

Contract Terms for procuring supplies and services by means of sales contracts or contracts for works construction and materials 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 sales contracts or contracts for work construction and materials shall form part of all purchase orders of Client where Client orders supplies and services by means of a sales contract or a contract for works construction and materials. 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.
- 1.2 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 sales contracts or contracts for work construction and materials.

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 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 Scope of performance

- 5.1 The delivery item shall comply with the recognized rules of technology, the statutory and regulatory requirements applicable at the point of use as well as the applicable technical safety requirements and the occupational health and safety and accident prevention rules. All relevant technical requirements, DIN and VDE standards and DVGW rules and regulations shall be complied with.
- 5.2 Contractor shall observe the contents of the German occupational health and safety act (*Arbeitsschutzgesetz*), the German order on industrial safety and health (*Betriebssicherheitsverordnung*). This may include drawing up risk assessments for the activities to be performed and the work equipment used. Machinery and technical work equipment shall be supplied together with assembly and operating instructions, an EC Declaration of Conformity, CE marking and, if applicable, a type examination, in accordance with the German equipment and product safety act (*Geräte- und Produktsicherheitsgesetz (GPSG)*) and the German machinery ordinance (*Maschinenverordnung*), where applicable.
- 5.3 Contractor shall provide Client with all documents required for testing, inspection and approval procedures, for installation and assembly, maintenance and repairs, operation, maintenance, and reviews, in duplicate copy.

6 Changes

- 6.1 In case changes or extensions of the scope of services become necessary, Contractor shall notify Client promptly in writing or by e-mail. Their implementation shall be subject to the prior express consent of Client.
- 6.2 If Client requests changes or extensions of the scope of services, Contractor shall promptly check the technical consequences and the consequences with regard to deadlines and costs and shall communicate them to Client in writing within 14 calendar days at most.

7 Execution

- 7.1 On receipt, Contractor shall examine without undue delay the purchase order, all documents that form 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

- 7.2 written form stating the reasons and shall submit proposals for alterations, provided they relate to the scope of the services ordered from Contractor. 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.
- 7.3 Contractor is obliged at Client's request to disclose to Client the names of its subcontractors.

8 Dates, late performance and contractual penalties

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 If Contractor is in default, Client shall be entitled to the statutory rights. In particular, Client shall particularly 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.
- 8.5 If Contractor defaults through its fault on completion or delivery, Contractor shall pay a contractual penalty of 0.3% of the net order total, but not exceeding 5% of the net order total, for every working day of default. 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.

9 Passing of risk

Irrespective of the mode of transport, the risk shall pass to Client upon arrival of the delivery at the agreed point of use. If an acceptance process has been agreed, the risk shall not pass to Client until acceptance has taken place.

10 Liability for defects and inspection for defects

- 10.1 Contractor undertakes to carry out a final inspection of the goods and is willing to conclude a quality assurance agreement with Client. Where there is an obligation to inspect the goods pursuant to section 377 HGB (German commercial code) it shall be limited to a minimum inspection based on the delivery note and to evident defects or defects which are easily recognisable during normal use. In case no quality assurance agreement exists for all goods whose condition can only be ascertained when they are put into use or put into operation, the scope of the inspection obligation shall initially be limited to defects visible externally.
- 10.2 In all cases, a notice of defect shall be deemed to have been made in good time if it is made within 10 days counted from delivery of the goods or, in the case of hidden defects, from discovery of the defect.
- 10.3 If the delivered goods are defective, Client shall be entitled to the full statutory warranty claims without limitation. In particular, Client shall be entitled to demand remedial measures or replacement delivery from Contractor at Contractor's expense. The defect remedy must 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.
- 10.4 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 or to deliver a replacement despite being requested to do so, or if setting a deadline is not possible, or unreasonable to Client for reasons of urgency, Client shall be entitled to take the necessary measures itself at the expense and risk of Contractor.
- 10.5 The warranty period shall be two years from delivery of the goods to be delivered, unless a longer limitation period results from the law. The expiry of the warranty period shall be suspended from receipt of a written notice of defect until the defect has been remedied or until remedial measures have been denied. If parts are replaced or repaired within the scope of remedial measures, the limitation period shall begin to run again from replacement or repair.

11 Liability and insurance

- 11.1 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.

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11.3 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.

11.4 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 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 the 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 the Client's employees, workers and agents shall be excluded to the same extent as the Client's liability is excluded.

12 Manufacturer's liability

12.1 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.

12.2 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.

12.3 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.

13 Prices, invoice and terms of payment

13.1 Unless otherwise agreed, the prices stated in the contract or in the purchase order shall be fixed prices plus value added tax. The total price covers all services to be performed by Contractor under the contract - including rights of use, ancillary services, travel costs, expenses, and any 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. (5).

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 enjoined with the shipment. The value added tax owed shall 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 are undisputed or *res judicata*.

14.3 Client shall have the right to set-off, and 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. In case Contractor delivers the goods to be delivered to a different point of use Contractor shall bear Client's additional costs.

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 and other waste created must be disposed of by the Contractor. Storage of deliveries on Client's premises is permitted only in the allocated storage spaces.

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 Security

16.1 For all orders with a net order total of more than EUR 25,000, Contractor shall be entitled to withhold from the final invoice an amount of 5% of the net final invoice total to secure Client's claims for liability for defects.

16.2 Contractor shall be entitled to redeem the security provided for under para. (1) and para. (2) by furnishing an open-ended, directly enforceable guarantee issued by a bank or credit insurer, provided that the bank or credit insurer is licensed in the European Community and has a registered office in Germany. The defence of contestability and set-off must be waived, whilst the assertion of the defence of set-off may be permitted for claims that are undisputed or *res judicata*. The guarantor's right to be released from its liabilities under the guarantee by making a deposit must be excluded.

17 Material supplied

Where Client provides material, Client shall remain the owner thereof. 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 the Client. In the event of accidental loss or accidental damage to the material provided, Contractor shall not be entitled to compensation for the expenses it incurred by processing and/or altering the material.

18 Infringement of industrial property rights, rights of use

18.1 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.

18.2 Client shall be granted a simple, transferable, irrevocable, open-ended and geographically unlimited right of use to supplies, services and documents provided by Contractor.

19 Non-disclosure, protective rights and antitrust damages

19.1 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 foregoing shall apply particularly to commercially sensitive information within the meaning of section 9 of the German energy act (*Energiewirtschaftsgesetz*), in particular information relating to network customers or network-related information. 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 obligations on any third party it engages.

19.2 Contractor shall make confidential information accessible only to such employees and subcontractors for whom such information is indispensable to perform the present contract.

19.3 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 industrial property rights.

19.4 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.

19.5 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 if the contract has been terminated or already fulfilled. Client's other contractual or legal claims shall not be affected.

20 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.

21 Compliance

21.1 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 at 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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21.2 Contractor undertakes to comply with the provisions of the 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.

22 Governing law, contract language

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

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

22.3 Should difficulties of interpretation arise concerning the interpretation of this contract term or contradictions between the German Version of this contract term and this English version, the German version available on <https://www.ewe.de/unternehmen/agb/aeb> shall be binding.

23 Place of jurisdiction, place of performance

23.1 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.

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