

# General Contractual Terms and Conditions

## § 1 General information, scope

(1) These General Contractual Terms and Conditions (AVB) shall apply to all business relationships with the business partners and suppliers of the customer. The AVB shall only apply if the contractor is an entrepreneur (Section 14 German Civil Code [Bürgerliches Gesetzbuch - BGB]), a legal entity under public law or a special fund under public law.

(2) These AVB shall apply exclusively. Deviating, opposing or supplementary General Business Terms of the Contractor (German abbreviation: AN) will only become part of the contract to the extent that the Customer (German abbreviation: AG) has explicitly approved their validity in writing. This approval requirement shall apply in any case, for example if the Customer, in the knowledge of the General Business Terms of the Contractor also accepts its deliveries or services (hereinafter: Services) without reservation.

(3) The following shall consecutively be deemed as part of the contract:

1. the order/purchase order letter with all annexes (e.g. service specifications, drawings, sketches)
2. the Special Contractual Terms and Conditions of the Customer, if agreed
3. these AVB
4. the General Terms and Conditions for the execution of Services (German Procurement and contract procedures for Supplies and Services - Part B [Vergabe- und Vertragsordnung für Leistungen – Teil B, VOL/B], German Award and contract regulations for construction services - Part B [Vergabe- und Vertragsordnung für Bauleistungen – Teil B, VOB/B]).

The order /contract shall require a text form. This shall also apply to changes. In case of contradictions between the contractual bases listed above the rank of the circumstances shall be determined according to the order of the aforementioned list. A contradiction within the aforementioned meaning does not exist if a subordinate contractual basis supplements or specifies a prior basis.

(4) Individual agreements reached in an individual case with the Contractor (including collateral agreements, supplementations and amendments) shall have precedence over these AVB in all cases. A written contract or the written confirmation of the Customer is decisive for the content of such agreements.

(5) Legally-relevant declarations and reports, which are to be submitted by the Contractor to the Customer after conclusion of the contract (e.g. the setting of deadlines, reminders, declaration of rescission), shall require a written form in order to be valid.

(6) References to the validity of statutory regulations have only clarifying significance. Therefore, the statutory regulations shall also apply without such a clarification, insofar as they are not directly changed or explicitly excluded in these AVB.

## § 2 Service, delivery, shipment and customs, passing of risk, delay in acceptance

(1) Insofar as agreed, the service time stated by the Customer in the order / the purchase order is binding. The Contractor is obligated to inform the Customer without delay in writing if it foresees that it will not be able to adhere to agreed service times – no matter what the reason. Possible consequences of default will not be affected by this report. In the event of default the Customer is entitled, after issuing a prior warning, to claim compensation for each started week of the delay in the amount of 0.5 per cent of the value of that part of the service that cannot be used, in total however a maximum of five per cent of the order value. The assertion of further claims for damages shall remain reserved.

(2) The Contractor is not entitled to have the service owed by it provided by third parties (e.g. subcontractors) without the Customer's prior written consent. Each infringement shall entitle the Customer to rescind the contract in full or in part. The Contractor shall bear the procurement risk for its services, unless it concerns a customised production.

(3) The service shall be carried out within Germany "free delivery" to the Customer or to the registered seat of the Customer. The Customer's registered seat is also the place of performance (service obligation to the customer).

(4) A delivery note is to be enclosed with the delivery, stating the date (issue and shipment), content of the delivery (article number and number) as well as the order code of the Customer (date and number). If the delivery note is missing or if it is incomplete, then the Customer is not responsible for thus resulting delays in the processing and payment.

(5) In case of deliveries from the customs foreign country, the Contractor has to contact the Customer in time because of the customs and import processing. The costs for the customs have to be borne by the Contractor. The Contractor has to notify the Customer in writing in time of: the HS-Code, the country of origin and, if requested by the Customer, supplier declarations regarding the preferential origin (with a European Contractor) or movement certificates (with Contractors from non-European countries). The Contractor shall bear all expenses and damages, suffered by the Customer owing to the absence or the inaccuracy of this information.

(6) The risk shall pass to the Customer with the receipt of the goods and, if an acceptance is not envisaged, after acceptance of the delivery/service.

(7) The statutory regulations shall apply for the occurrence of the delay in acceptance by the Customer. The Contractor must, however, also explicitly offer its service to the Customer if a certain or definable calendar time has been agreed for an action or assistance of the Customer (e.g. provision of material). If the Customer delays acceptance then the Contractor can request reimbursement of its additional expenses according to the statutory regulations (Section 304 BGB). If the contract relates to an object that is to be produced by the Contractor for which it is not responsible, (customised production) then the Contractor will only be entitled to further rights if the Customer undertakes to provide assistance and is responsible for the failure to provide assistance.

## § 3 Acceptance, prices and terms of payment

(1) If an acceptance is envisaged the Contractor is responsible for the corresponding proof. If a trial operation is envisaged then the acceptance will

only be determined after an impeccable trial run in accordance with an acceptance protocol that is to be jointly signed.

(2) The price stated in the order is binding. All prices are understood to include the statutory value added tax, if this is not shown separately.

(2) If not otherwise agreed in an individual case, the price shall include all services and secondary services of the Contractor (e.g. assembly, installation) as well as all secondary costs (e.g. patent fees, licence remunerations, proper packaging, transport costs including possible transport and liability insurance). The Contractor has to take packaging material back at the Customer's request.

(3) The agreed price is due and payable within 30 calendar days from the full service (including an agreed acceptance, if applicable) as well as receipt of a proper invoice. If the Customer makes the payment within 14 calendar days, the Contractor will grant 2% cash discount on the net amount of the invoice. Payment and cash discount deadlines begin at the earliest with the receipt of the invoice and the goods; if no acceptance is envisaged, with the acceptance of the delivery/service.

(4) The Customer shall not owe any interest on maturity. The claim of the Contractor for payment of interest on default shall remain unaffected. The statutory regulations shall apply for the occurrence of the default of the Customer. In any case, however, a reminder by the Contractor is necessary.

(5) The Contractor shall only have the right to offset or right of retention owing to counter-claims which have been declared final and binding or are undisputed.

(6) Advance payments (payments before acceptance) are only possible insofar as these are customary for the industry. The following shall apply in this respect:

- max. 1/3 of the order value after receipt of the order confirmation and invoicing (pursuant to Section 56 German Federal Budget Code [Bundeshaushaltsordnung - BHO] and Section 56 Saxony's Budget Regulations [Sächsische Haushaltsordnung - SÄHO] in conjunction with Section 17 Subclause 1, Sentence 2 VOL/B) - 14 days under the deduction of 2% cash discount on the net amount or within 30 days net without deduction

- Advance payments will only be made after submission of a valid unlimited performance bond issued for the Customer, that is recognised by it and is free of charge for the Customer, provided by a credit institution that is authorised in the European Union and is accepted by the Customer. The guarantee declaration must be submitted unlimited, in writing and by waiving the pleas of the benefit of discussion and the defeasibility (Sections 771, 770 BGB). The right to deposit must be excluded. Furthermore, the guarantor must declare that the law of the Federal Republic of Germany will apply exclusively for disputes from such a guarantee and that the place of jurisdiction is the registered seat of the Customer. Furthermore, it has to declare that the guarantee claim shall not become statute-barred before the secured principal claim.

## § 4 Invoice

(1) The invoice is to be issued in the Customer's name.

(2) In case of partial invoices owing to partial services delivered, the quantities delivered and the remaining quantities must be clearly visible. The last partial invoice is to be marked as such and as a final invoice.

(3) A claim for payment of the invoice will only exist if its verifiable documents regarding the service to the Customer are enclosed; this takes place as a rule with the help of delivery notes or proof of service confirmed by the Customer.

## § 5 Deficient service

(1) According to the statutory regulations the Contractor will in particular be liable for ensuring that the goods are in the agreed condition with the passing of the risk to the Customer. In any case those product specifications, which – in particular by designation or reference in the order / the purchase order of the Customer – are the object of the respective contract or, in the same manner as these AVB, were included in the contract, shall be deemed as an agreement on the condition. It makes no difference thereby whether the product description stems from the Customer, from the Contractor or from the manufacturer.

(2) In deviation from Section 442 Para. 1 S 2 BGB the Customer will also be entitled to claims for defects to an unlimited extent if the defect remained unknown to it upon conclusion of the contract as a result of gross negligence.

(3) The statutory regulations (Sections 377, 381 German Commercial Code [Handelsgesetzbuch - HGB]), shall apply to the commercial obligation to carry out an inspection and to report defects with the following condition: The obligation of the Customer to carry out an inspection shall be limited to defects, which can be obviously determined with an external appraisal including, if applicable, available delivery documents (e.g. transport damages, false and short delivery). Insofar as an acceptance is agreed there is no obligation to carry out an inspection. Incidentally, it depends on to what extent an inspection is useful, according to the proper course of business, by taking the circumstances of the individual case into consideration. Our obligation for subsequently discovered defects shall remain unaffected.

(4) The costs paid by the Contractor for the purpose of inspection and subsequent improvement will also be borne by the Contractor if it is determined that there was actually no defect. The Customer's liability for damages in case of requests for the unjustified remedy of defects will remain unaffected; insofar the Customer will, however only be liable if it recognised, or failed to recognise due to gross negligence, that there was no defect.

(5) If the Contractor does not satisfy its obligation for the subsequent fulfilment – at the choice of the Customer - by remedying the defect (subsequent improvement) or by the provision of a fault-free object (replacement delivery) within a reasonable deadline set by the Customer then the Customer may remedy the defect itself and request reimbursement from the Contractor of the expenses that are necessary for this purpose or a corresponding advance payment. If the subsequent fulfilment by the Contractor has failed or is deemed unreasonable for the Customer (e.g. owing to special urgency, endangerment to the operational safety or the impending occurrence of

(Place, date)

(Name, stamp, legally binding signature)

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disproportionate damages) it will not be necessary to set a deadline; the Contractor is to be notified without delay, if possible in advance.

### § 6 Compliance with the German Minimum Wage Act [*Mindestlohngesetz - MiLoG*]

(1) The Contractor undertakes to comply with the German Minimum Wage Act (MiLoG) and the German Employee Secondment Act [*Arbeitnehmerentsendegesetzes - AentG*].

### § 7 Anti-corruption clause

(1) The Customer and the Contractor hereby declare their firm intention to counteract all forms of corruption.

(2) In particular, the Contractor or its employees may not

- a. give the prospect of, offer, promise or grant employees of the Customer, who are entrusted with the preparation, the conclusion or the execution of the contract, or persons closely associated with them, any gifts, other concessions or other benefits directly or indirectly,
- b. commit punishable acts towards the Customer or aid and abet such acts, which fall under Section 298 German Criminal Code [*Strafgesetzbuch - StGB*] (Competition-restricting agreements with invitations to tender), Section 299 StGB (Corruption and bribery in business transactions), Section 333 StGB (Granting of benefits), Section 334 StGB (Bribery), Section 17 German Unfair Competition Act [*Gesetz gegen den unlauteren Wettbewerb - UWG*] (Betrayal of business and trade secrets) or Section 18 UWG (Exploitation of templates).

These obligations shall also apply to subcontractors.

(3) In case of a breach of the obligations stated in Paragraph 2, the Customer is entitled, irrespective of other rights of termination and rescission, to terminate all contracts existing with the Contractor without notice or to rescind said contracts.

(4) All damages, which are suffered by the Customer due to a breach of the obligations stated in Paragraph 2 and for which the Contractor is responsible, have to be compensated for by the Contractor.

(5) Paragraphs 2 to 4 shall not apply insofar as it concerns customary social concessions in the form of occasional gifts of a low value, such as low-value advertising give-aways, birthday and Christmas gifts of a reasonable value, low-value courtesies with anniversaries or birthdays as well as reasonable entertainment. The question of whether the field of the social adequacy is exceeded shall be exclusively determined according to the material value of the concession. This can be the case in an individual case already with a concession of EUR 50.

### § 8 Termination of the contractual relationship for good cause

(1) Substantial breaches of § 7 shall entitle the Customer to termination of the contractual relationship for good cause.

(2) The Customer is furthermore entitled to termination of the contract for good cause, if

- the Contractor is in liquidation;
- the Contractor is to be seen as unreliable owing to proven serious misconduct, e.g. bribery, Section 334 StGB, Subsidisation fraud, Section 264 StGB, or similar acts, beyond correct business customs;
- the Contractor submitted wilfully incorrect declarations in the contract awarding procedure with regard to reliability as well as specialist expertise and efficiency;
- the offer of the Contractor is based on competition-restricting agreements within the meaning of Section 298 StGB.

(3) If the Customer ends the contract according to § 8 Paragraph 1 it is thus entitled to return the previous services. The Customer has to remunerate the Contractor the value of services that are not returned or services that have already been used pro rata within the scope of the contractual price. The Contractor has to refund the remuneration, which was already paid for returned deliveries, to the Customer.

(4) The Contractor has to compensate the Customer for all damages, which are suffered directly or indirectly by the termination of the contract. The Contractor is not entitled to any rights other than claims for remuneration of used deliveries or services owing to the termination of the contract. Only Sections 347 to 351 and 354 shall remain unaffected by the statutory regulations.

(5) If good cause exists according to § 8 Paragraphs 1 and 2 and if the Contractor is responsible for these, then the Contractor has to pay the Customer a contractual penalty in the amount of five per cent of the order value. Slight breaches will not lead to any contractual penalty. Claims for damages according to § 8 Paragraph 4 shall remain unaffected.

### § 9 Take-back and disposal obligation according to German Electrical and Electronic Equipment Act [*Elektrogesetz - ElektroG*] and German Packaging Act [*Verpackungsgesetz - VerpackG*]

The Contractor shall assume responsibility for the take-back and disposal obligations contained in Section 19 ElektroG and Sections 4 and 5 of the German Packaging Ordinance [*Verpackungsordnung*] and shall bear possible costs associated herewith.

### § 10 Holding of spare parts

The Contractor undertakes to hand over full spare parts documents together with the object of delivery to the Customer and hold in reserve the spare parts designated therein for a period of five years, beginning from the receipt of the goods or, if an acceptance is envisaged, from the time of the acceptance of the object of delivery. Upon request, the spare parts are to be delivered at any time against a corresponding charge. In the case of spare parts requests, the price of the part may not be higher than stated in the spare parts documents that were handed over, however a reasonable surcharge can be charged for

cost increases for which the Contractor is not responsible, caused by general price and wage increases.

### § 11 Property rights

The Contractor shall indemnify the Customer from claims of third parties from possible direct and indirect property rights infringements for which it is responsible.

### § 12 Quality assurance, technical, safety-related and occupational medicine requirements

(1) The Contractor undertakes to only provide services, which comply with the statutory regulations and official provisions, as well as the generally recognised technical, safety-relevant and occupational medicine rules.

(2) The properties of submitted specimens and samples as well as the properties stated above under Paragraph 1 shall be deemed as warranted.

### § 13 Assignment of claim, reservation of title, choice of law, place of performance, place of jurisdiction

(1) The Contractor is not entitled to assign claims against the Customer to third parties, unless the Customer has agreed to the assignment of a claim in advance. If the Contractor is intending to provide the service under the reservation of title then it has to notify the Customer per se whether an assignment as collateral has taken place.

(2) The law of the Federal Republic of Germany shall apply to these AVB and all legal relationships between the Customer and the Contractor under the exclusion of all international and supranational (contractual) legal systems, in particular the UN-Convention on Contracts for the International Sale of Goods.

(3) If the Contractor is a merchant within the meaning of the HGB, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship is Dresden.

(4) The place of performance for the Contractor is the Leibniz Institute for Solid State and Materials Research Dresden [Leibniz-Institute für Festkörper- und Werkstoffforschung Dresden e. V., Dresden].

(5) Should individual or several provisions be or become invalid in full or in part this shall have no effect on the validity of the other provisions. The same shall apply in the event of a loophole in the regulations.

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(Place, date)

(Name, stamp, legally binding signature)