with the contract, to comply with the specifications of the electronic plan management system and to input or download the necessary information in good time.

4.4 Access and storage

- (1) All of the Contractor's employees must report to and sign in with the Client or the developer's security staff before entering the construction site, and sign out again when leaving.
- (2) The Contractor's employees, visitors and other third parties must be instructed on the construction site regulations and the ISG work safety regulations (see attachment) before entering the construction site.
- (3) Access to the construction site as well as any deliveries of materials to the construction site must be carried out exclusively via the loading area and delivery routes specified by the Client. The house rules of the building owner / landlord and the Client's construction site regulations must be observed. Any other access to the construction site is not permitted. In order to ensure that these rules are correctly understood, each Contractor must visit the site before commencing its performances in order to inspect the access possibilities itself. Provisions for parking cannot be provided. Storage facilities are only available to the Contractor to a limited extent. Any storage facilities will be specifically assigned to the Contractor by the Client.
- (4) The erection of a site sign by the Contractor is not permitted.

4.5 Deliveries

- (1) All material deliveries are to be announced to the Client by the Contractor 48 hours in advance, in order to allow an agreement with the respective authorised person regarding access, in particular the access controls and the possible use of an elevator. Unannounced deliveries are not permitted.
- (2) Only materials for daily use may be delivered to the construction site.
- (3) Unless expressly agreed otherwise, the Contractor is to strictly observe the specifications for materials, pre-assembled goods, products, deliveries, etc. laid down in the contract, including the contractual annexes. Deliveries or performances of an 'equivalent nature' are only permitted with the express and written consent of the Client.
- (4) The Contractor may only use building materials and procedures approved in accordance with the applicable DIN standards and the generally recognised technical rules. Building materials and processes whose use requires an official permit, must be previously approved in writing by the Client before use and installation. The architect or site manager and specialist engineers are not authorised to make such declarations. Furthermore, the Contractor may only use brand-new, flawless building materials, components and equipment for which a subsequent delivery period of at least 10 years is assured. Upon request, the Contractor must provide proof of the quality and serviceability of its deliveries and performances at its own expense.
- (5) The customary samples and tests are to be presented to the Client or the architect for approval in sample inspections, free of charge and in good time, prior to execution. Test installation/assembly is also to be carried out, if necessary. The Client must be invited to the sample inspections in good time. The invitation must state

which performances are to be tested and which products or materials the Contractor intends to present to the Client. The Contractor may only present contractually compliant products and materials for sample testing. Supplementary claims of the Contractor are excluded if the Client has decided on additional costs in the course of the sampling for a particular product or materials in the absence of previous notification from the Contractor.

- (6) Each sample is to be documented by the Contractor. A copy of the sampling report is to be sent to the Client within one week of the date of the sampling. The costs of the sampling and any documentation requested by the Client are to be borne by the Contractor. The approval of sampled materials does not discharge the Contractor from its liability for the quality of such materials.
- (7) The respective place of fulfilment is indicated in the respective order. The Contractor shall not use, remove or modify operating equipment at the place of performance without the corresponding authorisation.

4.6 Construction waste and environmental protection (hazardous substances, waste)

- (1) Normal construction waste and non-recyclable waste must be disposed of by the Contractor daily in a professional and environment-friendly manner in accordance with the statutory regulations. Problematic waste (paints, varnishes, oils, hazardous/polluting waste, etc.) must be disposed of by the Contractor daily in a professional and environment-friendly manner in accordance with the statutory regulations and, if necessary, with documentation. These activities are paid for by the contractual compensation.
- (2) Hazardous substances are those which, by virtue of their nature, their properties or their state, may pose a threat to the life and health of humans, to the environment or to property.
- (3) When using these substances, the Contractor is obliged to strictly observe all relevant regulations (e.g. hazardous substances regulations, dangerous goods and transport regulations, ordinance on flammable liquids, water and waste regulations) in their currently valid version.
- (4) If the Client specifies certain substances, only these may be used.
- (5) If these substances are provided by the Contractor within the scope of the order, the following environmental protection requirements apply:
 - a) They must not contain halogenated hydrocarbons.
 - b) Other solvents (e.g. hydrocarbons, alcohols, esters) may only be used if it is ensured that even in the case of unforeseen incidents, there is no risk of them reaching bodies of water, sewage systems or the soil.
 - c) Acid or alkaline preparations may only be used if it is ensured that they cannot reach bodies of water, sewage systems or to the soil during handling.
 - d) Preparations with heavy metals subject to classification according to the GefStoffV (German ordinance on hazardous substances) must not be used.
 - e) If there is a risk that, contrary to the provisions of clause 4.6 para. 4 b or 4 c, substances being transported may enter into bodies of water, sewers or soil, or substances must be used which, in accordance with the preceding provisions of this clause 4.6 are subject to a prohibition of use, then approval by the Client is required prior to entry into the factory / construction site at the place of performance.
- (6) Waste resulting from the performance of the contract and caused by the Contractor or its vicarious agents is to be disposed of by the Contractor at its own expense and risk. The method of disposal must be determined by the Contractor before commencing work. Disposal of waste substances via the wastewater is not permitted. The use of collection skips provided at the factory / construction site at the place of performance is generally not permitted. Arrangements to the contrary require the written approval of the Client. After the completion of the work, the workplace is to be left in a clean and tidy state. Rubble and residual materials are to be removed from the site by the Contractor. If the Contractor fails to comply with this obligation, the cleaning will be carried out at its expense after expiry of a reasonable period of notice.
- (7) If the Contractor fails to comply with the above obligations within a reasonable period of 24 hours, even after being reminded to provide these performances by the Client, the Client may engage a third party with the cleaning of the construction site and charge the Contractor for the resulting costs.

4.7 Work times

- (1) Normal working hours are Monday to Friday from 7:00 a.m. to 7:00 p.m. If the Contractor considers it necessary to work outside these times in order to fulfil its performances, it must obtain permission from the Client and cover the costs for any necessary supervisory staff.
- (2) All work processes or operations generating airborne or structurally transmitted noise leading to inconvenience for building users carried must be reported to the Client 48 hours in advance and must be approved by the Client. In the case of work generating airborne or structurally transmitted noise, signs for the protection of third parties must be posted in front of the work areas indicating the need for any hearing protection device.
- (3) All operations that may affect safety devices (such as fire alarms, sprinklers, etc.), as well as any interruption of the power supply, must be discussed with the Client in advance. Before commencing work, the Contractor must submit a workflow description with a timeline to the Client for approval, from which the times/dates of such work is apparent.
- (4) All other operations that interfere with existing installations or that have an impact on them must be agreed in advance with the Client. In this case, too, a workflow description with a timeline is to be submitted for approval before commencement of work.

4.8 Safety and protection measures

- (1) The Contractor must carry out the measures specified in § 4 (5) VOB/B without special request or compensation. The Contractor is responsible for the protection of its performances against damage, loss or contamination until acceptance, as well as the safety and insurance of its tools.
- (2) Insofar as the Contractor damages existing protective equipment, such damage must be immediately reported to the Client and the damage remedied after consultation. Such remedial work will be inspected for correctness by the Client.
- (3) The Contractor assumes responsibility for the safety of persons and vehicles throughout the entire period of performance and indemnifies the Client against any third party claims.

4.9 Electricity, lighting, construction site equipment

- (1) The Client shall provide connections for site electricity and water as well as passage lighting. Additionally, where possible, a canteen and changing area will be set up for use by ISG subcontractors. The Contractor shall pay 1.8% of the net final invoice amount for utility costs. If the Contractor requires invoicing according to actual consumption, it must install a consumption meter at its own expense.
- (2) Lighting required at the workplace must be provided by the Contractor.

4.10 Work permits

- (1) All hazardous and heat-generating work (welding, soldering) requires the approval of the Client and the Client must be notified in writing 48 hours prior to execution.
- (2) If work is required in areas that are no longer part of the developer's rental area, such work requires the written approval of the lessor / facility management and/or any other authorised person(s). This work must be reported in writing to the Client at least 6 working days prior to execution.

4.11 Permits, administration

- (1) The Contractor must provide all official permits and certificates, without which the intended use of its performances is not possible, at its own expense. These include, in particular, acceptances by TÜV and others.
- (2) The Contractor must submit all written documents in good time. This applies in particular for announcements of any kind, the registration of deliveries, the notification of deadlines, process descriptions, etc.
- (3) Detailed documentation (e.g. operating, maintenance and servicing manuals, technical data sheets, product data sheets, approval certificates, measurement records, inventory plans in their final version, various certificates, etc.) corresponding with the ISG guidelines is to be submitted for review to the Client by the Contractor no later than two weeks prior to completion of the construction project in a single copy. After review by the Client, the documentation must be submitted in triplicate in paper form and in 1 copy in electronic form.

5. Changes and additions to the scope of deliveries and performances

- 5.1 Supplementary claims by the Contractor after conclusion of contract, which are based on a lack of knowledge of the construction site or the content of the contract, will not be recognised by the Client.
- 5.2 If the Client is commissioned by its own client with subsequent orders within the framework of its contract, then the Contractor is obliged to perform these. Invoicing is carried out according to the unit prices of the main contract.
- 5.3 The Contractor may not refuse to create the quotation in relation to a change which is necessary to achieve the agreed objective in accordance with the MINUTES OF NEGOTIATIONS or to implement this change if this is unreasonable in individual cases. If the Contractor claims internal reasons as the basis for unreasonableness, then it bears the burden of proof.
- 5.4 If creation of the Contractor's quotation requires planning services, then the Contractor is also required to provide these, insofar as it can be reasonably expected to do so, for example, because its company is equipped for this purpose.
- 5.5 The supplementary quotation shall state the foreseeable consequences for due dates in the draft schedule for this contract or the detailed project schedule replacing the former, as well as any measures to accelerate performance including the resulting—determined in relation to the quotation costings—additional or reduced costs are to be specified and communicated in good time before performance (at the latest 5 working days after issue of the corresponding instruction). Otherwise, the respective project schedule shall remain in effect.

6. Compensation

- 6.1 The compensation can be made either in the form of a fixed price or on the basis of time and expenses. The following fixed price methods may be used:
 - a) All-inclusive price. In this case, a fixed amount is paid for the entire scope of the order or defined parts thereof.
 - b) Unit price. In this case, a certain amount is agreed for a defined performance. The final compensation equals the sum of the performances multiplied by the agreed amount.
- 6.2 If a fixed price has been agreed for a performance, payment on a time time/expenses basis is not permitted
- 6.3 If fixed prices are agreed for individual deliveries and/or performances, these shall include all costs for construction site equipment, tools, devices, labour costs, accommodation allowances, all travel expenses, ancillary wage costs and other ancillary costs necessary for the fulfilment of the contractual performance, until complete fulfilment of the contract. Cost rates are fixed prices.

- 6.4 Any claims due to frustration of contract are reserved.
- 6.5 The basic rates and cost rates are always based on the hours specified in the contract being worked by the Contractor and its agents. Unless otherwise expressly agreed, these rates cover all costs. The reimbursement of surcharges requires express agreement in the contract.
- 6.6 The Client is to be notified of general increases or reductions by the Contractor in writing in good time. Possibly required items must be approved by the Client before performance.
- 6.7 Wage and material price increases that arise after signing of the contract for work & services will not be remunerated.
- 6.8 All documentation costs, including costs for authority approvals, certificates, attestations, etc., are covered by the contract prices.

7. Changes in compensation and disclosure of costings underlying prices

- 7.1 The Contractor is obliged to disclose its costings, upon request of the Client, if it demands compensation for performances as a result of a change to the agreed objective of the work or in order to achieve the agreed objective.
- 7.2 The calculation of the additional or reduced compensation as a result of changes is always based on the Contractor's costings (in the meaning of clause 2.1). Any additional costs due to a resulting prolongation of the construction period must also be included. Furthermore, any discounts and payment terms granted must be taken into account. It is assumed that the compensation updated on the basis of the costings takes due account of the increased or reduced expenses associated with the change in an appropriate manner.
- 7.3 If, in individual cases, adjustment of the cost estimates results in inappropriate additional or reduced compensation, any compensation adjustment must be determined on the basis of the actual costs entailed, with appropriate surcharges for general business expenses, risk and profit. The same applies if the additional or reduced compensation cannot be determined on the basis of the costings in the individual case.
- 7.4 The Contractor is obliged to disclose its costings of certain unit prices if the Client requests this for the preparation of supplementary orders with respect to its own client. The Contractor must submit these within a period of 12 working days upon request.

8. Cost sharing by the Contractor

Agreed contributions to costs pursuant to clause 14.1. and 14.2 of MINUTES OF NEGOTIATIONS are deducted from the interim invoices and the final invoice.

9. Work at hourly rates

- 9.1 Hourly rates are only recognised by the Client after prior, separate supplementary written agreement and after submission of a time sheet to the Client's local site management within 24 hours.
- 9.2 The confirmation of working times does not automatically mean recognition for invoice purposes.
- 9.3 Saturdays are considered normal working days. Unless otherwise agreed, the basis for the calculation of the overtime premium is 70% of the value of the agreed hourly wage rates.
- 9.4 The basis for the compensation of work at hourly rates is solely the hours actually worked. Supervisory, driving and travel times as well as accommodation allowances etc. are not reimbursed. Site manager hours are not considered hourly work. Invoices must be accurate to the nearest 1/4 hour.
- 9.5 For fixed price contracts, the invoicing of hourly wage work including overtime pay is to be kept to a minimum - maximum 5% of the contract value.

10. Periods and due dates

- 10.1 The due dates for the start and completion of construction resulting from the schedule and the notice of award of contract are contractual deadlines in the meaning of § 5 para. 1 (2) VOB/B. In addition, further deadlines can be designated in the contract as contract deadlines.
- 10.2 The Client's schedule is binding for the Contractor. The Contractor shall create its own duty roster for its installation team. The size of the team shall be adjusted in any event to the needs of the site needs to meet the completion dates according to the schedule. The Client reserves the right to subsequently establish special due dates for a partial completion. Damages resulting from inadequate provision of personnel shall be borne by the Contractor.
- 10.3 The Client is entitled to make changes to the specific schedule as part of the overall project schedule at its own discretion. These changes are binding for the Contractor. It is agreed that a reasonable completion period will be set according to the work to be carried out and that the aforementioned right of amendment does not extend to imposition of unilateral instructions to accelerate performance, which is governed by clause 7.4 of the MINUTES OF NEGOTIATIONS.
- 10.4 If due dates are changed by mutual agreement or in compliance with the above clause 10.3, the contractual penalty agreed for such also applies to the newly established deadlines.
- 10.5 The Contractor is obliged to submit a detailed schedule to the Client prior to commencing its work, which takes into account the specifications of the above schedules. This schedule must include the following documents:

- Detailed implementation plans and a text description of the work to be carried out by the Contractor.
 - Detailed scheduling of the Contractor (construction program and procurement plan).
 - Description of the test and verification methods.
 - Commissioning programme.
- 10.6 The Contractor is obliged to immediately notify the Client in written form of any impediments to performance, which may lead to a delay or other impairment of the performance, and to state how long the delay will continue. This also applies in the event of an imminent hindrance or endangerment of the proper and punctual provision of the performances. The Client shall instruct the Contractor as to how this potential disturbance to work processes is to be counteracted.
- 10.7 The Contractor is obliged to request assistance of the Client or of third parties in a proactive and timely manner, so that any disruption to work processes is avoided insofar as possible.
- 10.8 In the event of delays for which the Contractor is responsible, the Contractor must take all necessary measures in good time to nevertheless adhere to the specified deadlines or to minimise delays. If necessary, it shall arrange shift work, overtime and/or Sunday/public holiday work at its own expense. The Contractor is responsible for obtaining the necessary special permits, in coordination with the Client.
- 10.9 If workers, equipment, scaffolding, building materials or components are insufficient or inadequate so that the deadlines cannot be observed, the Contractor must promptly seek assistance upon demand from the Client, in particular by increasing the numbers of personnel and quantities of equipment deployed.
- 10.10 In the case of a delay in delivery or performance by the Contractor, it shall be liable for all damages and detriments caused to the Client. Contractual penalties which are to be paid in this case by the Client, shall be passed on in their entirety to the Contractor.
- 10.11 In case of a delay in delivery or performance by the Contractor, the Client is entitled to terminate the contract or order for good cause without notice and to demand any additional costs incurred by assignment of the contract to a third party from the Contractor. For the rest, the consequences of delayed performances and deliveries are governed by the statutory provisions.

11. Contractual penalties

- 11.1 Unless the parties have agreed otherwise in the MINUTES OF NEGOTIATIONS, the following applies:
- In the event of a culpable breach of contractually binding interim periods and completion deadlines (contractual deadlines pursuant to § 5 (1) VOB/B), **0.15%** of the net final invoice amount is to be forfeited as a contractual penalty per working day, but no more than **5.00%** of the net final invoice amount.
- 11.2 The penalty can still be claimed up until the final payment. A declaration that the final payment is refused is equivalent to the final payment.
- 11.3 This is without projection to claims from demonstrable higher damages caused by delay. The contractual penalty is credited to such a claim for damages.
- 11.4 The Contractor can only claim that necessary documents to be supplied by the Client have not been provided by the latter, if the former has requested these documents in writing and has not received them within a reasonable period of time.
- 11.5 In the case of a delay due to *force majeure* or caused by the Client, the fulfilment deadlines shall be extended by the duration of the delay. The prerequisite for recognition of such delays in relation to the contractual penalty is that the Contractor notifies the Client in writing in case of *force majeure* immediately after the cause of delay has occurred and furnishes evidence thereof.

12. Invoicing, surveys

- 12.1 In the case of fixed price all-inclusive orders, the Contractor is obliged to prove the state of progress claimed in its respective invoice. The examination of the state of progress and the provision of evidence thereof is the responsibility of the Client's site management.
- 12.2 Surveys are to be prepared once a week and submitted to the Client's site management for review. The detailed, clearly verifiable survey protocol and the signature of the Client's site management are prerequisites for payment of the performance.
- 12.3 The Contractor shall create a detailed, verifiable survey report, which is broken down according to the parts of the installation, and will pass it on to the Client's site management for verification. The reviewed and countersigned survey report is a condition for an application for interim payment or creation of the final invoice by the Contractor.
- 12.4 The Contractor must invoice its performances in a verifiable manner. Its invoices must be clearly formatted, observing the order of the items and using the terms contained in the contractual documents. The quantity calculations, drawings and other supporting documents required to prove the nature and extent of the performance must be included. Changes and additions to the contract must be specifically identified in the invoice. They are to be invoiced separately upon request.
- 12.5 The reports necessary for invoicing are to be made, insofar as possible, in step with progress of the performance. The invoicing provisions in the other contract documents must be observed. For performances that are difficult to quantify in step with the progress of work, the Contractor must apply for joint progress reports in good time.

- 12.6 The Contractor is entitled to submit monthly interim invoices. Interim invoices are aggregated according to construction phases and state of progress, numbered consecutively and submitted in single copy. All performances provided by the reporting date are to be listed separately according to item numbers. The interim invoices must be accompanied by verifiable, reviewed and approved general proofs in a single copy. In this respect, documentation must be submitted in advance and regularly to the site management for review. Payments already received are to be deducted.
- 12.7 The Contractor is only entitled to issue a final invoice after completion and in particular after presentation of the documentation. All performances for the final invoice are to be aggregated for invoicing according to construction phases and state of progress. Payments already received are to be deducted.
- 12.8 For performances with a contractual execution period of no more than 3 months, the final invoice must be submitted at the latest 10 working days after completion, unless otherwise agreed. This period is extended by 6 working days for each additional 3 months of execution.
- 12.9 If the Contractor fails to submit a verifiable invoice, even though the Client has set a reasonable deadline for such, the Client may create this invoice itself at the Contractor's expense.

13. Payments

- 13.1 Interim payments are only granted for demonstrably contractually-compliant performances, whereby these performances do not include components specially manufactured and provided for the required performance nor the materials and components delivered to the construction site.
- 13.2 Interim invoices are paid out after deduction of agreed securities. Such payment does not imply any acknowledgement of the correctness of the quantities and amounts listed therein.
- 13.3 The due date of the final payment is normally subject to the acceptance of the Contractor's performances by the Client. However, the final payment is due without acceptance if the Client refuses acceptance without good reason or the refusal of acceptance by the Client is not in good faith. In the case of a legitimate refusal of acceptance of the Client, the final payment is nevertheless due, if the Client no longer demands fulfilment, but because of inadequate performance, only demands compensation or reduction.
- 13.4 The unconditional acceptance of the final payment excludes subsequent claims if the Contractor has been informed of the final payment in writing and has been advised of the exclusionary effect. If the Client refuses further payments in writing, with reference to payments already made, this shall be considered equivalent to a final payment.
- 13.5 Previously asserted, but outstanding claims are also excluded if they are not again expressly notified. Notification of a reservation must be made within 28 days of receipt of notice of final payment under points 2 and 3. This reservation shall lapse if, within a further 28 days - starting on the day following expiry of the 28 days referred to in sentence 1 - a verifiable invoice has been submitted for the reserved claims or, if this is not possible, the reservation is substantiated in detail.
- 13.6 The exclusion periods do not apply to a request for rectification of the final invoice and payment due to surveying, calculation and transmission errors.
- 13.7 The payment terms according to VOB/B apply for partial and final invoices.
- 13.8 Unless otherwise agreed, the Contractor grants a discount of 3% of the invoice amount for interim payments within 14 working days, as well as payments on final invoices within 20 working days, each calculated from the date of receipt of the invoice. The agreed discount rule also applies to supplementary payments.

This is an early payment discount. Thereafter, the Contractor grants a discount to the agreed compensation in accordance with the construction contract provided that invoices issued in accordance with the contract are paid within the applicable discount periods in accordance with the agreed terms of payment.

The discount periods begin upon receipt of the verifiable interim invoice or the verifiable final invoice. If an external auditor has been appointed, the date of receipt shall be deemed to be the date the invoice is received by the external auditor.

If the received invoice fails to meet other requirements for approval (e.g. verifiability according to § 14 VOB/B, absence of acceptance according to § 12 VOB/B) or justified rights of retention are asserted, the discount period starts with the lapse of the due date or the loss of the right to refuse performance.

If the Client allows the discount period to elapse for an interim payment or interim payment, this does not affect the entitlement to deduct discount for the remaining payments or performance.

14. Sureties

14.1 Contract performance surety

- (1) As guarantee for the fulfilment of the contract, the Contractor is to provide the Client with a surety amounting to 10% of the contract value ('contract performance surety') unless the parties have agreed on a different level of collateral in the MINUTES OF NEGOTIATIONS. The contract performance surety secures the Client's claims to the contractual execution of the performance, claims for defects and the Client's payment claims not related to defects (in particular due to contractual penalty, damages, additional costs and repayment of overpaid wages).
- (2) Insofar as claims for defects are also to be secured by the contract performance surety, the security only covers claims due to defects detected before or upon acceptance. The contract performance surety does not guarantee any claims for defects that are discovered for the first time after the beginning of the warranty period.

- (3) To simplify settlement, the Client may withhold 10% of the respective payment amount for each interim payment until the security amount has been reached (cash retention).
- (4) The Contractor may, insofar as the cash retention facility is not already legitimately used, demand its payment in return for a contract performance surety from a bank or credit insurer recognised under § 17 (2) VOB/B for 10% of the contract value as specified in the pro forma in the annex to the MINUTES OF NEGOTIATIONS designated as the 'contract performance surety'.
- (5) In the case of a change in the contract value due to quantity increases, changes, ordering of possibly required items or similar, the amount of the contract performance surety is to change accordingly. If the Contractor has submitted a contract performance surety, upon a change to contract value, the amount of the security must be adjusted accordingly upon the request of one of the parties. If the contract value has risen, the Client may effect a cash retention equal to the currently unsecured difference, until the surety value has been adjusted; this cash retention can be replaced under the conditions of clause 14.1, para. 5 by adjusting the security amount.
- (6) The surety under para. 5 may not contain an escrow clause. The above also serves to secure any claims of the Client for reimbursement of overpayments and damages. The same applies if the guarantee is replaced by a bank surety pursuant to the above para. 2. The right to draw down the security (also in the form of a surety) does not become expire before the expiry of the limitation period of the secured claim.
- (7) The Contractor can demand return the contract performance surety after acceptance and expiry of the inspection period for the final invoice, as well as against the provision of a security pursuant to clause 14.2. Insofar as claims secured by the security have not yet been fulfilled, the Client may withhold a corresponding part of this security for such claims. If a contract performance surety has not been surrendered, the cash retention is reduced after acceptance and expiry of the inspection period for the final invoice to the retention amount plus any claims previously asserted by the Client which have not yet been fulfilled.
- (8) The creation of a security by depositing cash is excluded. For the rest, § 17 VOB/B applies.

14.2 Security for warranty claims of the Client

- (1) In order to secure the Client's claims for defects found after acceptance (including compensation for damages), the Contractor shall provide a security of 5% of the settlement amount ('performance surety') for the full duration of the warranty, unless the parties agree on a different surety amount in the MINUTES OF NEGOTIATIONS.
- (2) Insofar as the Client does not demand a security for compliance with collective bargaining agreements from the Contractor pursuant to clause 14.3, the performance surety also serves to secure the Client's recourse claims against the Contractor due to a claim by the Client in case of the Contractor violating § 14 AEntG (payment of the minimum wage to the employees and payment of contributions to a common institution of collective bargaining parties), § 28e para. 3a to 3f SGB IV (deduction of social security contributions) and § 150 para. 3 SGB VII (deduction of contributions for the German building industry accident liability association).
- (3) To simplify processing, the Client may retain 5% of the settlement amount in the final payment as performance surety (cash retention).
- (4) The Contractor may, insofar as the cash retention is not already validly utilised pursuant to clause 14.2 para. 3, demand the payment of this cash retention in return for a security for defect claims of a credit institution or credit insurer permitted under § 17 (2) VOB/B in the amount of the requested payment, as specified in the template in the annex to the MINUTES OF NEGOTIATIONS designated as the 'contract performance surety'.
- (5) The Client is obliged to return the security because of defect claims under the preconditions of § 17 para. 8 no. 2 VOB/B, however, with the proviso that instead of the period mentioned in sentence 1 of two years, the limitation periods contractually agreed by the parties are definitive for claims for defects.
- (6) If the parties have agreed to a limitation period of 10 years in the MINUTES OF NEGOTIATIONS without having made a separate security reduction agreement after expiry of the statutory limitation period of 5 years, the security shall be reduced to 1% unless a claim has been made beforehand. The security must be returned in full after 10 years, unless previously used. If the security has been used and the claim asserted in each case has not yet been fulfilled, the Client may withhold a corresponding part of this security for such claims.
- (7) For the rest, § 17 VOB/B and § 14.1 para. 7 apply.

14.3 Security for the Contractor's compliance with collective bargaining agreements

- (1) The Client may demand from the Contractor an irrevocable, unlimited, unconditional and directly enforceable security from a bank or credit insurer meeting the requirements of § 17 (2) VOB/B, as specified in the pro forma in the annex to the MINUTES OF NEGOTIATIONS designated as the 'Compliance with Collective Bargaining Agreements Security'. The value of the security is to amount to 5% of the contract value, unless the parties have agreed on a different level of security in the MINUTES OF NEGOTIATIONS.
- (2) This security is to secure the Client's recourse claims against the Contractor in case of the Contractor violating § 14 AEntG (payment of the minimum wage to the employees and payment of contributions to a common institution of collective bargaining parties), § 28e para. 3a to 3f SGB IV (deduction of social security contributions) and § 150 para. 3 SGB VII (deduction of contributions for the German building industry accident liability association).
- (3) If the Client uses this right to claim a security, the Contractor undertakes to provide such a security within 14 days of receipt of the request.

14.4 Security for interim payments of the Client

- (1) In order to secure any agreed interim payments of the Client (including for compensation for damages), the Contractor shall provide a security from a credit institution or credit insurer meeting the requirements of § 17 (2) VOB/B, in the amount of the agreed interim payment, as specified in the template in the annex to the MINUTES OF

NEGOTIATIONS designated as the 'interim payment security'. The submission of the above to the Client is a prerequisite for the falling due of the interim payment.

- (2) The security must be returned if the conditions under the security agreement are fulfilled.
- (3) For the rest, § 17 VOB/B and clause 14.1 para. 6. apply.

14.5 Securities to the benefit of the Contractor

- (1) Insofar as the Contractor is entitled to demand securities pursuant to § 650f BGB, the parties agree on a minimum period of 10 working days as a 'reasonable deadline'. § 650e BGB is excluded.
- (2) In cases where the Contractor is entitled to refuse performance according to the contractual and statutory provisions, the Client is entitled to avert the termination of the Contractor's performance by posting an aversion of termination security amounting to a disputed, not yet secured payment claim. § 650f BGB in conjunction with § 232 BGB finds corresponding application for the form of the security and the allocation of costs. The Contractor is only entitled to exercise a right to refuse performance if it has announced the cessation of a performance at least 12 working days before the complete or partial cessation of its work.

15. Termination of the contract

- 15.1 The Client is entitled to termination in accordance with § 648 and 648 a BGB.
- 15.2 If termination or rescission of the contract by the Client is announced due to a breach of contract by the Contractor, the performances provided so far shall only be invoiced at contract prices to the extent that they can be used by the Client as intended.
- 15.3 In addition, the Client may demand damages for the remaining construction work not performed in accordance with the contract, in particular compensation for the additional costs and consequential damages resulting from the necessity for the Client itself and/or a third party to complete the work, and offset these counterclaims against the compensation claims of the Contractor.
- 15.4 The damages incurred by the Client will be taken into account in invoicing.
- 15.5 If the contract between the Client and Contractor is terminated by unilateral declaration of intent or agreement or otherwise (but not in fulfilment of § 362, 364 BGB) (hereinafter: 'Contract Termination'), the Contractor must provide all the resources that the Client needs to continue the performances. These include in particular: the use of equipment, materials, plant components, drawings, know-how and property rights. The Contractor is obliged to fully support the Client in this use. The Contractor is obliged to immediately return the complete project documents to the Client free of charge and hereby assigns all rights to these documents to the Client under the condition precedent of the Contract Termination, which the Client accepts. The Contractor waives any right of retention in the return of the documents, regardless of the legal grounds. The Client accepts the waiver. All project documents are all items in physical form as well as any computer-based data, files and other information that is (in)directly related to the project and its execution.
- 15.6 The Contractor hereby assigns, under the condition precedent of the Contract Termination;
 - a) all its current and future claims existing or arising against suppliers and subcontractors, including all claims for performance, claims for non- or poor performance, repayment claims for overpayments, claims for damages, warranty claims, claims to and from insurance benefits arising from damage incurred by it or its subcontractors, as well as;
 - b) all claims to and from related securities and guarantees (for example, interim payment, performance of contract and warranty securities) to the Client, which for its part accepts the assignment.
- 15.7 In all contracts to be concluded with its suppliers and subcontractors ('SC'), the Contractor is obliged to include the declaration of the SC, that the SC agrees that the Contractor shall assign all of its claims against the SC (in particular: fulfilment claims, repayment claims from overpayments, claims for damages, warranty claims, claims for insurance claims arising from the SC, claims to and from the securities provided by the SC), under the condition precedent of the Contract Termination, to the Client.
- 15.8 The Contractor will provide proof thereof to the Client upon request

16. Acceptance

- 16.1 A formal acceptance is to take place upon completion of the contractual performance. The acceptance of partial performances and § 12 (5) VOB/B are excluded.
- 16.2 The acceptance of the performance of the Contractor shall only take place at the time of the total acceptance by the Client's own client.
- 16.3 The documentation as well as all necessary permits and certificates must be in conformity with the contract upon acceptance. These form part of the acceptance. Missing documentation forfeits the acceptance of the performance due to incompleteness.
- 16.4 Insofar as the performances due by the Contractor also involve required official approvals, certificates, etc., the Contractor is to obtain these on its own responsibility and in good time, and present them to the Client on the acceptance date.

17. Rights in case of defects

- 17.1 Before acceptance, the Contractor is also obliged to rectify identified defects without delay, at the latest within a reasonable period set by the Client. If the Contractor does not comply with this obligation within the deadline set for it, then the Client shall also be entitled to have the necessary measures performed at the Contractor's expense before acceptance, without a corresponding termination or partial termination of the affected part of the performance or of the performance as a whole. If the Contractor is responsible for the defect or lack of conformity with the contract, it must also compensate for the resulting damage. If the Contractor fails to comply with the obligation to remedy the defect, the Client may set it a reasonable period of notice and declare that it will terminate the contract after the deadline has expired fruitlessly.
- 17.2 In urgent cases, the Client can, after consultation with the Contractor, carry out the rectification itself or have it carried out by a third party. The Client can eliminate small defects itself in fulfilment of its duty to mitigate damage, without prior consultation, and without affecting the warranty obligation. The Client can then charge the necessary expenses to the Contractor. The same applies if unusually great damage is imminent. The right of choice between rectification of a defect and renewed performance lies in any case with the Client.
- 17.3 Unless otherwise agreed by contract, the warranty period is five years and three months. Otherwise, the warranty provisions of VOB/B apply.
- 17.4 In the case of supplementary performance, the agreed warranty period or guarantee period begins start again from completion of the subsequent performance.
- 17.5 The Contractor hereby assigns all its claims for defects, warranty claims, product liability claims and claims for securities arising from such, which it can assert against its suppliers and subcontractors, to the Client, which accepts this assignment. The assignment does not affect the Client's own claims against the Contractor.
- 17.6 The Contractor shall be authorised by the Client until further notice to directly enforce the assigned claims against its subcontractors and suppliers. In the event of rectification of defects performed by itself or other fulfilment of the claims for defects of the Client, the Contractor may also demand that the assigned claims be reassigned to it, insofar as its fulfilment of the Client's claims for defects is sufficient.
- 17.7 The Contractor must hand over to the Client a list of all subcontractors and suppliers with their addresses and exact details of the trades performed, agreed defect claims/warranties and delivered items, no later than two weeks before acceptance. At the request of the Client, the Contractor is obliged to hand over and issue all documents and information necessary for the enforcement of the assigned claims to the Client.

18. Liability, insurance

- 18.1 The assignment of risk is defined by § 644 (1) BGB.
- 18.2 The Contractor is to take out sufficient liability insurance for possible personal, property and pecuniary losses resulting from the execution of the contract. Within 10 working days of placing the order, the Contractor will provide proof of liability insurance with the following minimum amounts:
- Personal injury € 1.5 million.
 - Property damage € 2.0 million.
 - Financial losses € 1.5 million
- 18.3 The Contractor authorises the Client to contact the insurer directly in case of damage, to request information from it or to conduct negotiations. The Client is hereby irrevocably authorised to assert and to accept compensation payments of the insurer in its own name, insofar as the compensation for damages relates to the Client's property.
- 18.4 Insofar as the MINUTES OF NEGOTIATIONS do not contain any provisions to the contrary, the Contractor undertakes to take out construction insurance cover at its own expense.
- 18.5 If the Client takes out building insurance for the construction project, which also provides insurance coverage for the Contractor's performances, the Contractor declares that it agrees to pay the premiums incurred *pro rata* in proportion to the amount of the contract and to reimburse the Client. In this case, the Client will provide the Contractor with the terms of insurance policy upon request.

19. Assurances / other agreements

- 19.1 Any assignment or debt collection assignment or pledging of claims arising for the Contractor out of and in connection with the construction project against the Client shall only be permitted with the prior consent of the Client.
- 19.2 The Client is entitled to offset claims arising for the Contractor against the Client with claims available to it or other companies affiliated with it in the meaning of § 15 AktG, against the Contractor. The Client is further entitled to offset the claims the Contractor has against one of the aforementioned companies, with its claims against the Contractor.
- 19.3 The Contractor can only offset claims against that of the Client if they are undisputed, legally binding or due for decision.
- 19.4 The documents produced or procured by the Contractor to be handed over to the Client (plans, drawings, documentation, data, etc.) shall become the property of the Client. A right of retention of the Contractor after the end of the performance (acceptance, termination or cancellation of contract) is normally excluded, unless the claims of the Contractor on which it bases the right of retention have been recognised by the Client or have been legally established.
- 19.5 The documents provided by the Client to the Contractor are to be returned to the Client at the latest upon completion of its performances.

- 19.6 The Client is entitled to claim compensation from the Contractor for the damage that it in turn incurs, due to claims that have been asserted against it by its own client for culpable violations of the Contractor against statutory or official regulations or if it is therefore prevented from further execution of the project for this reason or a delay in the construction process arises.
- 19.7 This contract itself as well as all changes and additions require the written form to be effective. This also applies to a waiver of the agreed written form. The terms of this contract also apply to supplements and additional orders.
- 19.8 No supplementary agreements have been made.

20. Jurisdiction, applicable law and severability clauses

- 20.1 The contract is governed by German law, excluding international private law and the UN Sales Convention.
- 20.2 The place of fulfilment is the site of the construction project. In the case of a defect, the Contractor is obliged to take back (place of fulfilment for rectification) the defective item in its unfinished state at the place where the item is intended for installation (location).
- 20.3 Place of jurisdiction for all disputes arising from and in connection with the contract is Frankfurt/Main.
- 20.4 If any provision of these General Terms and Conditions and Construction Site Regulations or the agreements supplemented by you in the other parts of the contract be or become ineffective, this shall not affect the validity of the remaining provisions. In the place of the ineffective provision, a provision shall then be deemed to have been agreed, which, in its effective form, comes as close as possible to the ineffective provision in its financial result.

Confirmation

We confirm that we have received, understood and accepted the above-mentioned terms/provisions.

Building project:.....

Place, date	Contractor	Company stamp

Please enter the construction project and send the signed ‘General Terms and Conditions’ and ‘Safety and Health Protection - Performance Standards’ in the annex in advance as a .pdf email attachment back to the sender of the GTC’s or by fax to +49 69 6677 859 99 or enclose the signed ‘General Terms and Conditions’ in the annex to your offer.