

# Purchasing Terms and Conditions for Construction and Installation Work



## 1. Bids

- 1.1 Bids are to be submitted in time and at no cost to the inquirer.
- 1.2 Bids must be based on an independent price calculation. The bidder may not agree prices or other terms and conditions with competitors.
- 1.3 Bids from bidding consortiums shall require the prior written consent of the inquirer.
- 1.4 Prior to submitting the bid, the bidder is to acquaint himself with the local conditions, including but not limited to roads and pathways, space and soil conditions, all cables, lines, drains and other installations or facilities, and to take account of these. This shall also apply to the scope, size and weight of deliveries, which are to be suitable for the circumstances at the customer's site, and in particular for the transport routes, clearances, and lifting gear which may be provided by the customer.
- 1.5 The bidder is to report any incompleteness or inaccuracy found in the bill of goods or services to the inquirer in writing without delay. The bids may only contain the prices and the required statements. They must bear a legally binding signature. Any amendments by the bidder to his entries must be unequivocal. Amendments to the contract award documents are not permissible. Any samples or specimens submitted by the bidder must be marked as belonging to the bid.
- 1.6 Supplementary bids which result in price benefits and/or technical advantages for the performance of the work may be submitted by the bidder with the main bid in specially marked attachments.

## 2. Duty to deliver/perform

- 2.1 The contractor's duty to deliver/perform shall cover everything necessary for complete and professional provision of the goods or performance of the works and for their use for the intended purpose, even if individual goods or services are not listed or incompletely listed in the bill of goods and services.
- 2.2 The drawings/diagrams on which the design or implementation of the goods or services are based are to be made available to the customer in electronic form and in the German language, reproducible and suitable for micro-filing, in the desired formats and quantities.
- 2.3 The customer reserves the right, following consultation with the contractor, to stipulate the makes, types, etc., of goods and/or to provide individual goods or services free issue. Even in such a case, the contractor shall remain responsible for fulfillment of the contract, provided that he has raised no objections to these stipulations or free issue goods or services. The objections are to be communicated to the customer in writing and with reasons.
- 2.4 The duty to deliver/perform shall comprise in particular:
  - 2.4.1 Production and supply of static calculations, design drawings, working drawings, workshop drawings, dimensions, quantity calculations and other documents which are necessary for the supply or performance and invoicing of the goods and/or services, including all additions and amendments. This shall also include all photocopies, duplicates, data media, etc., in the quantities desired by the customer.
  - 2.4.2 Provision of supervisory, skilled and ancillary staff.

- 2.4.3 Carriage paid delivery including packaging and carriage paid return transport of the packaging. The contractor shall be obliged to unload all parts, including any free issue parts from the customer, and inspect them immediately, and to provide the necessary lifting and handling equipment, transport the goods to the point of use or storage and store them temporarily or permanently. Deliveries must take place in accordance with the progress of construction.
- 2.4.4 Provision, connection, stocking and clearing of site facilities and all equipment including staff rooms and sanitary facilities. Connection to the main substation or transformer station provided at site, connection of service water, compressed air and distribution boards including any conversion work shall be performed by the contractor.
- 2.5 Drawings are in principle to be created with the aid of CAD systems, with representation in logical steps and in multiple layers (layers, part structures etc.) wherever possible. The customer is to be supplied with drawings for review as blueprints or full size copies, and in electronic form as DXF format files on data media or as otherwise agreed.
- 2.6 The contractor shall continuously maintain drawing lists containing all significant details of the contents, revision numbers, dates of compilation and distribution data, etc. The customer is to be provided with the latest drawing lists on a regular basis.
- 2.7 Should the customer perform part of the planning or engineering work himself, a corresponding description is to be presented in the other bid and contract documents.
- 2.8 As an integral part of his documentation, the contractor is to produce as-built and/or inspection drawings with a corresponding drawing list and submit these to the customer before submitting the final invoice. The documents shall show the final as-built condition of the components and systems. The documents are to be handed over in paper form in triplicate, clearly sorted in files. Drawing documents are also to be attached in single copies on a data medium in DXF or other format as agreed. At least the inspection drawings of the technical building services equipment are to be produced in color. The documents are to be in the German language and shall become the property of the customer.
- 2.9 The contractor shall be obliged, in return for a corresponding refund of costs and with the consent of the customer's project management or site management, to make modifications to scaffolding in the interests of other companies. On request by the customer and in return for a refund of costs, the contractor shall be obliged to leave scaffolding in place for other companies even beyond the contractor's own period of use. The erection and dismantling of scaffolding is to be agreed with the customer's project management or site management in good time so that its design and joint or further use by third parties can be coordinated.
- 2.10 The contractor is to ensure that his goods and work are protected from any effects of the weather. The same shall apply to all systems which are exposed to the weather in connection with work performed by the contractor.
- 2.11 Should deliveries arrive in the absence of the contractor's site personnel, the customer shall be entitled to unload and store the goods or have them unloaded and stored at the contractor's risk and cost.

## 3. Performance

- 3.1 The entire handling of the project and all correspondence shall be in the German language.
- 3.2 The contractor shall nominate a coordinator with decision-making authority within his organization to act as the customer's contact for the entire handling of the project. That coordinator should also be responsible for follow-on orders connected with the subject of the original order. Furthermore, the contractor is to nominate a specialist for safety at work, who is also to perform the safety coordination with the subcontractors and coordination between the subcontractors. This specialist is also to be the contact for any coordinator appointed under the terms of the STEAG site rules for construction, maintenance and installation work.
- 3.3 The contractor undertakes to check the advance work performed by the customer or third parties before the start of installation to ascertain whether the conditions required for proper and correct installation by the contractor are fulfilled. Any objections are to be raised in writing without delay. By commencing work, the contractor recognizes that the advance work has been properly and correctly performed. Subsequent objections will only be entertained if the contractor has drawn attention in writing to the defect in the advance work before commencing his own work or if he would not have been able to identify the defect even by careful inspection.
- 3.4 The contractor is to nominate a competent, responsible construction manager and his deputy in good time before commencement of the work. These are to support the customer's project management or site management in the coordination of the work. During working hours, the construction manager or his deputy must be reachable at site at all times. Replacement of the responsible construction manager shall only be permissible with the prior written consent of the customer.  
The persons provided by the contractor for the performance of the work must have the necessary experience, and are fully responsible for the safe operation of the site, the suitability of the equipment, compliance with the health and safety at work regulations, the performance of the work and the observance of all existing regulations. Personnel who, in the opinion of the customer, are unsuitable or do not follow the instructions of the project management or site management, are to be withdrawn from the site by the contractor immediately on request by the customer, and qualified replacements are to be provided.
- 3.5 The contractor and his personnel are to follow the instructions of the customer's project management or site management. Should the contractor consider instructions to be unjustified or inexpedient, he is to raise his concerns with the customer in writing, but nevertheless to carry out the instructions on demand, unless these are opposed by provisions of the law or requirements of the authorities, of which the customer is to be sufficiently informed.
- 3.6 Results of meetings and site inspections are to be recorded in writing by the contractor. The records are to be signed by both parties at the end of the meeting. The customer reserves the right to compile the records himself in individual cases.
- 3.7 Daily reports are to be submitted to the customer's project management or site management on the customer's special forms, no later than on the following working day. The daily reports must at least contain details of the number and qualifications of the staff deployed, divided into the contractor's own staff and third party employees, of the working time, weather, temperature, number and type of heavy equipment used, nature and location of the work performed, customer's instructions, acceptance inspections, tests, accidents and all other important events which could be of importance to the performance and invoicing of the order or to investigations by the authorities.
- 3.8 On request, the contractor is to coordinate the daily working hours and the number and qualifications of the workers with the customer's project management or site management.
- 3.9 The work is to take place under conditions which are usual in the construction, extension or repair of power plant, industrial or district heating systems, with allowances to be made where appropriate for normal operation in progress. In this context, attention is to be paid in particular to the simultaneous performance of various works and the interests of other companies. The contractor is to ensure that the customer's operations are not impaired; plant facilities and rooms may only be entered with the prior consent of the plant management. The contractor is to inform the customer's responsible project or construction manager in good time before all important work is performed.
- 3.10 The site facilities plan, including the areas and spaces required, broken down into site huts, workshops, material storage, etc., is to be submitted to the customer without delay after signing of the contract. The contractor may only set up or store site facilities, machinery, equipment, scaffolding, materials, components, etc., with the agreement of the customer or, where applicable, with the consent of the responsible building authority. The contractor is obliged to relocate them on request, especially when they disrupt the progress of work. Payment will only be made for the costs incurred for such relocation when the customer has issued an express written commitment to keep the areas to be used available to the contractor throughout the entire construction period. Reductions or changes to the stated requirements and changes to distances (e.g. between site facilities and installation point) by the customer shall not entitle the contractor to claim additional payment or to adjust completion schedules.
- 3.11 The contractor shall not be entitled to claim compensation for any failure of media provided by the customer such as electricity, water and compressed air; this shall not however prejudice the customer's liability for damages arising from such failure and caused intentionally or by gross negligence.
- 3.12 The contractor shall bear the responsibility for the preservation of structures, components, vegetation, cables, lines, drains, gratings and other systems or facilities which are affected by his work, and shall implement the necessary protection measures. The original condition is to be restored on completion of the work. Damage is to be rectified by the contractor, following consultation with the customer, without delay. Should several parties come into consideration for causing the damage, the customer will set a deadline and give them the opportunity to clarify responsibility amongst themselves. On expiry of the deadline, the customer shall be entitled to rectify the damage himself or have it rectified. The costs will be apportioned by the customer at his own appropriate discretion.
- 3.13 Should it be necessary to construct special construction roads and driveways on the site for performance of the work, including such to and from disposal sites, this is to be done by the contractor in consultation with the customer's project management or site management.

- 3.14 The contractor shall have the duty to implement safety precautions with respect to all risks which result from or are associated with the work to be performed.  
The road traffic measures required by the work are to be taken in accordance with the road traffic regulations, in consultation with the road traffic authorities when public roads are concerned, and where appropriate in consultation with the police. They are to be maintained during the construction period and removed on completion.
- 3.15 The site, the workplaces and the site facilities, including the sanitary facilities, are to be properly cleaned each day. In particular, all waste and material residues, etc., are to be removed from the site in an environmentally compatible manner, and the contractor shall provide evidence of proper and correct disposal where necessary. On completion of the work, the site is to be handed over to the customer's project or site management in an orderly condition. Should the contractor fail to comply with these requirements in spite of having been reminded and a period for compliance having expired, the customer shall be entitled to have the measures stated above performed at the contractor's cost. Should several parties come into consideration as having failed to comply, the customer will set a deadline and give them the opportunity to clarify responsibility amongst themselves. On expiry of the deadline, the customer shall be entitled to perform the cleaning and disposal work himself or have it performed. The costs will be apportioned by the customer at his own appropriate discretion.
- 3.16 Construction signs may only be set up with the consent of the customer.
- 3.17 Should the customer make equipment available on request in individual cases, the contractor is to check it carefully for usability and suitability for the intended purpose each time before putting it into operation. To the extent that he should fail to fulfill this obligation to perform checks, he shall bear the responsibility for the risks of use.
- 3.18 Prior to the commencement of work, the static calculations, the design drawings, the workshop drawings and the working drawings are to be submitted to the customer for approval in such good time that the customer has a reasonable period of time for review and any necessary modifications can still be made. The technical processing is to be coordinated with the implementation schedules. The technical processing must take place in such a way that the structures are cost-effective for the customer and represent the state of the art. Planning requirements by the customer are to be taken into account.
- 3.19 The review of the documents submitted shall be performed by the customer with the exception of the statics, the review of which shall be performed by the responsible building control department or an officially licensed test engineer. The contractor shall be responsible for taking account of all the modifications made by the test engineer. The contractor is to make the amendments to the corresponding drawings and diagrams, calculations, etc., and to produce new blueprints, at no charge. The same shall apply to modifications made by the customer, provided that the contractor cannot assert that the modifications are neither necessary nor expedient. The approved drawings and diagrams must be available to the customer's project or site management prior to the start of work.
- 3.20 The two main axes and a leveling benchmark are to be stipulated by the customer. The further surveying shall be the responsibility of the contractor. Survey points and boundary stones must not be removed.
- 3.21 For structures, the dimensional tolerances of the EN, DIN or AGI standards shall constitute the minimum requirements.
- 3.22 If it is demonstrated to the contractor that he has arranged or dimensioned components uneconomically, the customer shall be entitled to make payment on the basis of the dimensions which would have resulted from a structure constructed in accordance with economic principles.
- 4. Work based on hourly rates**
- 4.1 Work based on hourly rates may only be performed for services for which the compilation of a quotation with unit prices does not appear appropriate to the customer and a written requisition form from the customer is available.
- 4.2 The hours worked must be certified by the customer on a daily basis. Only the hours actually worked will be recognized. The customer's attestation on the time sheets shall not constitute acceptance of an obligation to make payment. Scaffolding, equipment, machinery, tools and similar are to be listed each working day, stating the duration of their use, in two copies, and submitted to the customer for approval. The customer's signature shall attest to the use of the listed equipment, machinery, etc. Attention is drawn to the STEAG site rules for construction, maintenance and installation work.
- 4.3 The daily working hours are to be coordinated with the local operations, also with regard to organization of the workflow.
- 4.4 Remuneration for the certified working hours will be paid on the basis of the hourly wages agreed with the customer at the time of performance or established by collective bargaining, plus an agreed mark-up to cover overheads.
- 4.5 The mark-ups for overheads and/or cost rates shall include the remuneration for business costs and profit and all overheads, costs of standard tools of the trade, small equipment, non-wage labor costs, traveling costs and traveling time and per diem allowances. Hardship allowances shall only be paid at the rates agreed or established by collective bargaining.
- 4.6 Night work, work on Sundays and public holidays, shift work and additional work shall be governed by section 7.5.
- 4.7 The statutory input tax deduction for traveling expenses (per diem allowance and travel costs) is to be declared on the invoices in accordance with the applicable law.
- 4.8 Should work based on hourly rates require special tools and other equipment and facilities, these costs will only be paid if this was agreed in writing prior to commencement of the work and their use has been confirmed in detail by the customer.
- 4.9 Incidentals, materials, and fuels and consumables for construction which are not supplied free issue by the customer are to be stated to the customer and only charged for at the agreed prices.
- 4.10 The remuneration for supervisory personnel shall be determined by the agreed rates.
- 4.11 The customer reserves the right to group the work based on hourly rates in individual lump sums, specifying the work performed in detail. Should the final account result in a price which is grossly disproportionate to the work performed, the establishment of a reasonable total price may be required, in spite of the acceptance of time sheets (exception: downtime)

is the responsibility of the customer).

- 4.12 The contractor and his personnel are to comply with the customer's regulations and instructions in order to maintain order and safety at the works. The contractor is, at his own cost, to comply with the legal, official and other regulations applicable to the performance of the work.
- 4.13 Especially when foreign workers are employed, the contractor shall be responsible for ensuring that they are employed in accordance with the legal and official regulations in the Federal Republic of Germany.
- 4.14 Should the contractor perform more than 50 % contract work on one day – in relation to the regular working time per calendar day as set down in the collective bargaining agreement – and then continue with work based on hourly rates, no remuneration will be paid in respect of per diem allowances, traveling costs or travel time for that work.
- 4.15 Completion of the work based on hourly rates as rapidly as possible is to be ensured by sufficient staffing and qualified personnel and the use of suitable materials and equipment. A list of the names and qualifications of the personnel deployed is to be submitted.
- 4.16 The costs of regulation compliant working clothes shall be covered by the hourly rate. Issue of materials by the customer will be charged to the contractor at customary rates.
- 4.17 If unsuitable or tardy personnel are used, resulting in a disproportionately great amount of time being taken, the customer shall be entitled to reduce the number of hours or refuse to certify the time sheets.
- 4.18 The company designation and the name of the wearer are to be applied in a clearly visible manner to the safety helmets.

## 5. Quality control

- 5.1 The contractor is to perform the quality control stated in the technical specifications independently. The test and inspection results are to be provided to the customer in full and without delay. Irrespectively of the above, the customer may also perform his own tests and inspections on planning work and on materials during the manufacturing period. In such a case, the contractor is to provide him with the necessary equipment free of charge and provide an opportunity to perform tests and take samples.
- 5.2 Where the quality of the inspected parts does not meet the contractual requirements, the contractor shall bear all the costs of the inspection and testing and any costs of further examinations and expert reports.
- 5.3 The contractor shall pass on these obligations accordingly to his subcontractors and suppliers.

## 6. Deployment of customer's personnel by the contractor

The customer reserves the right, in consultation with the contractor, to provide his own personnel for deployment by the contractor. This shall not affect the liability of the contractor. The contractor is to raise any concerns about the professional or personal suitability of the personnel immediately. An agreement at standard market conditions is to be reached at the appropriate time on the contractual terms applicable to these personnel.

## 7. Delivery and performance dates

- 7.1 On placement of the order, the contractor is to compile a time schedule on the basis of the order without delay and submit it to the customer for approval. On approval by the customer, the time schedules shall become an integral part of the contract. Changes to the time schedules shall only be permissible on the basis of written agreements.
- 7.2 Should it become apparent that dates are expected to be exceeded, the contractor is to inform the customer without delay and state all the necessary actions to be taken to ensure that individual completion dates, milestones and final completion dates are met; these shall also include actions to avert weather effects including frost and snow. If the failure to meet these dates is within the contractor's control, the contractor shall take all necessary actions to comply with individual completion dates, milestones and final completion dates at his own cost. The customer shall also have the right to check the delivery and performance dates of the contractor's subcontractors. The contractor is to impose a corresponding obligation on his subcontractors.
- 7.3 Should provisional work and deliveries become necessary to meet the delivery and/or performance dates, they shall be at the cost of the contractor, unless the necessity of such work or deliveries arose from circumstances beyond the control of the contractor or his subcontractors.
- 7.4 Should the customer desire modifications to the goods or services, the contractor shall perform these without any postponement to completion dates. Should a postponement be unavoidable as a consequence of the modifications, the contractor is to report this without delay and agree new dates with the customer.
- 7.5 The customer may expressly require night work, work on Sundays and public holidays, shift work and additional work to shorten the agreed completion periods. In such a case, the customer shall pay the additional wage rates established by collective bargaining and the agreed additional wage costs. The contractor is to obtain the approval of the authorities for any work on Sundays and public holidays or night work.
- 7.6 The customary changes in the construction of industrial facilities and obstruction by other contractors shall not entitle the contractor to change completion dates.
- 7.7 Obstructions – including obstructions of which the customer's project or site management is aware – must be reported to the customer in writing within 24 hours.

## 8. Acceptance

- 8.1 Prior to commencement of the acceptance inspection, the contractor shall hand over to the customer the complete documentation to be compiled by the contractor in the agreed form and number of copies.
- 8.2 The customer will produce a record of acceptance of the construction services, using a form of the customer. Acceptance shall not be refused for insignificant defects. The customer shall be entitled to retain part of the outstanding payment as defined in Section 641, para. 3, of the German Civil Code (BGB) for defects noted in the acceptance record.
- 8.3 The acceptance inspection is to be performed in the presence of the customer and confirmed in a customer's acceptance record.

- 8.4 Should further inspections be necessary for reasons within the contractor's area of risk, the contractor is to bear all costs associated with these.
- 8.5 Partial acceptance inspections are only to be performed in exceptional cases and on the basis of special written agreements. The use or partial use of goods or services shall not constitute acceptance.
- 8.6 In the case of work which is subsequently no longer accessible, technical releases have to be issued before work is continued; such technical releases serve exclusively to determine the status of construction. They are to be coordinated with the customer and shall not constitute provisional acceptance or acceptance of the work.
- 9. Invoicing and terms of payment**
- 9.1 Invoices are to be submitted in single copies. Unless otherwise agreed, payment shall only be due on receipt of a verifiable and correct invoice, and not before the time at which the contractor effects performance. On payment within 14 days of the invoice becoming due, the customer shall be entitled to deduct a discount of 3 % from the invoice amount. If payment is made by bank transfer, the time at which the customer's account is debited shall be decisive.
- 9.2 The contractor shall not have any right of retention on grounds of outstanding contractor's receivables from the customer which are not related to the same contractual relationship unless such claims have been recognized by declaratory judgment.
- 9.3 Payment is to be made by the method selected by the customer.
- 9.4 Deliveries are to be made, where necessary, duty and tax paid by the contractor.
- 9.5 Invoicing for orders based on measurements
- 9.5.1 The invoicing documents must be compiled in so clear a manner that they can easily be reviewed manually. The dimensions which recur in the quantity calculations, work records and invoices must be directly discernible from the drawings or measurement charts. All invoices are to be issued stating net prices with a separate statement of value added tax.
- 9.5.2 Partial invoices for work performed are to be issued on the basis of reviewed billing documents, these being in particular quantity calculations, parts lists and drawings, etc.
- 9.5.3 The findings and measurements necessary for invoicing are to be taken jointly in accordance with the progress of the work.
- 9.5.4 All dimensions which deviate from the original working drawings and the quantities to be accounted for which cannot be verified later at site are to be set down in writing jointly in drawings or dimensional charts with corresponding sketches. Should this not take place, exposure or other subsequent inspection shall be at the cost of the contractor.
- 9.5.5 Unless otherwise agreed, the invoicing sections of the VOB/C (German Construction Contract Procedures) and the "VOB im Bild" illustrated instructions, shall be applicable to measurements and invoicing.
- 9.5.6 When dates for payment installments have been set down in the contract negotiation and award records, the installments are to be requested in writing no later than 4 weeks before the agreed due dates.
- 9.5.7 In the case of orders which are invoiced on the basis of a bill of quantities and measurements taken, the contractor shall be entitled to invoice 90 % of the goods or services demonstrated in accordance with section 9.5.2 on the basis of the progress of construction work (provided that the goods or services exceed 20 % of the provisional order value or € 10,000.00) – or, if so agreed with the customer, by lot or section (partial invoices).
- 9.5.8 The remaining payment shall be made after acceptance of the goods or services and submission of the final invoice (final partial invoice).
- 9.6 In the case of orders amounting to over € 200,000.00, 5 % of the total invoice value – net of VAT – shall be retained from the (remaining) payment as security for the duration of the limitation period for claims based on defects. The contractor shall be entitled to redeem the sum retained as security by providing an absolute bank guarantee of unlimited duration from a public financial institution or – on consultation with the customer – from a reputable major German bank or insurance company, in accordance with the customer's sample text.
- 9.7 To the extent that the contractor does not exercise his right to redeem the sum retained as security, the customer shall not be obliged to invest and pay interest on that sum.
- 9.8 Each partial invoice or request for payment is to be numbered in sequence and may only contain a job or project number or indication of the cost center in addition to the order number.
- 9.9 In the case of delays to delivery or performance, the agreed due dates for payments shall be postponed accordingly. The customer shall be entitled to require interest on his advance payments at 8 % above base rate for the duration of the delay.
- 9.10 Payments by the customer shall not constitute acknowledgement that the goods or services have been supplied or performed professionally and without defects.
- 10. Delivery and performance dates**
- The agreed dates shall indicate the times at which performance is to be made at the customer's premises.
- 11. Prices**
- 11.1 The agreed prices shall cover the goods and/or services stipulated by the order.
- 11.2 The agreed prices shall in particular also cover:
- wage costs and non-wage labor costs of all kinds, including per diem allowances, travel allowances, traveling expenses and costs for accommodation of non-local workers;
  - all the contractor's overheads and mark-ups;
  - costs resulting from hardship and obstructions, including but not limited to those caused by the effects of the weather, including frost and snow, work by other contractors, possible interruptions to work and installation, and costs for the performance of remaining work at a later date.
- 11.3 The agreed prices shall be fixed prices for the entire term of the contract.

- 11.4 When a unit price contract is concluded, the customer reserves the right to alter the quantities entered in individual items of the bill of quantities or to cancel individual items or groups thereof. In such cases, the contractor may only require price changes when the final invoice amount falls short of the provisional total order value by more than 15 %. Should the final invoice amount is exceeded by more than 15 %, new price negotiations may take place on request by either party. In order to reduce the contractor's quantity risk, the contractor shall have the right to offer the customer the fixed site overheads as a lump sum in a special item.
- 11.5 Should the quantities change from those in bids which the contractor has calculated himself, he shall not, in the case of a unit price contract, be entitled to require any change of prices, or in the case of a lump sum contract to require any remuneration for the additional quantity.
- 11.6 Unit prices shall also apply to identical or comparable supplies of other components, even if they are only listed for a particular component in the bill of quantities.
- 11.7 Should actions and/or additional goods or services which were not discernible on submission of the bid or are subsequently required by the customer become necessary during the performance of the order, price agreements are to be made on these prior to performance on the basis of amendment bids and verifiable costing documents, and these price agreements are to be confirmed in writing by the customer. In that context, the prices are to be calculated on the basis of the main order: Furthermore, amendments shall be subject to the conditions and agreements of the main contract including all discounts granted. Should it be impossible in special cases to reach a price agreement before performance, the amendment bids are to be submitted without delay.
- 12. Transfer of ownership**
- 12.1 The contractor shall be responsible for ensuring that he and his subcontractors are free to dispose of their goods and services.
- 12.2 Ownership of the objects supplied shall pass to the customer as soon as they are delivered to the construction site or to their destination. The transfer of ownership shall not be relevant to the bearing of risk, to claims based on defects or to liability. The contractor shall handle the objects supplied or their parts with care until the risk is transferred.
- 12.3 All documents which the contractor or his subcontractors have produced or caused to be produced by third parties for supply of the goods or performance of the services, including but not limited to the drawings to be supplied, shall become the property of the customer and may be used without restriction for operational purposes. The contractor shall make corresponding stipulations in contracts with subcontractors.
- 13. Entitlements to cure**
- 13.1 The goods or services must comply with the agreement on quality, the intended purpose and the legal and official regulations, in particular the health and safety at work regulations and accident prevention regulations. The contractor warrants the use of suitable materials for the intended purpose, appropriate design, construction and workmanship, correct function and achievement of the agreed performance.
- 13.2 The contractor's responsibility and duty to effect a cure shall not be limited by the customer approving calculations, design drawings and/or implementations of the contractor. They shall remain in effect even when defects are traceable to the quality of previous work by other businesses or when the customer has required or made modifications, unless this was done in contravention of the contractor's written objections with reasons.
- 13.3 Defects are to be rectified without delay. If the customer cannot reasonably be expected to permit this due to site or operational conditions, the contractor shall on request take provisional action without delay and at his own cost to ensure that the site or plant can continue in operation. The defects are finally to be rectified as soon as the customer's site or plant conditions permit.
- 13.4 New acceptance inspection shall be required when reworking or replacements are carried out. The limitation period shall be suspended from the time at which the first complaint based on defects is raised to the time of acceptance of the relevant reworking or replacement. The limitation period for the reworked goods or services shall in any case commence anew as set out in section 13.5, reckoned from the time of acceptance of the relevant reworking or replacement.
- 13.5 The limitation period shall be 5 years, reckoned from the date of acceptance.
- 13.6 The entitlement to rectification of defects for which a complaint has been made shall lapse 2 years after the first complaint has been raised, but in no case before the limitation period stipulated in clause 13.5 has lapsed.
- 14. Indemnification**
- The contractor shall indemnify and hold harmless the customer, his personnel and persons brought in by them from any and all claims by third parties for which the contractor is responsible in connection with his goods or services.
- 15. Confidentiality and property rights**
- 15.1 The contractor shall be responsible for ensuring that the goods and/or services do not infringe patents and other property rights of third parties. He undertakes to hold the customer harmless from and against any claims by third parties and to bear liability for any damages arising therefrom. Any license fees shall be borne by the contractor.
- 15.2 Drawings, samples or written explanations of the customer, and goods manufactured according to these, may not be made accessible to third parties without the written consent of the customer; this shall apply accordingly to other documents and know-how of the customer of which the contractor becomes aware in connection with the order.
- 15.3 With the purchase of the goods or services the customer acquires the right to perform repairs, modifications or suchlike himself or have these performed by third parties. The customer shall furthermore be entitled to manufacture spare parts himself or have them manufactured by third parties. These rights may also not be impaired by property rights or proprietary notices of the contractor or his licensees.
- 15.4 All inventions, developments or other findings by the contractor made in the planning and/or implementation of the goods or services shall be equally available to the contractor and the customer for exploitation if the customer has assisted in the planning of the goods or services.

Inventions made by employees of the contractor and employees of the customer in connection with the goods or services are to be claimed without restriction. A mutual understanding shall be reached unless it has already been agreed otherwise.

## 16. Insurance

16.1 Unless special conditions are agreed in the case of large construction sites, the contractor shall be obliged to take out the following insurance policies in the customary scope for the industry and against all risks: a) Transport insurance b) Erection insurance including customer's risks.

16.2 In addition, the contractor is to take out a third party liability insurance policy including indirect damage and maintain it until the end of the limitation period for claims based on defects, with a double limit in the annual aggregate and minimum sums insured of:

- Euro 2,000,000.00 for each event of damage to property and loss of assets;
- Euro 2,000,000.00 for personal injury per individual person.

16.3 The contractor is to provide the customer on request with evidence that the insurance policies have been taken out, that the premiums have been paid and that the scope of cover meets the above requirements.

16.4 For damages which affect the customer, the future claims of the contractor against the relevant insurers shall be assigned in advance to the customer on request. The contractor shall bear liability for subcontractors he employs as for his own staff. The agreed sums insured shall also apply to subcontractors.

## 17. General

17.1 Use of the inquiries and orders for advertising purposes is not permitted. Any publication about the project, no matter whether in words or in pictures, in professional journals or advertising materials etc. shall only be permissible with the special written consent of the customer.

17.2 Should any provision in these terms and conditions be or become legally invalid for substantive or formal reasons, this shall not affect the validity of the remaining terms and conditions. On the contrary, the parties concluding the contract undertake to replace the invalid provision from the start of its invalidity onwards by a stipulation with as equivalent a commercial effect as possible. The same shall apply accordingly to the closing of any loopholes which arise in the implementation of the contract.

17.3 The customer shall be entitled to save and use the data on the contractor obtained with regard to or in connection with the business relationship, observing the requirements of the German Federal Data Protection Act.

17.4 The above General Terms and Conditions shall apply exclusively. They shall also apply if the customer issues an order to the contractor when aware of general terms and conditions of the contractor which oppose or deviate from these General Terms and Conditions.