

**Special terms and conditions of purchase for construction works, VW  
AG / general purchasing division (current as of 1 May 2018)**

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**General terms and conditions of purchase for construction works, VW AG / general purchasing division (Current as of 1 May 2018)**

**1. Validity of these contractual conditions**

These contractual conditions shall supplement the general terms and conditions of purchase, VW AG / general purchasing division and the general terms and conditions of purchase for facilities and construction works, VW AG / general purchasing division. They shall be applicable subject to deviating agreements pertaining to individual contracts.

**2. Contractual foundations**

**2.1**

All design-, construction-related and other services arising from the contractual elements in accordance with fig. 2.4 of these special terms and conditions of purchase on an individual basis shall be included in the scope of the services to be rendered by the contractual partner.

**2.2**

Provided that nothing to the contrary has been expressly agreed, the contractual performance shall comprise those goods and services arising from the order, including all its components, in a complete manner.

**2.3**

Insofar as the contractual partner shall be obliged to provide independent design services for the purposes of the tender preparation and after the contract's conclusion, the tender documentation and additional documentation transferred to the contractual partner shall merely constitute an indicative basis for the evaluation of the scope of services to be provided, taking account of the performance required from the contractual partner in the process.

**2.4**

The following contractual foundations shall constitute an intrinsic contractual component:

**2.4.1**

the VW order description

**2.4.2**

- the negotiation records in chronological order

**2.4.3**

- these special terms and conditions of purchase

**2.4.4**

- the general terms and conditions of purchase, VW AG / purchase division for facilities and construction works

**2.4.5**

- the general terms and conditions of purchase, VW AG / general purchasing division

**2.4.6**

- the planning permission and building regulations clearance documents

**2.4.7**

- the operational resources guidelines (ORG) 1.01

**2.4.8**

- the contractual documentation in accordance with the call for tenders (with particular reference to the specifications)

**2.4.9**

- the list of subcontractors

**2.4.10**

- the draft contractual fulfilment guarantee

**2.4.11**

- the draft guarantee security documentation

#### **2.4.12**

- the German Construction Contract Procedures part B: general contractual terms and conditions for the execution of construction procedures (VOB/B) in accordance with the version current at the time when the contract is concluded.

#### **2.4.13**

- the standards, specifications, regulations, manufacturer specifications etc. and all TÜV (Technical Inspection Agency) guidelines, industrial law guidelines and all laws, ordinances and local by-laws pertaining to the construction project in question.

#### **2.4.14**

- All legal, official and employer's liability insurance association guidelines and regulations associated with the construction project planning, with particular reference to the regional building regulations and energy saving regulations applying within the vicinity of the construction project.

#### **2.4.15**

- the regulations and provisions of the BGB (German Civil Code), with particular reference to the law applicable to works and services.

### **2.5**

In the event of any contradictions within the contractual documentation or their appendices, the order of precedence shall be as follows. In the event of contradictions in the appendices, the order of precedence as regards numbering shall apply (e.g. 1 precedes 2, etc.); in other cases, the most recent appendix shall take precedence.

## **3. Scope of services / service amendments / additions**

### **3.1**

VW shall be entitled to alter the scope of services, including the manner of their execution, and to issue alternative instructions. The contractual partner shall be obliged to execute altered services in accordance with the terms and conditions of the contract, this unless the contractual partner's premises is not equipped to execute the said services in the required manner, and the contractual partner is unable to guarantee the correct execution of the said services via their assignment to a third party, or the contractual partner is unable to carry out the correct execution of the altered services for other reasons. Figure 6 of the general terms and conditions of purchase for facilities and construction works, VW AG / general purchasing division shall also apply.

### **3.2**

The contractual partner shall be obliged to submit its entire calculation to VW in a sealed envelope within eight days of the contract's conclusion. This envelope shall only be opened in the presence of the contractual partner in the event that these calculation documents are required for subsequent pricing purposes.

## **4. Involvement by VW**

### **4.1**

The contractual partner shall be obliged to create any prototypes or samples required in accordance with the scope of its service provision in a punctual, independent manner, taking account of any separately agreed prototype schedule in the process. These prototypes must be designed by the contractual partner in such a way that VW and any participating third parties are able to make a decision regarding the specifics of their concrete execution with no difficulty, this subject to any more detailed descriptions of the prototypes in question. Fig. 5.2 of the general terms and conditions of purchase for facilities and construction works, VW AG / general purchasing division shall apply accordingly.

### **4.2**

As far as nothing to the contrary has been agreed, the contractual partner shall be

obliged to procure the forms of energy required in order to provide the goods and services in question (with particular reference to construction water, electricity, pressure and steam etc.) in an independent manner. The same shall apply to delivery areas, storage areas and the construction site set-up, etc. The contractual partner shall not be entitled to use areas and means belonging to VW.

## **5. Due dates / deadlines**

### **5.1**

The contractual partner shall be obliged to submit a construction schedule to VW for approval one week at the latest after being assigned the commission in question. This schedule should take account of all contractual obligations and must be subdivided in accordance with the specific types of work to be carried out. Thereafter, the contractual partner shall be obliged to incorporate justified suggestions by VW without delay and to update the approved construction schedule on a daily basis.

### **5.2**

In the event that VW stipulates a different binding construction start date to the one stated in the construction schedule, the remaining binding contractual deadlines shall be postponed by the same number of working days by which the original construction start date has been postponed, this in the event that other express agreements have been made. This shall not apply in the event that the contractual partner is able to prove that it is unfairly burdened by this regulation.

### **5.3**

The contractual partner shall be obliged to agree an updated and new binding construction schedule with VW in the event of any alterations to the execution deadlines, this within an appropriate period of time after VW's request to this effect. In the event that the contractual partner fails to draft a replacement schedule within a reasonable period of time, VW shall be entitled to specify an updated construction schedule in accordance with the principles of equitable

discretion (§ 315 BGB (German Civil Code)).

## **6. Contractual penalty**

### **6.1**

In the event that the contractual partner is responsible for exceeding the agreed completion deadline or is in default in any way, the contractual partner shall be obliged to pay 0.15% of the net order total and a maximum of 5% of the net order total for every working day which the deadline is exceeded or delayed.

### **6.2**

In the event that the contractual partner is responsible for exceeding an agreed interim deadline or delays this interim deadline in any way, the contractual partner shall be obliged to pay 0.15% of the net order total in proportion to the interim deadline and a maximum of 5% of the net order total in proportion to the interim deadline for every working day which the deadline is exceeded or delayed. In the event that deadlines are exceeded or delayed, subsequent contractual penalties shall be taken into account in conjunction with contractual penalties levied in the case of preceding interim deadlines, this in order to ensure that an accumulation of individual contractual penalties is excluded.

### **6.3**

The total contractual penalty shall be limited to a maximum of 5% of the net order total and the maximum amounts specified in figs. 6.1 and 6.2 shall not apply individually.

### **6.4**

### **6.5**

VW shall remain entitled to demand that the contractual partner compensates it for any possible damages incurred above and beyond the contractual penalty imposed (e.g. off-setting the imposed contractual penalty against the overall damages).

## **7. Acceptance**

### **7.1**

The contractual partner shall guarantee that its service provision shall be free of quality-related defects at the time of the final formal acceptance of the contractual service provision, e.g. that it is in possession of the contractually agreed qualities, complies with the recognised technological regulations and is free of defects of title. The service provision shall be deemed free of quality-related defects in the event that it is suited to the use specified in accordance with the contractual terms and conditions, that its condition complies with the standard specifications for works of the type in question and which VW is entitled to expect in this context, and, in all other cases, is suited to the use in question and is in possession of a condition which complies with the standard specifications for works of the type in question and which VW is entitled to expect.

### **7.2**

The contractual partner shall be obliged to provide VW with a written guarantee certificate in accordance with regulations issued by VW by the time of the final acceptance at the latest.

Furthermore, the contractual partner shall be obliged to provide VW with all documentation falling within the scope of its service provision and including consulting, operating and reference manuals related to all technical facilities and required for their operation and later maintenance on the occasion of the acceptance, this in accordance with fig. 7.1 of the present conditions. Furthermore, the contractual partner shall be obliged to draw up a list of all technical facilities requiring regular care and / or maintenance and a list of companies involved in the execution of the construction project, including addresses, telephone numbers and the name of the authorised representative, and to submit these to VW by the time of acceptance at the latest.

### **7.3**

VW shall invite the contractual partner to attend a formal acceptance.

Acceptance reports should be drawn up and signed by both contractual parties. The contractual partner shall be obliged to bear the costs of necessary repeat acceptances and / or performance and functional checks of all types in the event that it is responsible for the implementation of the said procedures.

### **7.4**

The contractual partner shall be obliged to undertake the execution of required trial runs and the commissioning of the technical facilities and to instruct VW employees and / or future users and / or operators in the equipment's operation. In the event that the abovementioned employee training has not been completed by the time of the facilities' acceptance for reasons for which the contractual partner is responsible, VW shall be justified in its refusal to grant the said acceptance. However, insofar as the facilities have to be commissioned on the grounds of a mitigation of damages, the contractual partner shall be obliged to provide its own employees to operate the technical facilities until the required staff training has been completed.

### **7.5**

Partial acceptances may only take place as far as this has been agreed on an individual basis for the construction project in question.

### **7.6**

Works relating to the rectification of deficiencies also require formal acceptance.

## **8. Defect-related claims**

### **8.1**

In the event that no other limitation periods have been expressly agreed, the contractual partner shall be liable to the extent of the provisions outlined in the VOB/B (German Construction Contract Procedures), this with the proviso that the limitation period shall normally constitute five years, this in contrast to § 13, no. 4 of the VOB/B (German Construction Contract

Procedures). The legal regulation stipulated in § 199, para. 3 of the BGB (German Civil Code) for the determination of the limitation period in the case of defects which have been maliciously concealed by the contractual partner or by subcontractors commissioned by it shall not be affected.

## **8.2**

The contractual partner shall be obliged to assign all its guarantee-related claims against third-party subcontractors or manufacturers employed by the contractual partner in order to execute the scope of its contractually agreed services to VW. The abovementioned assignment shall take place by way of security and in accordance with the escrow condition that the contractual partner shall file for bankruptcy should this be necessary. The contractual partner's guarantee obligations shall hereby remain unaffected.

## **8.3**

In principle, the contractual partner shall be liable to VW for the full extent of any damages caused, even in the event that the subcontractor's liability shall be limited via contractual regulations or a court order.

# **9. Securities**

## **9.1**

The contractual partner shall be obliged to provide VW with an unlimited guarantee for any claims by VW which may arise up to the date of acceptance from a major German bank or a German credit insurer which must be formulated in accordance with the sample text included in the call for tenders (contractual fulfilment guarantee), this within two weeks of receiving the commission in question. Unless otherwise agreed, the security amount should be 10% of the net order total.

The right to make guarantee claims may not lapse prior to the secure claims which may be asserted against the contractual partner. The contractual fulfilment guarantee shall be returned at the time of

acceptance unless it has been used by VW.

## **9.2**

The contractual partner shall be obliged to provide an unlimited guarantee from a major German bank or a German credit insurer in the form of a security for defect-related claims by VW, which must be formulated in accordance with the appendix enclosed with the call for tenders (security for defect-related claims). Unless otherwise agreed, the security amount should be 5% of the net invoice total.

The security for defect-related claims shall extend to the settlement of all claims of this nature, including compensation, and the reimbursement of excess payments including any interest. The right to make guarantee claims may not lapse prior to the secure claims which may be asserted against the contractual partner.

VW shall have the right to retain 5% of the net invoice, or a percentage that has been agreed otherwise, as a security for defect-related claims including compensation, and the reimbursement of overpayments including any interest until the security for defect-related claims is provided. The amount retained shall be paid out to the contractual partner once the security for defect-related claims has been provided.

## **9.3**

The security for defect-related claims must be returned once the deadline in accordance with fig. 8.1 has expired, unless it has been used by VW. Possible rights relating to the security's reduction shall hereby remain unaffected.

# **10. Industrial property rights, know-how**

## **10.1**

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 and that of its facilities.

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 programmes shall remain in the direct possession of the contractual partner as bailee and safe-deposit company for VW until the respective documentation, drawings, and programmes 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 project's facilities, or to commission their manufacture or repair by third parties, this on the basis of the documentation supplied by the contractual partner.

#### **10.2**

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. 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.

#### **10.3**

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 10.1 and 10.2, above.

### **11. Payments**

In the event that the parties have agreed on a payment plan, VW shall only be obliged to make advance payments proportionate to the proven defect-free provision of services; VW's rights relating to the presence of possible defects prior to acceptance shall hereby remain unaffected.

Provided that nothing to the contrary has been agreed, the down payments / advance payments made by VW shall be offset against outstanding partial payment invoices until the down payments / advance payments have been offset completely. The contractual partner may demand a down payment / advance payment security from VW in return for the granting of a down payment / advance payment security reduced by the offset amount.

### **12. Exemption from § 48b of the EstG (Income Tax Act)**

The contractual partner shall be obliged to provide VW with a certificate of exemption from its local tax office in accordance with § 48b of the Income Tax Act and the social insurance agency, this for itself and its subcontractors. The contractual partner shall release VW from all claims made by the financial authorities and social insurance agencies, irrespective of the legal grounds for the said claims (e.g. revocation of the certificate of exemption).