

# General Terms and Conditions of Tenders and Contracts

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## 1. GENERAL REMARKS

The following names are used below:

- Bidder/Contractor - Contractor
- Client
- List of services/description of services. Specification

IN THE EVENT OF A CONTRACT BEING AWARDED, THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY WITHOUT RESTRICTION

## 2. BASIC PROVISIONS

### 2.1. The Contract

The contract comprises the following documents

- a. The contract to produce a work or the framework contract to produce a work.
- b. The minutes of negotiations and their appendices.
- c. These general terms and conditions of tenders and contracts.
- d. The specification and preliminary technical notes.
- e. ÖNORM B 2110 in the version applicable at the time the contract is concluded, provided that GIG is treated as a consumer. However, provisions of ÖNORM B 2110 annotated with "Hinweis KSCHG" ["refer to the Protection against Dismissal Act"] shall not be applicable.
- f. All relevant technical European standards valid on the date of tender submittal or, in their absence, the same technical national standards in the following order of priority:
  - Standards of international standardization bodies (e.g. ISO, or national standards implementing them, e.g. ÖNORM or BS-...-EN)
  - National standards (e.g. ÖNORM, DIN standards or equivalent)
  - The generally recognised rules of good engineering practice

### 2.2.

Insofar as the above mentioned components of the contract contain different rules or requirements, the Contractor acknowledges that the most onerous requirement will apply and that it has allowed for all cost and time associated with such within the contract price and programme.

### 2.3.

The Contractor hereby confirms that it has read and accepted these General Terms and that any ambiguities arising have been eliminated, and declares its own terms are expressly excluded from this contract.

## 3. TENDER

To be observed when submitting a tender and complied with in the context of any subsequent contract.

### 3.1. Tender submittal by the Contractor

Tenders must be fully compliant with the invitation to tender documentation.

When submitting a tender, the bidder shall sign:

- a. The tender itself together with the quoted price

- b. The General Terms and Conditions of Tenders and Contracts
- c. The timetable for the Works on which the invitation to tender is based.

Statements and designs which deviate from the invitation to tender shall be referred to in an appendix as alternative lots, described in detail and priced (see also clause 3.8.). The tender shall be drawn up by the Contractor free-of-charge.

### 3.2. Award period

The award period shall be six months from the deadline for tender submittal (period during which the bidder shall be bound by its tender).

### 3.3. Supporting documents

By submitting a tender, the bidder guarantees that it is in possession of the required trading licences.

The valid trading licence shall be furnished to the Client at its request.

Proof of valid extended business liability insurance covering the period of the warranty, the insured amount of which shall be at least twice the value of the order, shall be furnished to the Client by means of an up-to-date confirmation from the Contractor's insurance company.

This insurance shall cover in particular the costs of dismantling and re-assembly arising as a result of the replacement of goods subject to complaint and any financial losses.

### 3.4. Basic provisions specific to the project

The bidder shall undertake, at the Client's request, to furnish within one week information concerning its personal, financial, technical and other capacity and its particular competency to provide the tendered services.

### 3.5. Selection of tenders by the Client

The Client reserves the right to make a free selection among the tenders submitted, to award a contract or contracts in terms of sub-services or to reject all tenders without the Contractor having any claims to reimbursement of expenses or lost earnings.

### 3.6. Tender price

Save as otherwise indicated in the invitation to tender, the tender price shall cover the complete scope of the Works. The additional submittal of alternative tenders shall be permitted solely in addition to a tender which complies with the invitation to tender.

#### 3.6.1 Tender price amendment

Where a planned change to a service or to the circumstances of service provision impacts on the contractually stipulated price, or where additional services are required, entitlement to amend the tender price shall only exist where the Contractor informs the Client in advance and in writing of the required expenditure, indicating the reason and amount involved, and the Client consents to this amendment. An amendment to the contractually agreed sources of materials and structural elements shall not provide grounds for amending the price to the detriment of the Client.

### 3.6.2 Fixed prices

Tender prices shall be fixed prices (except as provided for in clause 3.6.1) which may not be amended for the agreed contract period and for a period of 12 months thereafter, including for wages, taxes, social security contributions, etc., and materials and ancillary costs. Errors of calculation shall not give entitlement to additional claims. Unit prices shall apply without amendment even in the event of amendments to the order.

### 3.6.3 All-inclusive prices

All-inclusive tenders and all-inclusive orders shall require the bidder, acting at its sole responsibility, to determine and verify which quantities, dimensions, designs, material qualities and works, etc., are necessary in order for it to fulfil performance. The Contractor shall be required when submitting its tender to identify any incorrect assumptions or unclear formulations on the Client's part. The all-inclusive price shall be independent of the site measurement.

Additional claims shall be excluded.

Where the Client increases, amends or reduces the order in writing, the increased or reduced price shall be determined by calculating the short/excess quantities on the basis of the unit price, taking due account of any discounts.

The Client shall be entitled to omit part of all of the services and to award the same to others. In the event of any such omission the contract sum will be reduced accordingly.

### 3.7. Due diligence obligation on the part of the Contractor

The Contractor shall have the tender documents and specification reviewed by qualified personnel and shall identify any errors or conflicts in writing in an appendix to the tender.

The Contractor shall review, before and after an order is placed, any and all specifications and instructions of the Client and/or building owner and, if applicable, shall inspect any and all materials provided by the Client and/or building owner for accuracy, suitability as well as technical and economic practicability and Contractor shall, in the event of errors, unsuitability or insufficient technical or economic practicability, issue a written warning to the Client before providing Contractor's service.

The agreed review and warning obligations, both when tendering services and after an offer was accepted, shall exclusively be the obligations of the Contractor. Mistakes made by the Client or any third parties the Client is responsible for shall not constitute contributory negligence.

This requirement shall also apply above all to the completeness of the services put out to tender or ordered (see also paragraph 4.2).

Where the text of an item (relating to a service, measurement or settlement) may be interpreted in different ways, the bidder shall be obliged to draw the Client's attention to that fact when preparing its tender so that the text can be clarified before the contract is concluded. Where it fails to do so, the Client's interpretation shall be deemed to have been agreed.

By submitting the tender, the bidder confirms that the service in question has been correctly defined according to the invitation to tender documentation, the state of the art and in an economically

appropriate fashion on the basis of the available documentation, plans, specification, etc.

The bidder has had the opportunity to visit the building site and submits its tender in the knowledge of all physical and/or other conditions that may influence its ability to progress and complete the works. No claim for lack of knowledge of the foregoing will be accepted.

### 3.8. Materials indicated in the invitation to tender/the tender, Sampling

Samples of the materials indicated in the tender shall, at the Client's request, be supplied free-of-charge. The product indicated in the respective items of the specification shall be deemed to constitute the minimum requirement.

The products indicated in the tender shall be binding and the supplier shall not make any changes to them without first obtaining the Client's express written consent.

If in its tender the bidder proposes an alternative and equivalent material or product from those specified within the invitation to tender documents, insofar as this is declared by the Client as being permitted, it shall, when submitting its tender or no later than one week after the opening of tenders, be required to furnish proof free-of-charge of their technical, qualitative and commercial equivalence to the material or product indicated in the specification by means of certificates, test reports, test certificates of a public testing body or similar, including lists of reference projects where the proposed alternative product has been successfully employed.

Should the offered products cause a change to plans and/or calculations and should the Client decide for these new other products proposed by the Contractor, the Contractor needs to pay for thereof occurring costs for amendment to the Client.

By submitting its tender, the bidder assumes liability (where it has not, at the time of tender submittal, stated any valid concerns or doubts in an addendum) for the tendered and predefined materials/products corresponding to the recognised state of the art. The bidder shall undertake to offer and use only tried and tested materials and processes, assume liability for their suitability and guarantee that they will be used in executing the contract.

### 3.9. Recyclable materials/materials suited to bio-construction

On request, the bidder shall be required, by means of certificates/expert opinions, to demonstrate to the Client that the materials to be used are recyclable, suited to bio-construction and harmless to the environment. In the event of equivalence in terms of technology and price, the Client shall give preference to materials that are recyclable and suited to bio-construction.

Where the bidder is aware of such materials as an alternative to those indicated in the specification, it is encouraged to offer them to the Client as an alternative.

At the Client's request, the bidder shall submit a cost-benefit calculation in relation to this, also covering maintenance, lifespan and operation.

#### **4. ORDER/CONTRACT**

##### **4.1. Award/Recognition/Company tax office**

The order shall be awarded in writing, indicating acceptance of the tender by the Client, including any agreed adjustments. Any addenda and/or amendments to the invitation to tender documents shall only be valid if agreed in writing. Any order between the contracting parties shall be subject to these general terms and conditions of tenders and contracts.

The Contractor shall be required (on receiving the written order) to declare its company tax office and tax number in writing immediately after receiving the order.

The rules laid down in the section entitled TENDER of these General Terms and Conditions of Tenders and Contracts relating to order processing shall also be deemed to have been agreed for execution of the Contract.

##### **4.2. Guarantee of completeness**

By submitting its tender, the Contractor confirms that all goods/services supplied for the purposes of performing the contract comply with the contract and correspond to the state of the art. The Contractor shall provide any additional deliveries/services that may be required and that are not included in the tender at Contractor's own costs.

The Contractor's order shall also cover coordination of its service provision with the other Contractors. Costs or delays in performance arising as a result of errors of coordination shall be borne by the Contractor.

##### **4.3. Pre-payments of materials by the Client**

Where in the individual case the Client has made pre-payments for purchases of materials, the Contractor shall undertake to provide an abstract bank guarantee (corresponding to the Client's model) issued by an Austrian credit institution amounting to the gross value of the pre-payment. The bank guarantee shall expire when the Contractor has completed all works associated with this contract and such are accepted by the Client. By making such a pre-payment, the Client acquires ownership of the materials in question. The Contractor shall store and mark the materials in such a way as to ensure that it is clear at all times that they belong to the Client.

Until acceptance of the building works, liability for damage, theft or accidental loss of such materials shall lie with the Contractor, as is the case for all other supplies and services covered by the order.

##### **4.4. Reduction of scope/Delay to commencement of construction**

Where, for any reason, the goods or services ordered are not supplied or the scope of the order is reduced, or the commencement of construction is delayed, this shall not entitle the Contractor to seek additional costs or claims arising therefrom or to claim compensation.

In addition to any other entitlement it has under this contract, the Client shall be entitled to terminate this contract at will. In this event, the Contractor shall undertake to immediately suspend the works in such a way that the value of the works performed up to the time of suspension shall be preserved. In this event, the Contractor shall be entitled to claim its reasonable costs in respect of the services demonstrably provided up to that point. The Contractor shall not be

entitled to any further compensation, in particular no fee resulting from section 1168 Austrian General Civil Code [ABGB] and no compensation.

Sub-services to be supplied by the Contractor which have been supplied only partially by the Contractor in terms of the overall execution of the building project at the time of suspension shall be remunerated by the Client proportionately on the basis of the specification, minus any discounts.

The Contractor has included within its price and programme for adequate measures to maintain the programme of the works and to avoid and/or overcome all possible impediments such as bad weather, strikes, etc., with the exception of extraordinary events (such as a war, civil commotion or acts of terrorism).

Any extension to the period of execution or delay in the commencement of works shall not entitle the Contractor to suspend its works associated with the contract, provided the delay or extension does not exceed 40% of the stipulated duration of performance, or a period of no less than nine months.

##### **4.5. Plans/Documentation/Instructions of the Client**

Plans and instructions of the Client or its authorised representatives shall be binding even where they are brought to the Contractor's attention after the award of the order.

##### **4.6. Short/excess quantities**

Short or excess quantities in individual supplies of goods or services shall not give rise to any increase in unit prices and shall not entitle the Contractor to claim any remuneration on whatever basis. The Client shall be entitled to omit part of all of the works and the Contractor confirms that it shall have no right to claim for any loss of overheads and/or profit associated with any such omission.

##### **4.7. Variations/contract extensions**

Subsequent new, additional or amended Works shall be tendered on the basis of the main tender and shall be awarded in writing by the Client prior to execution. Should the Contractor commence execution of such Works without the Client's written instruction to proceed, the Client will effect no payment for these additional Works to the Contractor.

The additional cost of any change to the scope of the contract works instructed by the Client shall be valued by reference to the rates and prices contained within the contract. The Contractor shall provide all calculations and other evidence required to support any claim for additional costs.

Any changes to the scope of the contract works must be instructed in writing by the Client. The Client will accept no claims and the Contractor shall have no entitlement in the absence of a written instruction.

The Contractor shall expressly be required, before commencement of its services, to check any quantities resulting from the implementation, execution and installation plans for their compliance with the quantities of the works contract, and where deviations in quantities are identified, to bring them to the attention of the Client for the purposes of an additional order (variations), failing which it shall lose any claims in their respect.

#### 4.8. Dayworks

Dayworks shall only be remunerated where they are performed on written instruction issued by the Client before their execution (dayworks request, construction diary, etc.). Dayworks services provided shall be notified weekly, with a detailed description of the services, to the Client for signing. Dayworks that are not made available to the Client in writing as part of a detailed specification of services within no more than one week do not have to be remunerated by the Client. Other dayworks not ordered in writing and confirmed after they have been performed shall not be remunerated by the Client. Save as otherwise provided in the order, all dayworks shall be regarded as "associated dayworks services".

Mandated dayworks shall be chargeable on the following terms

- Only hours which can be demonstrated as having been worked shall be recognised.
- All dayworks, irrespective of when they occur or are performed, may only be settled at the rates determined in the offer letter.
- The rates for dayworks shall also include the necessary supervision and the use and maintenance of the necessary equipment and tools.

In the event of unsatisfactory work being performed, the Client shall retain the right to apply deductions accordingly.

#### 4.9. Subcontracting by the Contractor

The Contractor shall not sub-let all or part of the contract without first obtaining the Client's written consent. No consent to sub-letting by the Client shall serve to lessen or diminish the Contractor's responsibility for the contract works.

The Contractor shall be required to agree with subcontractors that the Client is entitled to become involved in subcontracting contracts on the Client's side in full or regarding individual sub-services and to insist on the contract being performed.

Such involvement shall not result in the ceasing of the Contractor's liability towards the Client regarding performance.

The Contractor surrenders all conceivable claims against the subcontractor to the Client, in particular warranty claims and claims for damages, whereby the Client alone reserves the right to decide whether to claim against the Contractor and/or the subcontractor individually or together.

#### 4.10. Insurance

On being awarded the contract, the Contractor shall be required to take out sufficient liability insurance for all damage which may result from the supply of its services (including by its subcontractors) and to maintain such insurance for the duration of construction. In the absence of such insurance, the Client shall be entitled to take out equivalent insurance cover at the Contractor's expense.

The Contractor shall be obliged, within one week of receiving the order, to transmit to the Client a copy of the insurance policy and a confirmation of insurance covering the period of works up to the settlement of the final invoice.

#### 4.11. Performance guarantee by the Contractor

On receiving the order, the Contractor shall be required to provide a performance guarantee of 5% of the gross value of the order in the form of an on demand bank guarantee issued by an Austrian bank. Where this performance guarantee is not furnished within two weeks of the order being issued, the Client shall be entitled to terminate the order. In this case, the Contractor shall be required to reimburse to the Client any expenses arising as a result of the substitute performance which then becomes necessary.

#### 5. PERSON RESPONSIBLE

Prior to commencement of the works, the Contractor shall inform the Client of the competent person responsible for the order with appropriate power of representation. This person may not be replaced without the Client's consent until the acceptance of the services. However, the Client reserves the right to direct the removal of the noted person if it reasonably believes that he/she does not possess the relevant skills, competences and/or abilities to execute the noted role.

#### 6. PROVISION OF SERVICE

##### 6.1. Timetable

After the order has been issued, the Contractor shall, within fourteen days, draw up a complete timetable with the Client including all associated upstream and downstream works/supplies, which shall be confirmed in writing by both parties.

This timetable shall form an integral part of the contract.

Where the Contractor fails to draw up the timetable on time or completely, or does not participate sufficiently or in a timely manner in its preparation, time shall be deemed to be of the essence and the Contractor shall be bound by the deadlines established by the Client and shall not have any claim for any expenses regarding the acceleration of work or other additional expenses.

Any and all time limits and dates set out in this timetable are subject to a contractual penalty in accordance with section 7.3 of these General Terms and Conditions of Tenders and Contracts.

##### 6.2. Staff

The Contractor shall be prohibited from poaching any employees, freelance staff or representatives of the Client and employing them itself in any capacity whatsoever, be it as an employee, freelance staff member or representative.

In the event of a breach of paragraph 6.2.1, it is hereby agreed that a penalty of one year's gross remuneration of the illegally recruited person shall be payable.

Any additional compensation claims, and any other claims, in particular claims for an injunction, are hereby restricted.

##### 6.3. Deliveries

Transport security and the delivery shall be coordinated with and notified to the Client in advance and in good time.

##### 6.4. Project management by the Contractor

The Contractor shall be obliged to establish technical supervision consistent with the scale and scope of the construction project, which shall operate throughout the entire duration of the works.

## 6.5. Inspection reports

The Contractor shall also be obliged to produce all inspection reports and certificates, in particular those officially required or necessary for the notification of building completion, in respect of its supplies and services, not later than by the acceptance thereof by the Client, and shall meet all associated expenses itself.

## 7. DEADLINES FOR EXECUTION AND DELIVERY

### 7.1. Commencement/Termination/Impediment

The Contractor shall be required to commence and complete the supplies and services at the stipulated time as set out in the timetable. Where the Contractor fails to do so or where agreed deadlines are missed, the Contractor shall be liable for all additional costs and damage arising therefrom.

### 7.2. Imminent Default

Should the Contractor fall behind the timetable or should the Client reasonably believe that any such delay is likely to occur, the Contractor shall immediately confirm what additional resources can be deployed to overcome and/or avert any such delay. Should the Contractor fail to provide such confirmation within 10 days or should the Client believe that the measures proposed by the Contractor are inadequate, the Client shall be entitled to employ others to execute and/or assist with the execution of the delayed works and all costs associated with such will be charged to the Contractor.

### 7.3. Contractual Penalty

A claim for payment of a contractual penalty shall arise as soon as the Contractor is in default (this shall also apply to partial and interim deadlines). This penalty shall amount to 0.5% of the gross value of the order per calendar day. In the event of a delay in the commencement dates by the Client, the duration of execution, i.e. the stipulated number of working days, shall in any case remain binding, as shall the rules concerning penalties.

Any loss exceeding the contractual penalty shall be reimbursed to the Client.

The contractual penalty shall be deducted from the subsequent interim invoice or from the final invoice.

The contractual penalty is agreed not only in respect of the final deadline but also, in the same amount, for the interim deadlines set out in the contract to produce a work or the framework contract to produce a work.

The contractual penalty may not be reduced by court order.

## 8. ACCEPTANCE

### 8.1. General acceptance

Acceptance shall take place at the earliest on the unconditional acceptance of the entire contract works by the Client.

Where the supply or service ordered reveals defects at the time of acceptance (approval), acceptance shall not be deemed to have occurred until all defects identified have been eliminated, with the consequence that any obligation to pay a penalty under paragraph 6.3 hereof shall not be extinguished until that time.

## 9. WARRANTY

### 9.1. Scope

The Contractor shall guarantee that its supplies and services are consistent with the contract to produce a work or the framework contract to produce a work, generally recognised technical rules and the state of the art and comply with statutory and official notices and regulations, the relevant Austrian EN technical standards or, where such do not exist, the corresponding DIN standards applicable at the time of acceptance by the Client.

The Contractor shall also provide an unrestricted warranty and shall be liable for any materials supplied or services provided by itself and its sub-suppliers and any third parties to which it has contracted them out. This warranty shall take effect at the time of general acceptance (in accordance with paragraph 8.1).

The Contractor shall provide a warranty for the agreed term for the quality of its supplies and services as ordered.

This warranty shall come into effect no earlier than the unconditional acceptance of the entire contract works by the Client and shall last at least three months longer than the Client's liability vis-à-vis its client on the basis of the warranty.

It shall be expressly stipulated that the assumption that a defect already existed at the time of acceptance shall apply to the entire warranty period.

Features which have been promised but which are lacking from the Contractor's supplies and services, or defects which obstruct or restrict the agreed use shall in any case be deemed to constitute significant defects.

Section 377 Austrian Commercial Code [UGB] does not apply.

The warranty shall include, irrespective of any fault:

- Replacement as new or removal,
- Costs of dismantling and assembly and of eliminating defects to other components and structures which are typically caused by the defects in question,
- And costs on the part of the Client and third parties involved in respect of their assistance in identifying the damage and its removal.

Not later than two months before the expiry of the warranty period, the Contractor shall be required to request that the Client carry out a final assessment. Where this request is not made, the warranty period shall be extended until two months after the written request by the Contractor for that final assessment.

### 9.2. Remedy of Defects

Defects arising within the warranty period and any damage caused by such defects shall be eliminated by the Contractor immediately and free-of-charge on the Client's behalf. Where the Contractor fails to eliminate the defect or does not begin eliminating it immediately, the Client may, at the Contractor's expense and risk, employ others to rectify such defect or defects).

It is hereby expressly stipulated that the Contractor expressly waives its right to first elimination of any defects covered by the warranty. It is hereby agreed that the Client shall be entitled, at its discretion,

either to demand that the Contractor to eliminate the defect within an appropriate time or to have the cost of elimination reimbursed (in order to ensure that the quality of the supply or service is guaranteed in accordance with the contract) as compensation and this shall be irrespective of any fault as to the cause of the defect. The Client's entitlement to conversion shall remain unaffected by this provision.

The early payment of the retention or expiry of a bank guarantee relating thereto shall not affect the warranty obligations or time limits; in particular, it shall hereby not be acknowledged that no defects existed at that time.

Where the Client makes a warranty claim before expiry of the warranty period, the period shall be extended by one year in order to ensure that this claim may be enforced via the courts.

### 9.3. Retention

The retention (5% of the gross final invoice amount indicated) shall not be released until after the contract works have met with the requirements of paragraph 8 hereof.

The Contractor shall release the Client from any compensation claims made against it as a result of defects in the Contractor's performance.

The retention may be released solely on presentation of an abstract bank guarantee (corresponding to the Client's model) issued by an Austrian credit institution. On acceptance and approval of the final invoice in the amount determined by the Client, the performance guarantee shall be settled or, as appropriate, returned to the Contractor (in full or in part) in accordance with the payment claim.

### 9.4. Right of Retention

In the case of a defective performance, the Client shall be entitled to withhold part or all of the contract sum until all the faults have been rectified.

## 10. INSPECTION DEADLINES AND DUE DATES OF INTERIM AND FINAL INVOICES

### 10.1. Site measurement

Site measurements shall be carried out free-of-charge by the Contractor and the time of their performance shall be notified to the Client in good time so that it can be present. Site measurement shall be carried out not later than by the time of acceptance, be accompanied by as-built plans and be signed by both parties.

Covered parts shall be measured in good time and shall be verified with the Client. Where such measurement does not take place or the Client is unable to verify it, the site measurement estimated by and determined at the reasonable discretion of the Client shall be deemed to be the service provided.

The site measurement shall be transmitted to the Client in digital and easily verifiable form.

The issue of the final invoice shall not be permitted until the quantities have been determined and verified by mutual consent.

### 10.2. Settlement, Advance payments, Performance guarantee

Insofar as an advance payment is agreed, this shall also be secured by means of an on demand bank guarantee (corresponding to the Client's wording) issued by an Austrian bank, valid up to the acceptance of the

entire construction project by the Client as determined by the timetable.

### 10.3. Inspection deadline and payment, Performance retention

The inspection deadline for interim and final invoices shall run from the date of receipt.

The deadline for interim invoices shall be 15 (fifteen) calendar days, and for the final invoice or interim final invoices 30 (thirty) calendar days.

Retention shall be deducted from all sums due to the Contractor at the rate of 10 %.

For the purposes of determining on-time payment, the date of the debit entry of the Client's remittance order at the transferor's bank shall apply.

The payment period for interim invoices and final invoices shall be 60 days from the end of the inspection period.

Payments shall be made once a week. Payment deadlines are met when the payment instruction arrives at the Client's bank by the first transfer date following the due date of the invoice, provided that the payment is not overdue for more than seven working days.

In the case of foreign transfers, all costs/fees shall be borne by the Contractor.

### 10.4. Invoicing

All invoices shall indicate the project and the relevant order number and, in the form of a short text, the work performed and period of execution or delivery date.

The Contractor shall also indicate its account number and the name of the financial institution to which payment is to be made.

Interim invoices may be presented not more often than once a month and up to a maximum amount of 80% of the value of the order. Relevant site measurements shall be verified and confirmed by the Client before invoicing. Invoice documents shall be drawn up by the Contractor in an easily verifiable form. Services performed for the purposes of eliminating construction damage shall be calculated and documented separately.

Digital invoices may be issued, provided the parties to the contract have signed an e-billing agreement beforehand.

## 11. FINAL INVOICE/FINAL ACCOUNT

### 11.1. General remarks

The Contractor shall not be entitled to issue the final invoice until the supply and service have been accepted by the Client and all performance defects have been demonstrably eliminated by the Contractor. However, the final invoice shall be issued not more than four weeks after this time.

Final invoices (including individual invoices) not preceded by payments on account shall be submitted in the agreed number, including appendices.



The offer and order date and the date of completion or complete delivery shall be indicated. Any payments on account shall be listed.

The invoice shall be drawn up in an easily verifiable form in accordance with the item numbers of the specification.

As part of the process of verifying invoices and establishing any claims, the Client shall be entitled to check any quantities, supplements, additional services and force-account work for their justification and the correctness of their price, and to correct them, even if they have already been separately ordered and, where appropriate, approved by the Client.

#### **11.2. Factoring**

In general the Contractor is not allowed to assign receivables to any third party.

#### **11.3. Final Account – Default and defects of form**

Where the Contractor fails to submit the final account on time or in due form, the Client or its authorised representative shall be entitled, after setting a time limit of four weeks, to draw up the invoice itself at its reasonable discretion and entirely or partially at the expense of the issuing party. The final invoice shall be deemed not to have been issued until such action has been taken by the Client.

#### **11.4. Compensation in the event of defects of performance**

Where additional costs arise for the Client or third parties as a result of defects of performance by the Contractor, the Client may offset or deduct justified claims and, where appropriate, compensate the injured third parties accordingly.

#### **11.5. Compensation for claims**

The Contractor shall declare, on issuing the final invoice, that it has no further claims against the Client associated with the contract and shall therefore record all services and supplies in the final invoice, whereby it shall lose any entitlement to compensation or remuneration for any other services or supplies. Reservation are not permissible.

#### **11.6. Interim Final Invoice**

The issue of the interim final invoice shall be permitted solely with the express written consent of the Client.

#### **11.7. Invoices for Dayworks**

All dayworks (subject to provision of validated evidence) shall be invoiced with interim invoices and shall be included in the final account.

### **12. DISCOUNT**

#### **12.1. Interim, Interim Final and Final Invoices**

In the event of payment within 14 calendar days from the end of the relevant inspection period, the applicable discount shall be 3% of the net amount due.

In the event of enforcing a right of retention or right to refuse performance (for example due to defects), when payment is made within 14 calendar days from the loss of the right of retention or right to refuse performance (for example when defects are rectified) the applicable discount shall be 3% of the net amount due.

#### **12.2. Loss of discount**

It shall be regarded as expressly agreed between the Client and Contractor that, in the event that the Client misses the discount deadline, the discount shall only be forfeited for the interim invoice in question or the unpaid portion of the invoice and the discount will be applicable to other interim invoices and the payment of the final and interim final invoices.

Where, owing to incorrect or missing measurement documents, calculation errors, etc., invoice amounts are not determined until after clarification with the Contractor, these may still be paid by the Client with deduction of the discount.

### **13. NO SET-OFF FOR THE CONTRACTOR**

#### **13.1.**

Offsetting against our claims with counterclaims of any kind whatsoever is excluded.

#### **13.2.**

The Contractor shall have no right of retention or other right to refuse performance, not even the concurrent defence, irrespective of whether the Client has fulfilled the obligations arising from the contract or other contracts within the scope of our business relationship, in particular irrespective of whether the Client has fulfilled the payment obligations.

### **14. WITHDRAWAL FROM THE CONTRACT**

#### **14.1. Death/Insolvency of the Contractor**

In the event of the death of the Contractor (or only one of several joint Contractors) or where insolvency proceedings are initiated in respect of its assets, or the initiation of insolvency proceedings is rejected due to there being insufficient assets to cover costs, or where it loses its trading licence, sells all or most of its company, or discontinues its company in full, or where the Contractor's financial situation deteriorates to such an extent that it is to be feared that the Contractor will not perform the contract, the Client shall be entitled to stop all payments (including those that are due) and declare its withdrawal from the contract with immediate effect.

This shall also apply where it transpires that the abovementioned circumstances already applied at the time of award.

#### **14.2. Breach of Duty by the Contractor**

Where the Contractor does not fully comply with its contractual obligations in any respect, the Client shall be entitled, after granting an appropriate grace period of a maximum of 10 days for performance of the contract, to declare the contract terminated and to have the remaining or missing works executed and completed by third parties at the Contractor's expense and risk, and without the Contractor being able to claim lost profits or earnings. Any additional expense arising for the Client shall be borne by the Contractor.

#### **14.3. Cancellation of the contract before performance**

Where the contract between the Client and the Contractor is cancelled prior to completion, irrespective of the reasons for such cancellation, for example revocation by the Client, due to fault of the Client, in line with section 13.1 etc., the Contractor shall not acquire any claims against the Client for any remuneration over and above the service already provided; in particular, it shall not have any claim for compensation for damages, lost profits or lost remuneration.

The services and supplies carried out up to the time of cancellation of the contract shall be settled in accordance with the order and taking account of discounts.

#### **14.4. Act Governing the Employment of Foreign Nationals**

In the event that foreign labour is employed, all applicable regulations, including the Act Governing the Employment of Foreign Nationals [Ausländerbeschäftigungsgesetz], shall be complied with and all required documents and proof, in particular proof of nationality (passport), work permits, employment permits or exemption certificates and social-insurance registration documents, shall be furnished immediately on request at any time. The Contractor shall ensure that any subcontractors are likewise bound by these requirements and shall verify their compliance.

In the event that this obligation is not complied with, a contractual penalty amounting to 5% of the value of the order, but not less than EUR 5,000.00, shall be payable.

In the event of any breach of these requirements, the Contractor shall be liable for any resulting damages, including consequential losses.

In the event of the breaches referred to above, the Client shall be entitled to cancel the contract with immediate effect and without granting a grace period for compliance, without the Contractor being able to raise claims of any kind vis-à-vis the Client. Any additional expense on the part of the Client arising from work carried out by a third party shall be borne by the Contractor.

The Contractor hereby declares its express agreement and consent to the Client obtaining information from the competent authorities concerning any previous breaches of the Act Governing the Employment of Foreign Nationals by the Contractor.

### **15. COPYRIGHT**

#### **15.1. Plans/Documents, Use**

The use by the Contractor of the plans and documents of the Client or its authorised representative for purposes other than the contract works is not permitted. In the event of an infringement of this provision, the Contractor shall be required to pay a penalty to the Client (without the need to prove fault or the possibility of reduction by a judge) amounting to the fee paid for the drawing-up of the document in question, and shall hold the Client harmless in this respect, particularly vis-à-vis the author.

### **16. COMPENSATION FOR DAMAGES**

Notwithstanding any other part of this contract the Contractor acknowledges, accepts and indemnifies the Client in respect of any and all damages suffered, or likely to be suffered by it, due to any failure of the Contractor associated with the contract.

### **17. OBLIGATION TO ISSUE A WARNING**

The Contractor shall review any and all specifications and instructions of the Client and/or building owner and, if applicable, shall inspect any and all materials provided by the Client and/or building owner for importance, suitability as well as technical and economic practicability and the Contractor shall, in the event of errors, unsuitability or insufficient technical or economic practicability issue a written warning to us before providing Contractor's service. These review and warning obligations shall exclusively be the obligations of the Contractor. Mistakes made by the Client or any third parties the Client is responsible for shall not constitute contributory negligence.

### **18. CONFIDENTIALITY AGREEMENT/ADVERTISING**

#### **18.1.**

The Contractor commits to treat all technical and commercial details that become known to them through their business relationship and that are not generally known, as business secrets and to keep these confidential. In particular, the protected data includes technical data, purchased quantities, prices and information concerning products and product developments, present and future research and development projects, customer data, as well as all business data from the contractual partners.

#### **18.2.**

Furthermore, the Contractor is obliged to conceal all illustrations, plans, drawings, calculations and other documents that he has received and only to disclose these to third parties with explicit consent insofar as the information that they contain is not generally known.

#### **18.3.**

Advertising and publications about the Client's orders and the inclusion of the Client in the Contractor's reference list shall require the Client's prior written consent.

#### **18.4.**

The same obligation must be imposed on subcontractors, suppliers and employees.

#### **18.5.**

The obligations as per point 16 apply indefinitely beyond the end of the contractual relationship between the Client and the Contractor.

#### **18.6.**

In the event of a breach of these points (17.1 – 17.5) by the Contractor, it is agreed that there will be a penalty of EUR 50,000.00 per breach and calendar day for each individual breach.

### **19. CUSTOMER PROTECTION**

#### **19.1.**

The Contractor will not advertise, nor market its own goods nor conduct services for the Client's customers.

#### **19.2.**

A customer in the sense of this agreement is deemed to be any natural or legal persons under private law and public law, who become known to the Contractor due to the Client providing the Contractor with this customer's details or making the Contractor aware of this customer in any other way.

#### **19.3.**

The customer protection ends 24 months after the unconditional acceptance of the entire building project.

#### **19.4.**

In the event of a breach of these points (18. – 18.3), it is agreed that there will be a penalty of EUR 50,000.00 per breach and calendar day for each individual breach.

