

## **General Conditions of Purchase for Contracts of Sale, Contracts for Works and Services as well as other Services, Execution of Orders and Provision of Works for ENERGIE SAARLORLUX AG**

### **Chapter I: General**

#### **1. Scope**

- 1.1 The provisions of Chapter I of these General Conditions of Purchase (GCP) shall apply to all orders and invitations to tender of the Principal in which the Principal appears as the party issuing the invitation to tender or as purchaser and which involve the performance of services, fulfilment of orders or execution of works by the Client, irrespective of whether this involves a delivery of goods or not.
- 1.2 In case of conflict between the original German version and any translation, the German version shall apply. General Terms and Conditions of the Client are hereby expressly excluded irrespective of their description. They shall apply only to such an extent as the Principal expressly agrees in writing.

#### **2. Rank**

The following shall apply with respect to type and scope of the mutual undertakings in order as listed:

- The terms of the invitation to tender, the order, the description of service, implementation or execution;
- Any further contract terms contained in the invitation to tender, the order, the description of service, implementation or execution;
- these GCP for contracts of sale, contracts for works and services as well as other services, execution of orders and provision of works.

#### **3. Offers, Invitations to Tender, Orders, Amendments and Contact Partner**

- 3.1 The Client shall follow the specification and wording of the request exactly. Any deviation must be made clear by express reference. The offer shall be made free of charge.
- 3.2 In accordance with the provisions of § 48 German Income Tax Act (Einkommenssteuergesetz, EStG), the Client shall provide a legible copy of a valid certificate of exemption pursuant to § 48b EStG. Where such is specifically required by the task, the certificate of exemption shall be provided in the original. Failure to fulfil this criterion shall result in the offer being excluded from consideration in the contract award procedure. Should the certificate of exemption be revoked for any reason, the Client shall notify the Principal immediately.
- 3.3 Invitations to tender and orders must be made in writing. The written form requirement shall be fulfilled in the case of electronic data transfer. Oral ancillary agreements with respect to the order shall only be binding where such are confirmed in writing by the Principal. This shall also apply in the case of any subsequent amendment or supplement.
- 3.4 Orders placed orally may not be performed until written confirmation from the Principal is provided.
- 3.5 The order shall be confirmed by the Client by way of signature within 10 working days on the order. Orders submitted by the Principal by the way of electronic data transfer may be confirmed by the Client by the same means.

- 3.6 In the absence of any written agreement to the contrary, invitations to tender shall be valid for 30 days.
- 3.7 Taking into account the legitimate interests of the Client, the Principal may demand that certain features of the goods ordered as well the amount to be delivered be amended within reasonable and fair limits and may amend the payment sum accordingly. The amendments may not be such that it can reasonably be assumed that the Client would not have concluded the contract had he been informed of the amendments previously. Each amendment must be made in writing.
- 3.8 For the performance of contracts of sale, contracts for works and services as well as other services, execution of orders and provision of works, each party shall be entitled to demand from the other party that, before beginning performance of contract, the names of all persons used as contact partners for the performance of contract are indicated.

#### **4. Prices, Invoicing and Payment**

- 4.1 In the absence of any agreement to the contrary, all agreed prices shall be understood as fixed prices in EUROS exclusive of value added tax. Any taxes or fees as may become payable from the performance of contract shall be borne by the Client. Invoices, to be issued in duplicate, shall be sent to the invoice address indicated in the order, alternatively to the Principal's administration department, after successful delivery/provision of service. Order numbers are to be indicated on invoice and all invoice documents (stock lists, works records, plans etc.) are to be attached. Invoices for partial deliveries/services must be identified as "invoice for partial delivery" or "invoice for partial performance", concluding invoices identified as "invoice for remaining delivery" or "invoice for remaining performance". Each invoice must make separate indication of statutory value added tax. Original invoices must not be attached to the delivery.
- 4.2 The Client shall be liable for all consequences of breach of the duties set down in Point 4.1 of these GCP.
- 4.3 In the absence of any agreement to the contrary, prices shall include all costs for transport, customs duties, insurance and packaging.
- 4.4 Payments shall be made after performance of contract and 14 days after receipt of invoice with a 3% discount or 30 days after receipt of invoice net. Payment made by the Principal shall not be deemed to be acknowledgement.
- 4.5 In individual cases and at its own discretion, the Principal may require that the Client furnish an unqualified and irrevocable bank guarantee from a bank acceptable to the Principal as security for fulfilment of the Client's contractual duties
- 4.6 To the extent provided by statute, the Principal shall be entitled to exercise a right to offset any claim of the Client against the claims of the group company sued. The Principal shall also have a right of retention which may be similarly exercised.

## 5. Assignment

- 5.1 Any assignment of contract duties by the Client or transfer to another company shall be subject to prior written approval from the Principal. This shall also apply to services which are not covered by the Client's ordinary operations.
- 5.2 The Principal shall be entitled to assign the contract to third parties. The Client herewith provides approval for such.

## 6. Execution, Environmental Protection, Security, Health & Safety and Quality

- 6.1 The Client shall have regard to all generally accepted technical standards, applicable statutory and official provisions as well as the operational rules and provisions set down by the Principal. In particular, the Client shall have regard to applicable occupational safety rules and provisions, the "Principles of Prevention" (DGUV Vorschrift 1) as well as to all generally accepted safety and occupational health standards. The Client shall have regard to the German Occupational Safety Act (Arbeitsschutzgesetz), the Ordinance on Industrial Health and Safety (Betriebssicherheitsverordnung) and, in the case of construction projects, to the German Construction Site Ordinance (Baustellenverordnung). In particular, this shall include the compilation of risk assessments, which must be kept up-to-date, for the tasks to be carried out as well as for the tools employed. It shall also include the definition of suitable Personal Protection Equipment. In the case of construction projects, ancillary provisions from partial approval notices must be complied with. Before performance of contract is commenced, the Principal shall inform the respective contact partner, as appointed by the Client, of all rules which apply in addition to the relevant statutory provisions at the respective site at which the works are to be carried out. This shall include, in particular, company-specific information on health and safety at work as well as provisions on environmental protection and safety. The Client warrants that contract products/services are provided/rendered in accordance with respective generally accepted industrial and technical standards and are prepared and compiled pursuant to contract.
- 6.2 Machines and technical tools shall be supplied in accordance with the German Equipment and Product Safety Act (Produktsicherheitsgesetzes „ProdSG“) as well as the Machinery Ordinance (Maschinenverordnung) and with instructions for assembly and operation, EC declaration of conformity, CE certification and, where necessary, type approval. Tools shall be preferentially supplied which have the GS product safety mark. Where certification of assessment is not provided, the supplier shall bear the burden of proving compliance with the above provisions. Where so requested, the Client shall furnish the Principal with the result of the risk assessment in accordance with Annex 1 of the EU Machinery Directive 2006/42/EC.
- 6.3 The Client shall be bound to test the products in accordance with general German industrial standards and to furnish the Principal with the test results free of charge where it so requests. The Principal shall also be entitled to test the products. Tests in this sense shall not be construed as acceptance. During and after the manufacturing process, the Client shall be responsible for testing the unfinished or finished goods where the manufacturing process is carried out under its supervision. At request, the Principal shall be entitled to observe the manufacturing process, also in the completion phase, on the Client's premises (in-shop inspection).
- 6.4 Where hazardous substances pursuant to the Hazardous Substances Ordinance (Gefahrstoffverordnung) are supplied, the Principal shall be supplied with product information, in particular current EU safety data sheets in German, in good time before delivery. The same shall apply for information on statutory marketing and usage restrictions. The provisions of the Dangerous

Goods Transportation Act (Gefahrgutbeförderungsgesetz) shall be respected.

- 6.5 Where chemicals are used as raw materials or consumables, Point 6.4 above shall apply mutatis mutandis. The Client shall respect the provisions of the EU Regulation (EC 1907/2006) on registration, evaluation, authorisation and restriction of chemical substances ("REACH") in the applicable versions, including any amendments which may have been implemented by supplementary regulations. In addition, the Client shall furnish all information which may reasonably be required for the proper and safe use/operation of the goods.
- 6.6 The use of substances which are carcinogenic, toxic for reproduction or mutagenic shall be subject to written approval from the Principal in each individual case. In case of necessary derogation from this provision, the Principal must be informed in writing prior to delivery/use. Resulting precautionary measures shall be mutually agreed. The Client warrants that the goods comply with all statutory requirements and do not contain any banned substances. The Client further warrants that the goods do not contain any substances which cannot be subjected to ordinary waste processing procedures upon their disposal. At request, the Client shall provide information as to how far environmental protection was taken into account on construction and manufacture. The Client shall furnish the Principal with complete and exact information in case the goods contain hazardous or harmful substances which place at risk or harm people, property or the environment.
- 6.7 Where the Client applies a quality assurance system and the contractually agreed service includes its being maintained (e.g. in accordance with DIN EN ISO 9001 – 9003), the Principal, or a third party appointed by it, shall be entitled to assess the system in consultation with the Client.
- 6.8 For replacement and spare parts, the Client shall indicate all clearly described features, e.g.: manufacturer, type, order/article/identification number, dimensions, material, norm descriptions such as DIN, IEC, ISO etc. and any contents and fuels of the article/device to be delivered which are subject to the Hazardous Substances Ordinance shall be declared accordingly.
- 6.9 The Client shall notify the Principal without delay in case of any concern with respect to the planned means of execution or with respect to the services rendered/products of other actors where this affects the scope of the Client's duty.
- 6.10 The Client shall indemnify the Principal against all damage and costs incurred (including the costs of litigation) as may result from an infringement of legal norms either by the Client or one of its employees or subcontractors or where the Client or one of its employees or subcontractors is liable for such infringement.

## 7. Custody and Surrender of Documents

The Client shall store all documents on performance of contract for the term set down by statute so that all expenses and liabilities may be confirmed. In case of legitimate interest, the Client shall furnish the Principal with copies of all documents relating to the contract provided that these are free to be divulged to the Principal.

## 8. Amendments

- 8.1 The Client shall inform the Principal immediately and in writing of any amendments/supplements to the scope of service/delivery which prove necessary through the course of performance. Their implementation shall be subject to prior written approval from the Principal.
- 8.2 Requests for amendment from the Principal shall be assessed by the Client with respect to their possible consequences. The Client shall notify the Principal of its findings in writing within ten calendar days. In particular, express reference shall be made to consequences for technical realisation, costs and time schedule.

Should the Principal decide that the amendments are to be implemented, the contract parties shall amend the contract accordingly.

## 9. Waste Disposal

Insofar as deliveries/services by the Client produces waste, the waste shall be recycled or removed by the Client and – in the absence of any written agreement to the contrary – for its own account and in accordance with applicable waste disposal provisions. Property, risk and liability for the waste shall result to the Client at the time of waste production.

## 10. Prohibition on Assignment

Assignments as well as other forms of transfer of rights and duties of the Client outside the scope of application of § 354 a of the German Commercial Code (HGB) shall be excluded; exceptions shall require prior written approval from the Principal for their validity.

## 11. Transfer of Risk

Title and risk shall be transferred to the Principal once the delivery/service has been made/rendered to the Principal at the place of performance or where the delivery/service has been accepted by it.

## 12. Representations and Warranties

- 12.1 The Client warrants that all contract products and services comply with all statutory provisions, in particular provisions on the environment and occupational health.
- 12.2 Statutory warranty provisions shall apply. At its option, the Principal shall be entitled to demand supplementary performance in the form of either the removal of defect or the delivery of a replacement free of defect or manufacture of a new product. Supplementary performance shall be in consultation with the Client and shall have regard for the operational needs of the Principal. Guarantees in addition to this shall be agreed separately where necessary.
- 12.3 The limitation period for defect claims shall be extended by the length of time which elapses between notification and removal of defect.
- 12.4 In the case that component parts of the contract product or service are altered by the assertion of warranty claims or where these are replaced by other components, the corresponding replacement or spare parts are to be altered or changed at the Client's expense.
- 12.5 In case of rescission of contract, the Principal shall be entitled to continue to use the Client's products or services free of charge up until the procurement of a suitable replacement.
- 12.6 In case of rescission, the Client shall bear all costs of dismantling / removal and return freight and shall assume responsibility for disposal.

## 13. Securing the Non-Discriminatory Use of Information pursuant to § 6a Energy Industry Act (Energiewirtschaftsgesetz, EnWG)

- 13.1 The Client undertakes not to divulge any economically sensitive and/or economically advantageous information which it may become aware of through the course of performance of contract from the Principal's sphere of influence and which may be of commercial interest for energy distribution, trading, generation or production organisations or companies.
- 13.2 In particular, it shall treat as confidential:
  - Customer and terminal data;
  - Data of potential customers;
  - Supplier/trader data;
  - Information on measures for extending the network or grid;

- Information on profitability criteria for the assessment of terminals or network extensions.

The Client undertakes to refer its employees to these duties and to secure the relevant undertakings from them. The Client further undertakes to secure undertakings from any subcontractors employed within the scope of this contract that they will adhere to § 6a EnWG.

## 14. Reservation as to Intra-Group Clearing

- 14.1 Claims of the Principal and of ENERGIE SAARLORLUX AG companies shall be held by the Principal and ENERGIE SAARLORLUX AG companies as joint and several creditors. Pursuant to §§ 15 et seq. German Stock Corporation Act (Aktengesetz, AktG), ENERGIE SAARLORLUX AG companies are affiliated with the Principal where the Principal holds at least a 50% stake in that company. ENERGIE SAARLORLUX AG companies shall be entitled to net/set-off its claims against claims of the Client. All substantive and procedural rights which the Client has with respect to a claim against a joint creditor shall also exist as against the other joint creditors.
- 14.2 With respect to claims of the Client against the Principal and ENERGIE SAARLORLUX AG companies, the Principal and the ENERGIE SAARLORLUX AG companies may offset/net their claims against the Client with the claims of the Principal and/or of ENERGIE SAARLORLUX AG companies.
- 14.3 The above rules shall also apply where, on the one hand, cash payment, or on the other, the issue of bills of exchange is agreed, or where the mutual claims mature on different dates though here invoicing shall be with value date. In case of ongoing payments, this entitlement shall refer to the balance.
- 14.4 The Client hereby waives the right to object to the choice of claims to be offset by the Principal in case of multiple claims.
- 14.5 On request, the Principal shall furnish a list of the ENERGIE SAARLORLUX AG companies entitled to participate in the intra-group clearing system.

## 15. Servicing

- 15.1 The Client shall be bound to notify cessation of production; this shall also apply for planned cessation of production as soon as such is foreseeable.
- 15.2 Where contract products require servicing, the Client shall warrant that it is ready and in a position to repair and service the technical equipment delivered for a minimum period equivalent to the statutory depreciation period pursuant to the applicable depreciation table (AfA).

## 16. Liability and Contractual Penalty

- 16.1 The Client shall be liable for all losses and expenses incurred by or asserted against the Principal as a result of or in connection with performance of contract or by third parties, provided such losses or expenses are caused by the Client and where it is responsible for the loss or expense, at least through negligence. The Client shall also be liable to the same extent for all employees, agents or subcontractors it uses for the fulfilment of its contractual duties.
- 16.2 The Client shall hold the Principal harmless from all third party damage claims as set down in Point 16.1 of these GPC and shall pay compensation.
- 16.3 Claims for damage or reimbursement of expenses against the Principal (hereinafter: "damage claims"), irrespective of legal ground, in particular for breach of duty, either contractual or tortious, shall be excluded. This shall not apply where liability cannot be excluded, e.g. liability under the Product Liability Act (Produkthaftungsgesetz), in case of deliberate acts, gross negligence, injury to life, body or health or in case of breach of essen-

tial contract duty. Damage claims arising from breach of essential contract duty shall, however, be restricted to damage which is typical and foreseeable provided that the breach is not deliberate or the result of gross negligence. The restriction shall not apply with respect to liability for injury to life, body or health. The above rules shall not involve a reversal of the burden of proof to the detriment of the Client. Where a damage claim arises to the Client under this provision, this shall be subject to a limitation period of two years except in the case that statute provides a different mandatory limitation period. In the absence of any mandatory legal provision to the contrary, the limitation period shall begin with the end of the calendar year in which the event giving rise to the damage claim takes place. Claims of the Client against the Principal or Client rights other or more extensive than those expressly set down in these GCP, irrespective of their legal grounds, shall be excluded.

- 16.4 The Client shall take out appropriate insurance with respect to the liabilities and risks described above where the contract sum exceeds EUR 500,000.
- 16.5 Where the Client culpably fails to fulfil its contractual duties, because it is unable to complete works on the agreed date or cannot deliver the goods to the agreed delivery point, then, at the Principal's request, the Client shall immediately pay a contractual penalty in the amount of 0.3 % of the value of the affected works/goods for each working day of non-performance capped at a maximum of 5 %. The penalty shall be payable plus statutory VAT. The right of the Principal to assert further claims for damage incurred over and above that covered by the contractual penalty sum shall be unaffected. The contractual penalty payment shall, however, be taken into account in calculating the value of such claims. The Principal shall be entitled to offset any contractual penalty sum owed to it against the next payment instalment due.

## 17. Insurance

- 17.1 The Client must take out liability insurance in accordance with Point 16.4 of these GPC under terms which are customary for the sector (minimum coverage of EUR 1 million per loss event) and shall maintain this for the duration of contract, including guarantee and limitation periods for defect claims, and shall furnish evidence of the existence of such insurance when requested by the Principal.
- 17.2 The Client shall ensure that all payments which the Principal may demand under the terms of the insurance policy in connection with the Client's liability are paid directly to the Principal. To this end, the Principal may, at its discretion, demand the following from the Client :
- that the Principal be included as beneficiary on conclusion of the insurance policy or
  - That all insurance claims are to be assigned to the Principal.
- In this case, the Client shall issue the Principal with an irrevocable power of attorney so that it may demand payment on the insurance claim from the insurance companies directly.
- 17.3 Any excess agreed by the Client in the insurance policy shall be paid by the Client.
- 17.4 The conclusion of a policy of insurance by the Client shall neither limit its liability nor shall it found an instance of joint and several liability towards the Principal.

## 18. Termination of Contract

- 18.1 The Principal shall at all times be entitled to terminate the contract pursuant to § 649(1) German Civil Code (BGB). Termination shall be in writing and shall indicate the reason for termination. Should one of the contract parties terminate the contract, the Client shall clear the construction site without delay and hand

over to the Principal. The Client shall furnish the Principal with all documentation necessary for continuation of performance. Should, in such a case, the Client have a disputed claim for outstanding remuneration and where, for this reason, the Client has asserted a right of retention in close temporal connection with the termination, the Principal may avert the exercise of any such right of retention by provision of a collateral of its choice, the value of which it may determine pursuant to § 315 BGB.

In case of termination, the Principal shall be entitled to cease all payments with immediate effect

In derogation from the statutory consequences of rescission, the following shall apply:

- 18.2.1 Where the contract is rescinded on grounds for which the Client is responsible, the Principal shall remunerate the Client for services rendered in accordance with contract and which are of use to the Principal up to the date of service of notice of termination. Remuneration shall be on the basis of agreed prices for part performance. The right to assert claims for damages by the Principal shall remain unaffected.

The Client shall be responsible for the following grounds of termination:

- The Principal expressly request the Client to perform and sets a suitable grace period for performance and the Client fails to discharge its duty within the grace period.
- The Client materially contravenes official provisions or guidelines on pain of having to pay fines or penalty charges in connection with the making of deliveries or rendering of services.
- The Client refuses to discharge one or more contractual duties.
- It can be proved that the Client or an agent acting at its best attempted to poach the Principal's staff.
- The Client infringes Point 12 of these GPC.
- The composition of the Client company shareholders changes significantly such as to affect the majority relationship or the Client company stands before imminent dissolution.
- The Client continues to breach the duties set down in Point 19 of these GPC after issue of warning notice.

- 18.2.2 Should the Principal terminate the contract on grounds for which the Client is not responsible, the Client shall be entitled to demand the agreed remuneration; it must, however, permit a deduction equivalent to the amount saved as a result of the termination of contract or to the amount that it earns or maliciously omits to earn by otherwise applying its labour.

- 18.2.3 The Principal shall be entitled to terminate the contract where the Client ceases payments to its creditors or where an application for insolvency or for a comparable statutory procedure has been properly submitted or such a procedure has been opened or rejected for lack of assets. The Principal shall remunerate the Client for services rendered on a pro rata basis. The Principal shall be entitled to demand damages from the Client for non-performance of remaining duties.

- 18.3 The Principal shall at all times be entitled to rescind the order for delivery (§ 433 BGB) up to the point of handover where, as a result of decisions taken by state authorities, the Principal has no further interest in the performance of duties owed by the Client. The Principal shall also be able to rescind the contract where an application for insolvency or for a comparable statutory procedure concerning the Client's assets has been properly submitted or such a procedure has been opened or rejected for lack of assets. In case of rescission by the Principal on grounds indicated in this Point, the provisions set down above in Points 18.2.1 to 18.2.3 shall apply mutatis mutandis with respect to the Client's

claim for remuneration. The Principal shall acquire title to partial deliveries of goods for which remuneration is paid.

### **19. Ethics and Sustainable Development**

19.1 The Client undertakes to comply with duties on sustainable development and community responsibility listed on the Principal's website under <http://www.gdfsuez.com/en/group/ethics-and-compliance/ethics-and-compliance/>

19.2 The Client shall secure undertakings from its suppliers and subcontractors, in particular and without restriction, that they will comply with the following:

- No use of works produced by children, slaves or prisoners or which are linked with another form of forced labour;
- No conclusion of employment contracts involving abuse or corruption;
- Avoidance of every form of discrimination within the company or against subcontractors.

The contract party further undertakes to encourage its suppliers and subcontractors to use resources sparingly in their product design, on production as well as in respect to use and disposal or re-use of goods.

19.3 At the request of the Principal, the Client shall immediately provide a report, free of charge, on compliance with these duties within its organisation and shall further provide the Principal with all (additional) information requested in this regard. Where the contract runs over several years, the Principal shall be entitled to demand that the Client regularly updates this information.

19.4 On breach of the duties listed in Points 19.2 and 19.3 of these GPC, the Principal may require the Client to take appropriate remedial action within a reasonable period of time.

### **20. Compliance with Minimum Wage legislation**

20.1 The Client warrants that it pay its employees at least the statutory minimum wage.

20.2 The Client shall provide proof of this to the Principal at the beginning of each contractual relationship and from then on at regular yearly intervals without specific request to do so.

20.3 Insofar as the Client for its part use subcontractors, it shall ensure that these also comply with Minimum Wage legislation and shall hold the Principal harmless in respect of any liability for breach in this regard. All other conditions for the use of subcontractors shall remain unaffected.

20.4 Insofar as the Client or its subcontractors infringe the provisions of Minimum Wage legislation, the Principal shall be entitled to issue termination without notice without prior warning.

### **21. Publication and Advertising**

An evaluation or disclosure of business relationships with the Principal in publications or for the purpose of advertising shall only be permitted with express and prior written approval from the Principal.

### **22. Shipment Abroad**

22.1 The Client is aware that transportation of documents and property of all kinds in many cases requires authorisation, e.g. under the German Foreign Trade and Payments Act (Aussenwirtschaftsgesetz, AWG). The Client shall be responsible for ensuring that, in those cases where its own documents or property or the Principal's documents or property are shipped abroad, an assessment of whether authorisation is required is made and – where necessary – all necessary licences are procured and all applicable legal requirements are fulfilled.

22.2 In case of infringement of these provisions, the Principal shall reserve the right to assert compensation claims for any damage incurred.

### **23. Travel Costs**

Travel and accommodation costs as well as travel times shall only be reimbursed by the Principal where this has previously been agreed in writing.

### **24. Miscellaneous**

24.1 The language of contract shall be German. This contract shall be governed by the laws of the Federal Republic of Germany.

24.2 Where the Client is domiciled outside Germany, the laws of the Federal Republic of Germany shall apply, excluding the provisions on the conflict of laws. The UN Convention on Contracts for the International Sale of Goods from 11.04.1980 shall not apply. Customary clauses shall be construed in accordance with the applicable Incoterms – ICC, Paris.

24.3 Where the Client is a merchant as defined by the German Commercial Code (HGB), is a legal entity under public law or a special fund under public law, the place of business of the Principal shall be the exclusive place of jurisdiction for any and all direct or indirect dispute arising from the contract relationship. In addition, the Principal shall be entitled to issue claims before the competent court at the place of business of the Client.

24.4 Subject to the exceptions set down in Points 3.3, 3.4, 3.5 of these GPC, e-mails shall not be sufficient to satisfy the requirement of writing as set down by these GPC or individual contracts concluded on the basis of these GPC. Amendments and supplements to these GPC must be made in writing for their validity. This shall also apply to the requirement for writing itself.

24.5 Should individual provisions of these conditions be or become invalid or unenforceable, the contract as a whole and remaining provisions shall remain in force. The contract parties shall be bound to replace the invalid/unenforceable provisions from the beginning of their invalidity/unenforceability, taking into account the interests of both parties, with provisions of equivalent economic effect. The same shall apply mutatis mutandis for any lacunae.

### **25. Directive Delivery of Technical Documentation**

The Directive "Delivery of Technical Documentation" in the currently valid version shall apply. This can be inspected by the Client on the Principal's internet site at any time.

## Chapter II: Delivery of Goods

### 26. Scope

The provisions of Chapter II shall apply, together with the provisions of the Chapter I of these GCP, for all orders and invitations to tender of the Principal in which the Principal appears as issuer of the invitation to tender or as purchaser and where these involve the delivery of goods.

### 27. Time of Delivery and Performance

- 27.1 For deliveries, the "Incoterms" published by the International Chamber of Commerce shall apply in their current version.
- 27.2 Goods shall be delivered duty paid (DDP) and punctually on the agreed date or within the agreed window for delivery and the place of delivery. With respect to the delivery of goods, the Client shall have regard for local and national holidays affecting the Principal.
- 27.3 The dates for delivery and performance indicated in the order shall be binding. The Client shall be bound to notify the Principal immediately and in writing with respect to any breach of its contractual duties, indicating the circumstances of the breach, as soon as it is foreseeable that it will not be able to fulfil its contractual duties or where completion within the original performance period is improbable. The Client shall make suggestions to the Principal as to how any delay can be avoided or reduced. This shall not affect the Client falling into default.
- 27.4 In urgent cases and where, after consultation with the Client, the Client declared that it is not in a position to perform its contractual duties in accordance with the contract, the Principal shall be entitled to commission the services of a third party, for the account of the Client, in order to avoid or reduce the length of any delay. The Client shall not be relieved of its contractual duties as a result.
- 27.5 The Principal shall only be able to rely on the non-delivery of necessary documents to be delivered by the Client where the Client has failed to deliver these documents within a reasonable period following prior written request.
- 27.6 Should the Principal be impaired for operational reasons in accepting products or services offered, it shall be entitled to request that the Client postpone the date of delivery. In this case, the Client shall store the goods at a secure location, properly packaged and clearly marked as delivery to the Principal. Title to these goods shall be transferred to the Principal upon the goods, clearly marked, being placed in storage. All goods shall be insured and all reasonable precaution shall be taken to prevent deterioration in quality. The Client may demand a fee, the level of which is to be fixed in writing, in order to cover all costs provably incurred in this respect. In this case, the Principal shall not be in default.
- 27.7 At the request of the Principal – for instance for operational reasons – the Client shall, where necessary, interrupt or temporarily or permanently cease all works. In this case, the parties shall meet and discuss resulting financial and other consequenc-

es. The statutory rights of the Client arising to it as a result of creditor default shall remain unaffected.

- 27.8 Where it is customary to supply goods with minimum durability date or filling date, the delivery must not be made more than 6 months after the date of manufacture. The time between delivery date and the minimum durability date must be at least 75% of total shelf life.

### 28. Packaging and Dispatch

- 28.1 In the absence of any express provision by the Principal for transport, the cheapest transport alternative shall be chosen. Deliveries shall be packaged in such a way that damage through the course of transport is avoided.
- 28.2 The Client must include a clearly visible packing slip, delivery note or copy of invoice with the goods to be delivered which must clearly indicate the name and address of the supplier, order number, net weight, country of origin, the invoice value of the consignment as well as the contract partner's VAT identification number, the HS number (harmonised commodity description and coding system), the number of packs, means of transport and country of destination. It shall be the responsibility of the Client to secure a corresponding undertaking from its subcontractors.
- 28.3 Costs incurred as a result of misdirection of deliveries shall be borne by the Client where it assumes responsibility for transport or is responsible for the misdirection.
- 28.4 The Client shall only be entitled to make partial deliveries or render partial performance where written approval from the Principal has been issued.
- 28.5 Signing the delivery note shall not be construed as acknowledgement of the goods delivered as in accordance with contract.
- 28.6 The contract partner shall be liable for all damage as a result of or in connection with incorrect packaging, where and insofar as it is responsible for this.
- 28.7 The Client and its agents shall assume the shipment obligations under § 412 German Commercial Code (HGB) of the Principal and shall provide safe shipment. Load safety by the Client and its agents shall be in accordance with the statutory provisions, in particular the requirements of §§ 22, 23 German Highway Code. The Client shall indemnify the Principal here against any third party claim. The necessary tools for load safety such as belt, straps, wedges and other tools shall be provided by the Client. The Principal reserves the right to inspect proper load safety.

### 29. Notification of Defect

In case of the delivery of goods which the Principal must inspect pursuant to § 377 HGB, the deadline for inspection and notification of manifest defect shall be two weeks commencing with receipt of delivery. The notice period for latent defect shall be two weeks from discovery of defect.

## Chapter III: Provision of Construction Services as well as other Services and Works

### 30. Scope

The provisions of Chapter III of these GCP shall apply together with the provisions of Chapter I for all contractual relations between Principal and Client which concern the performance of services, fulfilment of orders or execution of works by the Client.

### 31. Execution, Environmental Protection, Security, Health & Safety and Quality

- 31.1 The Client shall adjust working time to accord with applicable rules at the place of performance. Contractors and employees of the Client shall be bound to use the Principal's time management system. Local rules shall be coordinated with the respective operational entity before the uptake of works.

- 31.2 The Client further undertakes to apply the company regulation "Our Life-Saving Rules" (see Annex 1) for instructing its own personnel and to require its application in contracts with the companies commissioned by it.
- 31.3 The Client and its subcontractors shall use qualified and trained personnel who have been scrutinised in accordance with the respective occupational health principles applicable for the task to be carried out. At the Principal's request, corresponding proof of qualification and assessment shall be provided. The Principal reserves the right to assess compliance with provisions for occupational health and safety by the Client and its subcontractors during works.
- 31.4 The Client undertakes not to subject anyone with whom it comes into contact in connection with its activities for the Principal to unlawful discrimination or harassment. The Client further undertakes to refer its employees to this duty and to secure relevant undertakings from them.
- 31.5 The Client shall be bound to comply with the applicable local code of conduct in case of emergency as it is made known to it.
- 31.6 In case of reasonable doubt with respect to the necessary experience or qualifications of the Client's personnel or in case of non-compliance or well-founded and provable suspicion of imminent breach of the provisions referred to in Point 6.1 of these GPC or of statutory provisions essential for performance of contract, in particular provisions on occupational health and safety, other safety and environmental protection provisions, the Principal may:
- ban all affected persons from entering the site with immediate effect or, where access is necessary for compelling, technical reasons, to allow access only when accompanied by a person appointed by the Principal;
  - demand that works are ceased with immediate effect;
  - demand that certain of the Client's personnel are dismissed. The Client shall in such a case be bound to secure a qualified replacement. Dates and deadlines agreed shall remain unaffected by this. Dismissal of personnel by the Client shall require prior written approval from the Principal. All additional costs associated with this shall be borne by the Client.
- The right to terminate the contract pursuant to Point 18 of these GPC shall remain unaffected.
- 31.7 At the request of the Principal, the Client shall provide regular information on progress and shall participate in meetings with the Principal to this end at no additional cost.
- 31.8 The Principal shall only pay for additional work where this is commissioned in text form. Corresponding offers shall be forwarded to the Principal in good time before uptake of the additional work. The offer shall include a clear and complete calculation of material and labour costs and on all other necessary cost heads. Where the additional work has consequences for the agreed completion date, these shall be included in the offer. The parties shall then begin immediate negotiations to determine the possibility of postponing delivery dates and the consequences of such a postponement on any agreed contract penalty for delayed completion and to discuss all further consequences on the contract.
- 31.9 The Principal may insist that the contract partner's personnel and all its suppliers are at all times able to identify themselves.
- 31.10 The Client warrants that the identity of its employees and suppliers has been assessed in accordance with statutory provisions and all necessary work permits have been issued, professional qualifications have been checked and the necessary confidentiality agreements have been signed.
- 31.11 The Client's personnel shall carry out all works independently and shall decide on the specific means by which contractual duties

are discharged. All instructions or directives from the Principal to the Client in connection with the contract shall only serve the purpose of effective discharge of contractual duties and shall not prescribe a particular means of performance, which shall be at the sole discretion of the Client.

- 31.12 The Principal shall record all accidents occurring either at work or on the way to or from work suffered by its own staff and for external staff working for it. The keeping of such data shall serve to improve work safety.
- 31.13 Where an employee of the Client or of one of its subcontractors has an accident on the way to or from the place of performance (work travel accident) or at the place of performance during the course of its agreed activities (work accident), the Client shall immediately notify the Principal's safety steward of this and of all further circumstances surrounding the accident in text form. This shall include, in particular, all incidents which have caused or could cause injury or damage to property, personal health or environment. Notification of accident shall not relieve the Client of any existing statutory duty to report, in particular as against trade associations.
- 31.14 The Client shall cooperate in all investigations into accidents and, where necessary, in notification of these to competent authorities.
- 31.15 The Client shall compile a Health and Safety Plan for construction projects in which all project-relevant safety aspects are described. Depending on the scope of the construction project, the Principal shall set out what parameters must be included in the Health and Safety Plan.

### 32. Occupational Accidents

- 32.1 The Client shall be bound to notify every occupational accident to the Principal without delay. This shall apply irrespective of whether the occupational accident involves time off work or not.
- 32.2 In case of any accident which must be notified to the trade association, the Client shall be bound to furnish the Principal with a copy of such notification.
- 32.3 In case of activity on construction sites, the Client further undertakes to provide the Principal with a comprehensive report on the safety of the construction site. To this end, the Client shall provide the Principal with the following information:
- a monthly breakdown of the working time of each of the Client's employees as well as of its subcontractors working on the construction site;
  - the number of accidents which resulted in at least 24 hours inability to work immediately upon the information becoming available;
  - the number of sickness days taken by the affected employees at the end of each month;

### 33. Assessment of Documentation

The Client shall check whether the schedule of services/ construction description as well as all drawings and other documentation provided by the Principal for the purpose of execution of works are complete and accurate. In case of any inaccuracies or omissions, the Client shall notify the Principal of the error or omission in the above documentation at the earliest possible opportunity in text form. All proposals for improvement or amendment put to the Principal by the Client shall become an integral part of contract upon approval by the Principal.

### 34. Access to and Driving on Work Premises / Construction Site

- 34.1 Access to and driving on work premises/ the construction site shall be notified in good time. Instructions issued by specialist personnel of the Principal shall be complied with. The Highway Code shall apply. The Principal and its staff shall be liable, irrespective of legal grounds, only for gross negligence and deliber-

ate acts and in case of injury to life, body or health, also for negligence simpliciter.

- 34.2 Where work is done on work premises/ the construction site, the corresponding construction site rules shall apply. On the uptake of works or on prior request, the Client's supervisory staff shall be furnished with a copy of the respective construction site rules including a schedule of appendices against signature. Knowledge of the contents of the construction site rules including schedule of appendices shall be confirmed by written declaration.

### **35. Cooperation with Third Parties**

- 35.1 The Client acknowledges that third parties commissioned by the Principal shall also be permitted to perform works at the place of work or surrounding area at the same time. All works which may impair works to be carried out by third parties shall be discussed prior to commencement with the Principal. Should the Principal coordinate works of the Client with works to be carried out by third parties, the Client shall not be relieved of its contractual duties as a result.
- 35.2 The right to terminate the contract for important reason as well as the right of the Client to terminate the contract pursuant to § 643 BGB shall remain unaffected.

### **36. Subcontractors**

- 36.1 The outsourcing of services by a subcontractor to another company shall be subject to prior written approval from the Principal. The Client shall impose all duties with respect to the tasks assumed on the subcontractor and shall ensure the duties owed to the Principal are complied with. The Client shall further notify its subcontractors of all health and safety-relevant changes within the project in good time.
- Where subcontractors are used, the Client and the subcontractors it uses shall discuss applicable health and safety regulations, in particular applicable regulations of the trade association as well as further rules and provisions stipulated by the Principal and shall document this in a short protocol. The Principal shall be furnished with a copy of this.
- 36.2 The offer shall include the subcontractors to be used as well as a list of services to be carried out by these.

- 36.3 The Client shall secure undertakings from the subcontractor in the subcontractor agreement that it shall provide the Client with all necessary and most recently dated certification from the tax authorities, the appropriate social security carrier and trade association as well as – where necessary – work permits for presentation to the Principal. The Client shall impose all duties with respect to the tasks assumed on the subcontractor and shall ensure these duties are discharged.
- 36.4 The Client shall not prevent the subcontractor from contracting with the Principal with respect to other deliveries/services. In particular, exclusivity agreements with third parties which impair the Principal or subcontractor in receiving deliveries or services necessary for it to complete such tasks shall be prohibited.
- 36.5 Should the Client employ subcontractors without prior written approval pursuant to Point 34.1 of these GCP or should the Client breach duties pursuant to Point 34.5 of these GCP, the Principal shall have the right to rescind the contract and/or assert a claim for damages.

### **37. Excavation Works**

- 37.1 Where the Client must carry out excavation works or other subterranean activities in connection with the agreed services, the Client shall, as party responsible for the excavation, determine the exact position of all underground cables and pipes (including any empty conduits which are buried below ground and are used for support or protection) which are used for the transport of solid, liquid or gaseous products, electricity or data. The party responsible for excavation works shall be the natural or legal person under whose responsibility, direction or supervision such excavation works are carried out. As part of its responsibility, the party responsible for excavation works shall issue all necessary notification to the relevant authorities and shall procure all necessary permits or authorisation.
- 37.2 In case of damage to cables or pipes within the scope of the above works, or in case of other damage – e.g. sinking – the Client shall be liable to make compensation for such damage where it is responsible for such. In this case, the Client shall hold the Principal harmless against all third party claims. ■