

Contract Terms for procuring supplies and services by means of service contracts in the EWE Group

1 Scope of application, order of precedence

- 1.1 The present Contract Terms for procuring supplies and services by means of service contracts shall form part of all purchase orders placed by Client where Client orders supplies and services by means of a service contract. Contractor's standard terms and conditions shall not form part of such contracts, even if Client fails to expressly object to them or if Client makes reference to them in a letter, e.g. in a confirmation of the purchase order. They shall apply only if Client expressly agrees to them in advance.
- 1.2 The contract bases are as follows, in the following descending order of precedence:
 - the terms of the purchase order,
 - the present Contract Terms for procuring general services by means of service contracts.

2 Offer

- 2.1 In its offers, Contractor must adhere exactly to Client's enquiry and shall expressly point out any deviations.
- 2.2 For its quotes, Contractor shall receive payment only if so specifically agreed.

3 Purchase order

- 3.1 Client's purchase orders shall be placed by email or in writing (including fax). Transmission of the purchase order by email suffices if the identity of the ordering party is clearly stated in the email (including without a signature). A verbal side agreement shall be valid only if Client expressly confirms it in writing. This shall apply also to subsequent alterations and addenda. Contractor may derogate from the purchase order only with Client's express written or electronic (email) prior approval.
- 3.2 Unless otherwise stated in the purchase order, Contractor must confirm it without reservation and in writing within ten business days from the purchase order date. If Contractor is unable to confirm within 10 business days, it shall notify Client proposing a new deadline. If Client does not agree to the proposed extension of the confirmation deadline, Client shall cease to be bound to its purchase order.

4 Quality

Contractor shall maintain a state-of-the-art quality assurance system. Client and any third party engaged by Client shall be entitled to enter Contractor's places of performance in order to perform quality audits. Client shall not inappropriately disrupt the production processes during such audits.

5 Execution

- 5.1 On receipt, Contractor shall examine without undue delay the purchase order, all documents that from part of the order, and any documents and content specifications of Client transmitted subsequently, for any errors, ambiguities or inadequacy. If Contractor has concerns about the intended type of execution or about services provided by other undertakings, it shall notify Client without undue delay – if possible prior to execution – in written form stating the reasons and shall submit proposals for alterations, provided they relate to the scope of the services ordered from Contractor.
- 5.2 Client's prior approval of Contractor's documents or work shall not discharge Contractor from its liability for the correctness, and fitness for use, of its supplies and services and of the documents it has produced.
- 5.3 Contractor is obliged at Client's request to disclose to Client the names of its subcontractors.
- 5.4 When performing its work, Contractor shall comply with all occupational health and safety measures prescribed by legislators, supervisory authorities, workers' compensation boards and other regulatory institutions for the respective services (e.g. the German occupational health and safety act (*Arbeitsschutzgesetz*), the German order on industrial safety and health (*Betriebssicherheitsverordnung*), the German order on workplaces (*Arbeitsstättenverordnung*), the German workers' compensation boards' dangerous substances order (*Gefahrstoffverordnung Berufsgenossenschaftliches Regelwerk*), including regulations, rules and information), with all relevant technical rules and regulations, DIN and VDE standards and DVGW rules and regulations. Where appropriate, the foregoing shall include drawing up risk assessments for the activities to be performed and for the work equipment used. Contractor shall notify Client without undue delay in writing of any emerging inconsistencies between the individual regulations that may become apparent. On principle, such provision shall apply that ensures ongoing health and safety at work. In cases of doubt, Contractor and Client shall consult with each other and, if possible, shall agree on an amicable solution. If no such solution can be achieved, Client shall decide.
- 5.5 Contractor agrees to inform Client comprehensively in writing about any accidents in the workplace (and their cause) as a result of which the employee(s) involved in the accident ceases working, and about any environmental damage connected with the implementation of the contract. In the event of severe accidents, such information must be provided promptly. At Client's request, key figures on HSE (Health, Safety and Environment), which are required for Client's sustainability management system, must be provided on an annual basis. Contractor hereby consents to the processing, analysis and documentation of the accident and / or damage reports at Client's premises.

- 5.6 Contractor shall provide all documents required for inspection and/or authorisation procedures, or otherwise, in duplicate copy.
- 5.7 Contractor shall comply with Client's development and documentation policies, if any, in the version applicable at the start of each individual order. The then valid version shall be made available on conclusion of the individual contract.

6 Changes of services

- 6.1 In case changes of, or extensions to, the scope of services become necessary, Contractor shall notify Client promptly in writing or by e-mail. Execution of such changes requires the prior consent of Client.
- 6.2 If Client requests changes of, or extensions to, the scope of services, Contractor shall promptly check the technical impact as well as the consequences regarding dates and costs, and shall notify them to Client in writing within 14 calendar days at most.

7 Subcontractors

- 7.1 Contractor shall not have the right to transfer in whole or in part its obligations arising from the contract to any third party, unless Client has given its express prior consent. Subcontracting services in part to subcontractors also requires the express prior approval of Client.
- 7.2 If Contractor uses subcontractors, all required certificates of the subcontractor's tax office, responsible social security institutions and workers' compensation board shall be provided to Client at the latter's request. Contractor shall impose on the subcontractor all obligations assumed by Contractor and shall ensure compliance therewith. Contractor represents that the subcontractor too will pay the legally prescribed minimum wage.
- 7.3 Contractor shall ensure that the subcontractors employed will not subcontract the services transferred to them, unless Client has given its express prior consent.
- 7.4 The contracting parties agree to do everything required, and/or desist from anything as required, to ensure that Contractor and its employees or subcontractors are not integrated into the business operations, set up their own organisational processes independently, and that Client will not issue any instructions that may have relevance under labour, tax or social security law. The foregoing shall not apply to instructions that are necessary to maintain operational order and safety, in particular safety at work.

8 Personnel

- 8.1 Contractor shall carry out the tasks assigned to it, on its own responsibility. Client shall have no managerial prerogative to issue instructions. The foregoing shall not apply to instructions that are necessary for compliance with operational order and safety, in particular safety in the workplace.
- 8.2 The parties shall ensure that Contractor alone shall have managerial prerogative over Contractor's employees.
- 8.3 At Client's request, Contractor shall be obliged to present proof of the qualifications of the staff used.
- 8.4 Client shall have the right to require for important reasons that Contractor's personnel be replaced. Thereupon, Contractor must remove the personnel without undue delay and undertakes in such cases to name new personnel without undue delay. Important reason means, in particular, unreliability or lacking qualification or breach of essential contractual obligations, in particular safety aspects (such as alcohol or drug consumption etc.).
- 8.5 Contractor shall not replace the employees it has entrusted with fulfilling the contract nor the contractually agreed employees, without a compelling reason. Contractor must obtain the prior express consent of Client, which may not be unreasonably withheld.
- 8.6 For the services to be performed Contractor shall not employ any personnel who are employed in disregard of the German act on the provision of temporary staff (*Arbeitnehmerüberlassungsgesetz*) or of other legal rules and regulations, such as the German minimum wage act (*Mindestlohngesetz*), the German law on foreign nationals (*Ausländergesetz*), or illegally otherwise and in violation of mandatory provisions of law. Contractor undertakes to observe the German employee secondment act (*Arbeitnehmer-Entsendegesetz (AEntG)*) and to pay its employees the statutory minimum wage in accordance with the German minimum wage act (*Mindestlohngesetz (MiLoG)*) or the legal minimum wage applicable in Contractor's industry sector.
- 8.7 Contractor is responsible for the proper payment of all relevant taxes and social security contributions for all employees assigned to the particular order from case to case.
- 8.8 Contractor shall bind its subcontractors by contract to observe the above obligations.
- 8.9 Contractor undertakes to observe the German employee secondment act (*Arbeitnehmer-Entsendegesetz (AEntG)*) and to pay its employees the statutory minimum wage in accordance with the German minimum wage act (*Mindestlohngesetz (MiLoG)*) or the legal minimum wage applicable in Contractor's industry.

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- 8.10 Client shall have the right to demand up-to-date proof of payment of the applicable minimum wage. Such proof shall particularly include records of and receipts for hours worked and salaries paid. Contractor shall ensure my means of appropriate agreements with its subcontractors that it is able to furnish such evidence for its subcontractors also. If Contractor fails to submit evidence within a reasonable time limit set by Client, Client shall be entitled to terminate the contract without notice.
- 9 Waste disposal, storage**
- 9.1 Where the performance of Contractor's services generates waste, Contractor shall be responsible at its own expense for disposal pursuant to the provisions of waste law.
- 9.2 Using Client's premises as storage space is only permitted with Contractor's express prior consent.
- 10 Termination**
- Client is entitled to the statutory termination rights without limitation. In particular, Client has the right to terminate the service contract for an important reason without observing a notice period. There shall be an important reason particularly where, taking into account all the circumstances of the particular case, Client cannot reasonably be expected to continue the contractual relationship through to the agreed termination date or end of a notice period, in particular in the case of a material breach of contract by Contractor.
- 11 Dates, late performance and contractual penalties**
- 11.1 The dates stated in the purchase order are binding upon Contractor. If Contractor fails to meet them, Contractor shall be in default, no notice required.
- 11.2 If Contractor has reason to believe that it is unable to comply with a date, it shall promptly notify Client in writing, stating the prospective duration of the delay and the reasons. Client's rights arising from delay shall not be affected by the above obligation to notify.
- 11.3 Where cooperation on the part of Client is necessary, e.g. approvals or decisions, documents to be supplied by Client, or the procurement of authorisations, Contractor shall request it in good time in writing, setting a reasonable time limit, so that no delays will occur.
- 11.4 If Contractor is in default, Client shall be entitled to the statutory rights. In particular, Client shall be entitled to claim compensation for the damage caused by default. If Client has set Contractor a time limit for subsequent performance to no avail, or if the setting of a deadline is unreasonable to Client, Client shall additionally have the right to claim damages instead of performance and/or to withdraw from the contract.
- 11.5 If Contractor defaults through its fault on completion or delivery, Contractor shall pay a contractual penalty of 0.3% of the net purchase order total for every working day of default but not exceeding 5% of the net purchase order total. The contractual penalty can be claimed up to the due date for the final payment. Statutory claims arising from late performance shall not be affected, however any expired contractual penalty will be deducted from such claims.
- 12 Liability and insurance**
- 12.1 For damage caused by Contractor, its personnel, or by its agents, Contractor shall take out a liability insurance policy customary in the industry with a sufficient sum insured, which Contractor shall prove to Client on request.
- 12.2 Contractor shall indemnify and hold harmless Client from its liability vis-à-vis Contractor's employees for payment of the minimum wage in accordance with clause 8.9. The obligation to indemnify shall also apply in the event that Client is liable vis-à-vis employees of subcontractors employed by the Contractor for payment of the minimum wage.
- 12.3 Contractor shall be liable to the extent permitted by law for all damage, including consequential damage, caused directly and indirectly by Contractor or its agents.
- 12.4 Client shall be liable in accordance with the provisions of statutory law. By derogation from the foregoing, Client shall be liable in the event of slight negligence only in cases of a breach of an essential contractual obligation, the fulfilment of which is *conditio sine qua non* for the proper performance of the contract and on the observance of which Contractor may rely, or in cases of death, bodily harm or injury to health. The provisions relating to the burden of proof shall not be affected. The liability of Client's employees, workers and agents shall be excluded to the same extent as the Client's liability is excluded.
- 13 Prices, invoice and terms of payment**
- 13.1 Unless otherwise agreed, the prices laid down in the contract or the purchase order are fixed prices plus value added tax. The prices cover all services to be performed by Contractor under the contract - including rights of use, ancillary services, travel expenses, expenses and other costs and expenses. Contractor's cost escalation clauses will not be accepted unless Client and Contractor have expressly agreed otherwise. Section 677 BGB shall not be affected in case of emergency measures.
- 13.2 Invoices shall be sent separately for each purchase order to the invoice address specified in the order. Each invoice must state the order number and all invoicing documents (bills of material, time sheets for work done, measurements, etc.) must be enclosed.
- 13.3 Unless otherwise agreed, payments shall be effected net 30 days from complete delivery and performance and receipt of a verifiable invoice that fulfils the requirements of para. (2).
- 13.4 If Client pays within 21 days from receipt of a verifiable invoice and complete delivery and performance, Contractor shall grant Client a 3% discount, unless otherwise agreed.
- 13.5 The crucial condition for the timeliness of the payment is not the receipt of payment but the performance of the act of payment by Client, i.e. the issuance of the transfer order in the case of a bank transfer.
- 13.6 Invoices must not be enclosed with the goods delivered. The value added tax owed must be shown separately.
- 13.7 Payment of an invoice shall not be construed as acceptance or acknowledgement. It shall not entail the loss of any rights that arise from defects.
- 14 Assignment, setoff and retention**
- 14.1 Assignment of a claim against Client shall be subject to the prior written approval of Client. Section 354a HGB shall not be affected.
- 14.2 Contractor shall only have the right to set-off, or retention rights, where claims are concerned that that are undisputed or *res judicata*.
- 14.3 Client shall have the right to set-off, or retention rights, to the extent permitted by law.
- 15 Delivery, freight and packaging, weights/quantities**
- 15.1 Delivery and packaging costs shall be borne by the Contractor. Delivery shall be DDP to the named point of use, unless otherwise agreed.
- 15.2 Contractor shall be responsible for transport and proper packaging and shall comply with all national/international rules and regulations relating to transport (e.g. incl. import and export laws and implementing regulations). Packaging material must be disposed of by the Contractor.
- 15.3 Client shall be notified in writing and in good time of the readiness for dispatch and of the time of dispatch and arrival at the point of use.
- 15.4 Every delivery of goods shall be accompanied by a delivery note stating Client's order number. The name of recipient of the goods must be stated.
- 15.5 Contractor shall only be entitled to make deliveries/services in part if it has obtained Client's prior approval.
- 15.6 In the event of deviations in weight or quantity, the weight or quantity determined by Client during the incoming goods inspection shall apply unless Contractor proves that the weight or quantity calculated by Contractor was correctly determined using a generally recognised method.
- 16 Materials supplied**
- Where Client provides materials, ownership of such materials shall remain with Client. Whoever processes or transforms material provided by Client shall be treated as the manufacturer according to section 950 BGB (German Civil Code). Contractor shall store the processed object free of charge, and exercising the due care, for Client. In the event of accidental loss or accidental damage to the material provided, Contractor shall not be entitled to reimbursement of the expenses it incurred for processing and/or alterations.
- 17 Infringement of industrial property rights, rights of use**
- 17.1 Contractor shall be liable for ensuring that patents or other industrial property rights of third parties are not infringed by Contractor's supplies and services. Contractor shall indemnify and hold harmless Client on first request against all and any claims where a claim is asserted against Client by a third party for infringement of a national or foreign industrial property right in connection with a delivery and/or service of Contractor..
- 17.2 Client shall be granted a simple, transferable, irrevocable, open-ended and geographically unlimited right of use to all supplies, deliveries, services and documents provided by Contractor.
- 18 Non-disclosure, protective rights and antitrust damages**
- 18.1 Contractor shall treat all information provided to it by Client as strictly confidential and shall use it solely for the performance of the respective purchase order. The obligation of strict confidentiality shall not apply to information which Contractor demonstrably already had gained knowledge of without breaching the non-disclosure obligation or which it demonstrably gained knowledge of otherwise. The Contractor shall impose the same non-disclosure obligation on any third party it engages.
- 18.2 Contractor shall make confidential information accessible only to employees and subcontractors for whom such information is indispensable to perform the present contract.
- 18.3 Ownership of all and any information and documents provided by Client shall remain with Client. Contractor must not use them for any other purpose, must not copy or make them accessible to any third party and must return them on request. Client reserves all and any industrial property rights.
- 18.4 Contractor undertakes to comply with the applicable data protection rules, in particular the EU General Data Protection Regulation (GDPR). Contractor shall enhance the awareness of employees involved in data processing of their obligations under the GDPR, shall commit them accordingly and shall submit proof thereof to Client.

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18.5 If Contractor culpably and demonstrably enters into an agreement that constitutes a prohibited restriction of competition (e.g. anti-competitive behaviour and agreements with other contractors/bidders on prices, profits, surcharges, etc.) Contractor shall pay Client 10% of the net order total of the contract. Both parties to the contract are entitled to prove higher or lower damage caused. The obligation to pay shall apply also in case the contract has been terminated or already fulfilled. Client's other contractual or legal claims shall not be affected.

19 Publication/Advertising

Contractor is permitted to refer to the existing business relationship with Client in publications or for advertising purposes only with the express prior approval of Client.

20 Compliance

20.1 Contractor undertakes to comply with the laws of the applicable legal system(s), to not tolerate any form of corruption or bribery, to observe the fundamental rights of employees and the prohibition of child labour and forced labour. Contractor shall also assume responsibility for the health and safety of its employees in the workplace, ensure fair wages and working hours, observe environmental protection laws and promote and require compliance with these principles by its suppliers to the best of its ability.

20.2 Contractor undertakes to comply with the provisions of Client's "Code of Conduct for Suppliers". The Code of Conduct is accessible on the Internet at <http://www.ewe.com/de/konzern/unternehmen/compliance.php>. In the event Contractor severely violates the provisions of the Code of Conduct for Suppliers, Client shall be entitled to conduct an audit on Contractor's premises. In addition, Client shall be entitled to terminate, or withdraw from, the contract and any purchase order without notice.

21 Governing law, contract language

21.1 German law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

21.2 The contractual language shall be German, spoken and written. The foregoing shall apply also to all documents to be handed over to Client.

22 Place of jurisdiction, place of performance

22.1 In case Contractor is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law, or a special fund under public law, the exclusive place of jurisdiction shall be Client's registered office. Client shall also be entitled to bring legal action at Contractor's place of business.

22.2 The place of performance for the supplies and services of Contractor shall be the point of use specified by Client.