

Contract Terms for procuring general services by means of works construction contracts in the EWE Group

1 Scope of application, order of precedence

The present Contract Terms for procuring general services under works construction contracts shall form part of all purchase orders of Client where Client orders supplies and services by means of a works construction contract that does not constitute a construction contract and does not relate to construction work planning. Standard terms and conditions of the service provider (Contractor) shall not form part of the contract, even if Client fails to object to them expressly or if Contractor 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.

1.1 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 works construction 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 Contractor's offers shall be free of charge. 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 electronically transmitted (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 Scope of performance

4.1 Contractor shall be obliged to comply with all occupational health and safety measures prescribed by legislators, supervisory authorities, workers' compensation boards and other regulatory institutions for the respective services, all relevant technical rules and regulations, and DIN and VDE standards.

4.2 Before submitting its quote, Contractor shall obtain an impression of the external conditions, in particular of the place where the services are to be performed.

4.3 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 Contractor's processes during such audits.

4.4 In case Contractor performs the respective service at Client's business premises for reasons of objective or contractually agreed necessity, the contracting parties are in agreement that, within the meaning of the provisions of labour, tax and social security law, Contractor as well as its employees and subcontractors

- are not integrated into Client's business operations,
- shall independently set up the organisational processes required for performing the services in accordance with the contract,
- are not subject to any instructions by Client when performing services in accordance with the provisions of the respective contract.

5 Changes

5.1 Client shall have the right to require that changes be made to the agreed work results and/or that changes be made that are necessary to achieve the agreed work results (referred to hereinafter as "Changes"). The right to give instructions pursuant to clause 5.6 shall not apply to changes of the agreed work results and to acceleration measures if effecting such changes is not reasonably acceptable to the Contractor.

5.2 If Contractor is of the opinion that effecting the Change is not reasonably acceptable to Contractor, Contractor shall notify Client without undue delay, at the latest within 7 calendar days from receipt of Client's Change request, providing detailed reasons.

5.3 Furthermore, Contractor shall submit to Client without undue delay and at the latest within 14 calendar days from receipt of Client's alteration request its complete, comprehensible and conclusive verifiable supplementary quote stating in detail the consequences of the Change with regard to costs and dates.

5.4 Contractor's quote shall be prepared taking into account the provisions of clauses 5.8 and 5.9; at Client's request corresponding receipts shall be submitted and at Client's request details shall be explained.

5.5 The parties undertake to negotiate the quote without undue delay and in a spirit of mutual cooperation, with the aim of avoiding any delays and of entering into agreements as soon as possible to conclusively regulate any additional or reduced costs and any consequences regarding deadlines.

5.6 Contractor may not effect a Change for as long as Client has not expressly agreed on a price with Contractor. In the interest of undisrupted smooth processing the following shall apply however: If Contractor fails to submit a quote within 14 calendar days from receipt of Client's Change request and/or if the parties fail to reach an agreement within 21 calendar days from receipt of Client's Change request, Client shall have the right to give written order that the Change be effected. Furthermore, in case of emergency, if implementation is urgent, or if conciliatory talks have failed, Client shall be entitled at any time, even prior to expiry of the above mentioned period, to give order that Changes be effected even if no price has yet been agreed upon. In case Client gives such order, Contractor agrees to perform the required services without undue delay, even in the event of a dispute concerning the contractual scope of services, verifiability, and/or the amount stated in the supplementary quote submitted.

5.7 If Contractor fails to give written prior notice of the additional costs, or if Contractor effects a Change before Client has expressly agreed on a price with Contractor, or if Client has given order that the services be performed, Contractor shall not receive any payment for the Change unless immediate performance was strictly needed for technical or commercial reasons. Thus, the requirements of the present clause that relate to formalities are a precondition for entitlement to payment for Changes. An exception shall be made only if the immediate implementation of the Change is strictly needed for technical or commercial, e.g. in case of emergency measures or if notification is omitted through no fault of Contractor.

5.8 The amount of payment for the Change shall be based on the agreed prices; if no such prices have been agreed, the reduced or additional expenditure shall be determined on the basis of the costs actually required with reasonable surcharges for general business costs, risk and profit. Unless otherwise agreed, a surcharge rate of 5 % shall be deemed reasonable.

5.9 Persons working for Client shall not be permitted without express and written authorisation to give order on behalf of the Client that Changes be effected or that the purchase order be extended or supplemented. Such orders altering the contract may only be made by Client's responsible body.

6 Execution

6.1 On receipt, Contractor shall examine without undue delay the purchase order, all documents that form part of the purchase 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.

6.2 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.

7 Subcontractors

7.1 Contractor shall not be entitled 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.

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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 work safety. Contractor shall use qualified staff.
- 8.2 At Client's request, Contractor shall be obliged to present proof of the qualifications of the staff used. The parties shall ensure that on Client's premises Contractor's employees are exclusively subject to Contractor's right of managerial prerogative.
- 8.3 The Responsible Person and his/her representatives must possess the required reliability, technical expertise and physical fitness and must be sufficiently proficient in the language of the country where the place of performance is located, and/or must be sufficiently proficient in the written and spoken project language to comprehend Contractor's instructions and to pass them on to the workers engaged by Contractor in a language they comprehend.
- 8.4 Contractor shall ensure through adequate rules that the Responsible Person and any supervisors employed are able to perform their tasks and exercise their powers. In particular, they must have the necessary managerial prerogative to issue instructions to Contractor's employees.
- 8.5 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 lack of qualification or breach of essential contractual obligations, in particular safety aspects (such as alcohol or drug consumption etc.).
- 8.6 Contractor shall not employ any personnel for the services to be performed 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 law (*Mindestlohngesetz*), the German law of foreign nationals (*Ausländergesetz*), or illegally for other reasons 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 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 Dates, late performance and contractual penalty

- 9.1 Performance shall be commenced, adequately promoted, and completed, in accordance with the binding time limits (contractual time limits). If manpower or materials are so insufficient that the performance time limits clearly cannot be met, Contractor must immediately provide for a remedy at Client's request.
- 9.2 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.
- 9.3 If Contractor believes that it is being impeded in the proper performance of its services it shall notify Client in writing without undue delay. The consequences of the particular impeding circumstances on Contractor's personnel deployed and resources shall be specified in detail in the impediment notice. The notice shall state precisely whether and to what extent Contractor's personnel and resources can be employed or deployed elsewhere and which measures can be taken to mitigate any damage that may have occurred.
- 9.4 A proper written notice of impediment is a precondition for making a claim. If Contractor fails to give written notice of an impediment such impediment shall not result in a postponement of the dates, to additional payment, claims for damages, or claims for compensation, unless the impediment and its effects are obvious.
- 9.5 Contractor shall notify Client in writing and without undue delay when a reported impediment has ended.
- 9.6 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.
- 9.7 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.
- 9.8 Contractor shall undertake all reasonable efforts to ensure that work can be continued. If an impediment merely affects particular areas of the service, Contractor shall perform the remainder of the service in such a way that the service areas not affected by the impediment can be completed within the agreed time limits.

- 9.9 In the event of Contractor's failure to meet the agreed performance periods through its own fault, Contractor shall in the case of default pay a contractual penalty of 0.3 % of the net purchase order total for every working day of delay. The contractual penalty shall be limited in total to 5% of the net total of the purchase order. Statutory claims arising from default shall not be affected; however, any contractual penalty forfeited will be deducted from such claims. A forfeited contractual penalty may be claimed until the date of the last payment.
- 9.10 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.

10 Acceptance and risk

- 10.1 Acceptance of the Contractor's supplies/services must fulfil the formal requirements. Commissioning or use shall not constitute acceptance unless all agreed or otherwise applicable conditions for acceptance have been fulfilled and if the parties have agreed that formal acceptance must take place within a reasonable period after completion. Acceptance shall be deemed to have taken place if, after completion, Contractor has set Client a reasonable time limit for acceptance in writing and Client has not rejected the service within such reasonable time limit, stating at least one defect. If Client rejects, both parties shall carry out a condition assessment. An entitlement to acceptance of services in part shall exist only if such acceptance in part has been expressly agreed.
- 10.2 Work performed to cure a defect shall also be subject to acceptance. The Contractor, giving notice of completion from case to case, shall request the Client to carry out subsequent acceptance. Client may waive subsequent acceptance if it is proven that the defects have become obsolete otherwise.
- 10.3 The risk shall pass to Client on acceptance.

11 Termination

- 11.1 Client may terminate the contract at any time for no reason up to the date the service has been completed. If Client terminates the contract, Contractor shall in such case be entitled to the agreed payment. However, Contractor must accept that the costs it saved as a result of the termination of the contract or that what it acquired, or maliciously omitted to acquire, by using its manpower and its business otherwise, will be deducted. Section 648, third sentence, BGB is excluded.
- 11.2 Alongside its right to freely terminate the contract, Client shall have the right to terminate the contract for an important reason at any time.
- 11.3 Every notice of termination must be in writing.
- 11.4 There shall be an important reason particularly if the Contractor suspends its payments, if it or the Client or another creditor has filed for insolvency proceedings (sections 14 and 15 InsO) or comparable legal proceedings, if such proceedings are opened, or if the opening of such proceedings is rejected for lack of assets.
- 11.5 Client may limit its notice of termination to a delimitable part of the owed work (partial termination).
- 11.6 After termination, Contractor shall immediately surrender all documents that are necessary to continue the work. If and to the extent that Contractor exercises a right of retention in such a case, it shall be limited to claims that are undisputed or are *res judicata*. Client may avert such a right of retention on the part of Contractor by lodging a security, the amount of which shall be set by Client in accordance with section 315 BGB (German Civil Code).

12 Liability for defects

- 12.1 If Contractor's supplies/works are defective, Client shall be entitled without limitation to the full statutory warranty claims. In particular, Client shall be entitled to require a remedial measure or a replacement from Contractor at Contractor's expense. Remedial measures shall be carried out taking into account the operational interests of Client. The cost of remedying the defect, e.g. the cost of transport, travel, labour and materials, shall be borne by Contractor.
- 12.2 If a timely remedial measure or replacement delivery is not possible, is unsuccessful or is unreasonable to Client, the right to withdrawal (rescission of the contract) or reduction (reduction of the price) or to damages in lieu of performance shall not be affected. If Contractor fails to comply with its obligation to remedy the defect despite being requested to do so, or if setting a deadline is not possible, or unreasonable to Client for reasons of urgency taking into account the interests of both parties, Client shall be entitled to take the necessary measures itself at the expense and risk of Contractor.
- 12.3 Contractor shall be obliged to remedy without undue delay any defects notified to it prior to acceptance. If Contractor fails to comply with the obligation to remedy defects and if Client has granted it a time limit for a remedial measure in the notice of defects, threatening to remedy it itself and/or to have it remedied, Client may, after expiry of the time limit, have the defects remedied at Contractor's expense.
- 12.4 The warranty period shall be three years from acceptance, unless the law provides for a different limitation period.
- 12.5 Contractor shall be liable to the extent permitted by law for all damage, including consequential damage, that it or its agents caused directly and/or indirectly.

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13 Prices, invoice and terms of payment

- 13.1 In case of excessive payments, Contractor shall refund the excessive amount paid. Contractor may not invoke loss of the enrichment (section 818 (3) BGB).
- 13.2 If Contractor intends to discontinue its work on account of arrears in payment, it shall expressly warn Client thereof, setting an adequate time limit.
- 13.3 The agreed prices are fixed prices. They cover all services to be performed by Contractor under the contract - including rights of use, ancillary services, delivery and packaging, travel costs, 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.
- 13.4 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. Where possible, invoices shall be sent electronically in PDF format and addressed to Client.
- 13.5 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. (5).
- 13.6 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.
- 13.7 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.
- 13.8 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 Hourly wages

- 14.1 Work performed for hourly wages shall be permitted only if ordered separately and expressly by Client in advance. Where possible, the prospective amount shall be quantified in advance. Work for hourly wages shall be avoided as far as possible.
- 14.2 In the case of work performed for hourly wages, Contractor shall submit in duplicate copy time sheets for each working day. They shall show
- the date,
 - the designation of the place of performance,
 - Client's purchase order no.,
 - the type of service,
 - the names of the workers and their occupation, wage or salary group,
 - the amount of hours worked per worker, broken down where appropriate into overtime, night work, work on Sundays and on public holidays, and any drawbacks not included in the calculation rate.
- Hourly wage invoices must be broken down according to the time sheet. Client shall keep the original hourly wage slips and Contractor shall keep the certified copies.
- 14.3 Countersigned timesheets merely certify the attendance times of Contractor's personnel. Signature shall not imply acknowledgement or approval of work performed.

15 Liability and insurance

- 15.1 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.
- 15.2 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.
- 15.3 Client shall be liable in accordance with the provisions of statutory law. By derogation from the foregoing the Client shall be liable in the event of slight negligence only in case 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 case 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.

16 Manufacturer's liability

- 16.1 If Contractor is liable for a damaged product Contractor shall indemnify and hold harmless Client against third party claims to the extent that the cause lies within Contractor's organisation and is under his control and to the extent that Contractor is liable in the contracting parties' external relations.
- 16.2 As part of its obligation to indemnify and hold harmless, Contractor shall reimburse expenses according to sections 683, 670 BGB that arise from or in connection with third party claim, including recalls carried out by us. Client shall notify Contractor of the content and scope of recalls - inasmuch as possible and reasonably acceptable - and shall grant Contractor opportunity to comment. Other claims shall not be affected.

- 16.3 Contractor shall take out and maintain a product liability insurance policy with a blanket sum insured common in the industry per personal injury/property damage.

17 Assignment, setoff and retention

- 17.1 Assignment of a claim against Client shall be subject to the prior written approval of Client. Section 354a HGB shall not be affected.
- 17.2 Contractor shall only have the right to set-off, or retention rights, where claims are concerned that are undisputed or res judicata.
- 17.3 Client shall have the right to set-off, or retention rights, to the extent permitted by law.

18 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.

19 Infringement of industrial property rights, rights of use

- 19.1 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 upon 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 supply and/or service of Contractor..
- 19.2 Client shall be granted a simple, transferable, irrevocable, open-ended and geographically unlimited right of use for all types of use to all performance results produced by Contractor. The right of use includes all types of use and in particular the right to reproduce, process and further develop performance results. The Customer is entitled to transfer the rights of use transferred to him in whole or in part to associated companies within the meaning of sections 15 et seqq. AktG of the German Civil Code (BGB) or to grant them corresponding rights of use.

20 Non-disclosure, protective rights and antitrust damages

- 20.1 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.
- 20.2 Contractor shall make confidential information accessible only to employees and subcontractors for whom such information is indispensable to perform the present contract.
- 20.3 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.
- 20.4 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.
- 20.5 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.

21 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.

22 Compliance

- 22.1 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.

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22.2 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.

23 Governing law, contract language

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

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

24 Place of jurisdiction, place of performance

24.1 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.

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