

General terms and conditions of purchase for design services and services by consultant engineers (construction), VW AG / general purchasing division (current as of 1 May 2018)

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1. Validity of the contractual conditions / contractual elements

1.1

These conditions shall supplement the general terms and conditions of purchase, VW AG / general purchasing division. They shall also apply to design services and consulting services in the case of construction sites.

1.2

The contractual elements shall appear in the following order of precedence, this as far as available and not otherwise agreed:

1.2.1

- the VW order description

1.2.2

- the negotiation records in chronological order

1.2.3

- these terms and conditions of purchase

1.2.4

- the general terms and conditions of purchase / general purchasing

1.2.5

- the operational resources guidelines
1.01

1.2.6

- the service request or service description (with particular, but not exclusive reference to the specifications) issued by VW

1.2.7

- the relevant general recognised technological guidelines, particularly the relevant DIN provisions

1.2.8

- the provisions stipulated by the BGB (German Civil Code)

1.2.9

- the provisions stipulated by HOAI (fee structure for architects and engineers) in the version as amended at the time of the conclusion of the contract relating to the binding scope of services stipulated therein.

1.3

These terms and conditions of purchase shall also apply if particular methods or processes (e.g. building information modelling) or the use of particular forms of communication (e.g. an Internet-based communication platform) are agreed upon for the collaborative work or the provision of services.

2. Regulations relating to service provision

2.1

The contractual partner shall be obliged to execute all the required, appropriate services, duties and obligations necessary for the attainment of the design / consulting target defined in the individual order. Thus the services, duties and obligations to be provided by the contractual partner shall also comprise all activities not listed in the individual order which fall within the scope of the contractual partner's functions as specified in the individual order, and which are necessary to meet the design / consulting target stipulated therein.

2.2

In the event that it becomes apparent that the cost limit specified in the order, or the execution costs calculated by, or agreed with VW cannot be met during the course of the order's planned execution or in the wake of the submission of one or more tenders, the contractual partner shall be obliged to inform VW of the reasons for, and likely effects of this discrepancy in writing without delay, listing all the possible alternatives and options (particularly economisation strategies) in the process.

2.3

Moreover, the contractual partner shall be obliged to inform VW of all significant occurrences arising during its execution of the contractual duties in writing, and this without delay. This obligation shall not lapse when the contract expires. In the event that relevant legislation is in the process of being revised, or if specific ambiguities arise in connection with generally recognised technological rules and regulations which may influence the design / consulting services in question, the contractual partner shall be obliged to inform VW of these circumstances in writing with immediate effect.

2.4

VW hereby reserves the right to commission additional designers / consultants. The contractual partner shall be obliged to inform VW punctually in the event that it should prove necessary to commission additional designers / consultants, and to advise VW during their selection at the latter's request.

In the event that VW assigns the co-ordination of third-party design and consulting services to the contractual partner, the latter shall be obliged to co-ordinate the said third-party services with their own design / consulting services in an effective manner. The contractual partner shall be obliged to discuss the precise nature of the services to be provided with VW and the other specialist parties involved prior to their final preparation, and to examine design-related contributions by specialist participants for their accuracy and plausibility, taking account of their concerns and conditions in the process, before combining these with its own services as an integral part of the service provision.

2.5

The contractual partner shall be obliged to perform the design / consulting services in an independent manner on its own premises via its own employees. The contractual partner shall only be permitted to assign the performance of specific services to third parties (e.g.

subcontractors or freelance workers) with VW's prior written consent.

2.6

The contractual partner shall be obliged to participate in the discussions arranged by VW, other individuals or specialist companies associated with the design / consulting process. The contractual partner shall be obliged to merge the results of these discussions with its own design / consulting services, taking account of its other obligations in the process.

The contractual partner shall be obliged to inform VW of discussions arranged by other individuals involved in the project in question, to draw up transcripts detailing the contents of the said discussions at VW's request and to pass these to VW with immediate effect.

2.7

The fact that one of the other parties involved in the design / consulting process, or other specialist participant, is responsible for the controlling, co-ordination or monitoring of the project in question shall not exempt the contractual partner from its own responsibility for the inspection, control, co-ordination and monitoring of the same.

2.8

The contractual partner shall be obliged to observe VW's instructions and requirements and to apply these during the provision of its services. Other project participants, or those individuals representing VW, shall only be obliged to issue the contractual partner with instructions on VW's behalf with the latter's express written permission or authorisation. This shall also apply to any project managers appointed by VW.

2.9

The contractual partner may not represent VW with respect to any legal relations. However, it shall be entitled to issue instructions required in order to guarantee the contractual execution of the commissioned manufacturing and supply services and the smooth running of the project, which shall not result in any negative consequences for VW, this in a

qualitative, deadline-related or financial sense. This shall also apply to factual explanations issued to VW which prove necessary to the commission's coordination, and the monitoring of the manufacturing and supply services provided in the process.

2.10

In the event that VW commissions the contractual partner by progressive phases, the contractual partner shall not be entitled to perform any additional project-related stages in the wake of the completion of the commissioned phases, this subject to any agreement to the contrary. In particular, VW shall be free to cancel the construction project, or to commission another design or engineering company or a general contractor to carry out design / consulting services in relation to the project's subsequent phases.

2.11

The contractual partner shall submit all plans, drawings, other contributions etc. required in accordance with the contract to VW and to third parties specified by VW for inspection. VW shall be entitled to specify an appropriate verification period. The contractual partner shall continue to assume full responsibility for the contractually agreed performance in the wake of the examination and approval of the plans, drawings and other contributions or documentation by VW or individuals commissioned by the latter. The examination and approval by VW and / or from its designated agents shall not constitute any contributory negligence in terms of § 254 of the BGB (German Civil Code).

3. Due dates and deadlines

3.1

Provided that nothing to the contrary has been agreed by the two parties, the contractual partner shall be obliged to perform the design / consulting services in question on the basis of a schedule to be agreed between the parties, and shall, in particular, be obliged to begin, facilitate and complete the said services in such a

way that they contribute to rapid design / consulting / manufacturing progress for the benefit of VW.

3.2

The contractual partner shall be obliged to draw up a design / consulting schedule two weeks at the latest after the receipt of the order, and to pass this to VW. This schedule should contain details of all control-related and design and consulting processes and the individual goods and services required in order to complete the manufacturing processes in question. The contractual partner shall subsequently be obliged to agree on a design / consulting schedule on this basis, which shall subsequently become a contractual component. In the event that the contractual partner fails to fulfil this obligation, VW shall be entitled to specify design / consulting deadlines at its own discretion, by which time the design / consulting services in question must be provided.

3.3

The contractual partner shall, in any case, be obliged to make the design / consulting contributions required for the manufacturing services and supplies in question in a punctual manner, ensuring that the manufacturing / supply process agreed with the relevant third party companies is not interrupted. Furthermore, the contractual partner shall be obliged to issue the tender-related details and design specifications required for the assignment of manufacturing and supply services in a complete and punctual manner, this in order to ensure that it is possible to draw up a list of required manufacturing/ service specifications which is as detailed and exhaustive as possible.

3.4

Other binding deadlines shall be agreed within the context of the project processing on the basis of the schedule agreed between the contractual parties, or specified by VW at its own discretion on the basis of the agreed schedule.

3.5

The contractual partner shall be obliged to provide all services required for the remaining design / consulting processes and the execution of the manufacturing / supply processes in such a way that the completion deadlines agreed between VW and companies acting on behalf of VW in respect to the above, and all other individuals involved in the project, are not endangered or delayed for reasons for which the contractual partner is responsible within the scope of their duties or responsibility.

3.6

The contractual partner shall be obliged to document the delivery of documentation and other project contributions issued by it to other project participants, and, in particular, to maintain a design schedule list including receipt and issue dates which details the current processing status and the design distribution.

3.7

The contractual partner shall be obliged to place all documentation and information which is subject to a statutory audit at the disposal of the responsible project participants, particularly authorities, in a punctual manner, in order to ensure that the required audits can be carried out on the documentation in question without any delays.

4. Revisions and additional services

4.1

The contractual partner shall be obliged to perform any possible additional services at VW's request, this unless the services in question are not related to the previous service provision and the contractual partner is not qualified to execute them. In this case, VW shall be obliged to obtain the contractual partner's agreement as regards the assignment of these additional services. Section 650b(1) BGB (German Civil Code) shall remain unaffected.

4.2

The contractual partner shall be obliged to inform VW in writing of any additional services which are not included in the

scope of the services specified in the order before carrying out the said services, and to justify the reasons why these services are not included in the original scope of the services agreed between the two parties. This shall not apply in the event that VW expressly instructs the contractual partner to perform an additional service.

The contractual partner shall be entitled to an additional fee in the event that VW requests or confirms the execution of these additional services.

4.3

The contractual partner shall only be entitled to a right of retention as regards the required or requests additional or revised services in the event that VW subsequently refuses to recognise justified, additional remuneration claims. VW shall not be obliged to compensate the contractual partner for services which the latter provides without any contractual obligation. However, the contractual partner shall be entitled to remuneration in the event that VW recognises the provision of the said services in retrospect. Possible legal claims relating to agency of necessity to which the contractual partner is entitled shall remain unaffected.

5. Acceptance

5.1

In the event that nothing to the contrary has been agreed, VW shall be obliged to accept the services provided by the contractual partner which produce verifiable results, this provided that the services in question have been executed in a complete, defect-free manner in accordance with the contractual terms and conditions, and the contractual partner has notified VW of the completion of the said services in writing.

5.2

The acceptance certificate should be submitted in writing for reasons of proof.

5.3

Insignificant defects or negligible omissions, particularly those which do not compromise the contractually agreed or

stipulated use of the provided services or differ only minimally from their stipulated or anticipated condition or state shall not hinder the acceptance process.

5.4

The results of the acceptance shall take effect after VW has confirmed the acceptance in writing. The same shall apply in the event that VW fails to confirm the acceptance or refuses to do so without stating at least one defect, despite the fact that the services provided by the contractual partner are fundamentally complete, defect-free and comply with the terms and conditions of the contract. In this case, the contractual partner shall be entitled to draw VW's attention to this lack of acceptance, and to demand the renewed issue of the acceptance certificate by a specific date. VW shall be deemed to have accepted the services after the abovementioned deadline expires.

6. Issue of documentation / rights of retention

6.1

The contractual partner shall be obliged to give all original documentation (drawings, designs etc.) drawn up for the purposes of the contract's fulfilment to VW in a clearly ordered, complete manner, either in the form of original blueprints or in electronic form or on data storage carriers, this at VW's request. The contractual partner shall be obliged to return all documentation provided by VW to the latter in the event that it is no longer required for the execution of its duties, this without being asked and at the latest upon the acceptance of the contractual partner's services by VW.

The contractual partner shall be obliged to destroy all documentation drawn up in conjunction with the order execution after the expiry of the limitation period for defect-related claims. Prior to this, the contractual partner shall be obliged to offer to pass on the said documentation to VW, and to inform VW of the impending destruction of the said documentation. The

documentation in question may only be destroyed in the event that VW is in default of acceptance.

6.2

The contractual partner shall not be entitled to any rights of retention concerning the design-related or other documentation drawn up by it and required for the execution of the manufacturing / delivery services. The contractual partner shall be obliged to provide advance performance until the services in question have been completed.

The following shall apply in the event of an independent contractual termination by VW, or in the event that the contractual partner terminates the contract for reasons for which VW is responsible. In these cases, the contractual partner shall be entitled to a right of retention to the documentation drawn up by it, this until the settlement of justified, due remuneration claims by VW. This right of retention shall lapse in the event that the contractual partner fails to submit an auditable fee-related closing invoice within two weeks of the receipt of the termination, or in the event that VW provides the contractual partner with a security in the form of a bank guarantee for the amount of the fee-related claims associated with the aforementioned right of retention.

7. Industrial property rights, know-how

7.1

Unless otherwise agreed, the contractual partner shall grant VW the gratuitous right to use industrial property rights and know-how applied by the contractual partner for the purposes of the contract's fulfilment, during the project's subsequent operation. All documentation, drawings and software programmes created by the contractual partner in conjunction with the project-related service provision shall be subject to VW's unlimited property rights and rights of disposal. The contractual partner shall not be entitled to additional remuneration in this regard. The contractual partner shall transfer property rights to the respective documentation, drawings and programmes to VW

immediately following their creation or production. VW and the contractual partner agree that the respective documentation, drawings, and programme shall remain in the direct possession of the contractual partner as bailee for VW until the respective documentation, drawings, and programme are transferred to the direct possession of VW in line with the applicable regulations.

VW shall be entitled to create replacement and expendable parts for the premises' facilities, or to commission their manufacture or repair by third parties, this on the basis of the documentation supplied by the contractual partner.

7.2

Unless otherwise agreed, the contractual partner shall assign VW the usage and application authorisations for all services protected by copyright in conjunction with the contract's execution, this including the right to reverse engineering in the case of destruction. VW shall be entitled to make amendments to the contractor's works and services as protected by copyright, but shall permit the contractual partner to express its opinion in the event of significant revisions. Furthermore, the contractual partner shall provide VW with assurances to the effect that it is not aware of any circumstances, particularly those pertaining to the industrial property rights of third parties, which impede the manufacture of those objects and processes required in order to fulfil the contractual conditions, nor of any claims which have been, or could be asserted against it pertaining to possible breaches of existing industrial property rights.

7.3

The contractual partner shall release VW from all third-party claims pertaining to the possible breach of industrial property rights arising from the contractual partner's violation of the obligations outlined in figures 7.1 and 7.2, above.

7.4

Regardless of the regulations outlined in figures 7.1 – 7.3, above, the contractual partner shall be obliged to inform VW of all

existing industrial property rights which could conflict with an application of the services provided by the contractual partner without delay.

7.5

Furthermore, the contractual partner shall be obliged to inform VW of all inventions arising in connection with the execution of the commission in question and involving it or its subcontractors, and to submit all the documentation and other information required to use the said inventions to VW, this at the latter's request. The contractual partner's obligation to inform shall also apply to know-how arising in conjunction with the execution of the contract.

The contractual partner shall ensure that the rights of the inventors as regards employees and other independent individuals are applied and assigned to VW accordingly. VW shall thereafter be entitled to register the invention on a national and international basis in order to create an industrial property right, and shall be responsible for the costs incurred as a result.

Each party shall be obliged to remunerate their own employees / inventors independently in accordance with the relevant legal regulations.

Use of the inventions and industrial property rights, etc. for other goods and services involving third parties shall require the prior, individual, express written consent of VW (licence). If a licence is to be granted to the contractual partner, the contractual parties shall agree on the precise details of this usage, this with particular reference to an appropriate licence fee.

The contractual partner shall be obliged to make agreements with all its employees and subcontractors and other vicarious agents appointed within the context of the contractual execution in a punctual manner, with the effect that the latter recognise the above agreements in a binding manner.

The contractual partner shall be obliged to refrain from submitting a plea for

annulment or formal objection in conjunction with industrial property rights arising as a result of the services provided and registered by VW, or to support third parties during their submission of similar pleas, this irrespective of the regulations outlined in figures 7.1-7.5, above.

8. Liability for defects

The law pertaining to contracts for work and services in accordance with §§ 633 ff. of the BGB (German Civil Code) shall apply in this instance.