

## Standard Terms and Conditions for the Procurement of Plant, Machinery and Electrical Equipment of Open Grid Europe GmbH (Last revised September 2023)

### 1 Scope

- 1.1 Unless otherwise agreed, these Standard Terms and Conditions for the Procurement of Plant, Machinery and Electrical Equipment of Open Grid Europe GmbH (hereinafter referred to as the "Client") shall apply to all plant, machinery and electrical equipment offered for tender or ordered by the Client. They shall be deemed to have been accepted by the Bidder on submission of a bid in response to an invitation to tender and shall become an integral part of the Contract between the Client and the Contractor upon contract award.
- 1.2 The Bidder's or Contractor's standard terms and conditions shall not be binding on the Client, even where such terms and conditions are limited to only a few clauses.

### 2 Acceptance of Contract

- 2.1 The acceptance-of-contract form attached to the Contract awarded to the Contractor shall be signed and returned to the Client within a period of eight (8) days from the date of receipt of said form. Subject to the provisions of Section 2.3 hereinbelow, the Contract awarded shall not become effective until the Client has received said acceptance-of-contract form duly signed by the Contractor or by a person authorised to represent the Contractor.
- 2.2 The execution of said acceptance-of-contract form shall be deemed to be the Contractor's agreement with and acceptance of these Standard Terms and Conditions for the Procurement of Plant, Machinery and Electrical Equipment. No change or addition to the Contract shall become effective unless accepted and confirmed by the Client in writing. The Client shall in no case whatsoever be bound by any unilateral changes or additions made by the Contractor, even if the Client does not expressly object to any such unilateral changes or additions.
- 2.3 If the Contractor performs a Contract without returning said acceptance-of-contract form unchanged and duly signed by the Contractor within the period of eight (8) days referred to in Section 2.1 hereinabove, such performance shall be deemed to be the Contractor's agreement with and acceptance of these Standard Terms and Conditions for the Procurement of Plant, Machinery and Electrical Equipment. However, any non-objection to or the acceptance of the goods and/or services provided under the Contract shall not be deemed to imply that the Client accepts any changes or additions to said acceptance-of-contract form received after the period of eight (8) days referred to in Section 2.1 has elapsed, but the Contract shall rather be deemed to be concluded as submitted. Any changes or additions shall only be deemed to have been agreed after they have been expressly confirmed by the Client in writing.

### 3 Delivery Dates

- 3.1 Unless expressly agreed otherwise between the Contractor and the Client, the agreed date(s) for the delivery of goods and/or services shall be binding. The foregoing shall also apply with respect to dates and deadlines for the handover of documentation detailed in the service description/technical specification.
- 3.2 The Contractor shall notify the Client in written form within the meaning of Section 126b of the German Civil Code (BGB) without delay, if it realises that it will not be able to meet an agreed delivery date.
- 3.3 The Client reserves its rights provided by law or this Contract if the Contractor fails to meet an agreed delivery date.

### 4 Documentation

- 4.1 Prior to the commencement of the work, the Contractor shall submit to the Client all documents required for the fulfilment of the Contract for approval in accordance with the technical specification / service description.
- 4.2 Work on site may only commence after the Client has approved all submitted documents or if the Client has agreed to an earlier start of construction in writing.
- 4.3 Any commencement of work without the Client's approval shall be exclusively at the Contractor's risk.
- 4.4 Following completion of the work the Contractor shall draw up and submit to the Client free of charge revised documentation including as-builts and installation diagrams in accordance with the actual work performed. Such documentation shall contain all details which may be of importance for later modifications, supplementary work as well as maintenance.

- 4.5 If the Client only specifies a technical task in its invitation to tender, e.g. through a description of the required performance characteristics of a plant, machine or electrical equipment, (hereinafter referred to as "Functional Specification"), it shall be the Contractor's responsibility to draw up the detailed technical specification for the task.

### 5 Performance, Personal Performance Obligation, Subcontractors, Proof of Performance

- 5.1 Unless expressly agreed otherwise, the Contractor shall perform its services personally and within normal business hours.
- 5.2 The provision of services outside normal business hours (overtime, work on public holidays, at night, on Sundays, etc.) shall only be remunerated separately if this was agreed prior to the provision of services or has been subsequently approved and confirmed. However, the Contractor shall not be entitled to subsequent approval of its services.
- 5.3 If and to the extent that the Contractor wishes to retain third parties to perform the service or parts thereof, the Contractor shall obtain the Client's prior consent in written form. The foregoing shall apply mutatis mutandis if the Contractor wishes to replace a subcontractor or enlist further subcontractors. The Contractor shall ensure that the subcontractor will not, in turn, subcontract the services assigned to him without the Client's prior written consent.
- 5.4 If the Contractor assigns parts of the contract to subcontractors, such subcontractors shall be directly obligated by the Contractor in accordance with these Standard Terms and Conditions for the Procurement of Plant, Machinery and Electrical Equipment. The foregoing shall be without prejudice to the rights and obligations of the Contractor vis-à-vis the Client.
- 5.5 Where services are invoiced on the basis of measurements taken on site, the Contractor's performance records shall, unless otherwise agreed, be submitted daily in a form specified by the Client, stating the order number and the order item, for the purpose of checking and confirmation.

### 6 Site Manager

- 6.1 The Contractor shall name to the Client the person responsible and their deputy (hereinafter referred to as "**Site Manager**") who are entitled to receive instructions for the Contractor on the execution of the Contract in question. The Contractor shall obtain the written consent of the Client before replacing these persons. Such consent may only be refused for good cause.
- 6.2 A Site Manager shall be present on site every day from the beginning to the end of all work carried out on site. The Site Manager present on site must be available to the Client by telephone at all times.

### 7 Compliance with the Minimum Wage Act (MiLoG), the Posted Workers Act (AEntG), the Temporary Employment Act (AÜG) and Section IV of the Social Security Code (SGB IV); Exemption, Obligation to Provide Evidence of Identity

- 7.1 The Contractor undertakes to pay its employees the statutory minimum wage. The Contractor declares that it has not been excluded from the award of public contracts for failing to comply with the Minimum Wage Act (MiLoG).
- 7.2 The Contractor shall provide proof of payment of the minimum wage by the Contractor and, if applicable, by its subcontractors at any time upon the Client's request. The foregoing obligation shall apply during the period specified in Section 17 (1) of the Minimum Wage Act. Such proof shall be provided by submitting appropriate records of hours worked and the remuneration paid for such work. In addition, the Contractor undertakes to submit to the Client a clearance certificate ("Unbedenklichkeitsbescheinigung") from the collection agencies confirming payment of the total social security contributions as well as a certificate of exemption ("Freistellungsbescheinigung") issued by the tax office.

Moreover, the Contractor shall grant the Client access to the relevant (anonymised) payroll lists at any time upon request.

- 7.3 If any of the services are subcontracted, the Contractor shall also expressly obligate the subcontractor to comply with the provisions of the Posted Workers Act (AEntG), the statutory social security regulations (SGB IV), the Control of Unreported Employment Act (SchwarzArbG) and the Minimum Wage Act (MiLoG) and shall provide written evidence thereof to the Client upon request.

7.4 The Contractor undertakes to indemnify and hold harmless the Client on first written request from its liability for the minimum wage and all other claims including but not limited to legal defence costs in the event of a breach of the Minimum Wage Act (MiLoG) by the Contractor and/or by subcontractors employed by the Contractor. The foregoing shall apply mutatis mutandis in the event of a breach of the Posted Workers Act and/or the statutory social security regulations (SGB IV) and in the event that agencies are retained in accordance with the Temporary Employment Act (AÜG) by the Contractor and/or by subcontractors retained by the Contractor.

7.5 The Contractor shall ensure that employees covered by the scope of the Control of Unreported Employment Act (SchwarzArbG) carry suitable identification (identity card, passport or other document in lieu of a passport or identity card) and present such identification documents to the customs authorities on request. The Contractor as the respective employer shall notify each of its employees of the aforementioned obligation in a verifiable way and in writing, keep said notification for the duration of the services and present it on request in the event of an inspection.

## 8 Preparing / Securing the Site

8.1 Prior to commencing work, the Contractor shall obtain all necessary information about the exact location of any supply and disposal lines as well as other installations and facilities requiring protection. Upon request, the Client will assist the Contractor in obtaining such information in the area of the Client's pipeline routes and installations.

Third-party lines and systems shall be properly protected against damage and/or changes in position in close cooperation with the relevant line or system operator.

The Contractor shall inform the Client about the lines, installations and facilities to be protected as described in the two above paragraphs and shall take the necessary steps at its own expense to reliably prevent possible damage.

8.2 All employees performing or supervising ground-penetrating work must have been trained in accordance with DVGW GW 129. Proof of such training shall be submitted to the Client before the work commences.

8.3 The Contractor shall be responsible for ensuring public safety for all work carried out by the Contractor.

The Contractor shall undertake, at its own expense, all measures needed to secure the site (i.e. the building site and adjacent public and private areas used during project execution, including but not limited to access roads, footpaths, storage areas). In addition, the Contractor shall, at its own expense, take care of all measures required to enable, secure and maintain construction site traffic including but not limited to providing all necessary barriers, signposts and lighting on roads and private traffic areas.

Existing covers, handrails and other protective devices which are temporarily removed whilst the work is carried out must be properly restored after the work has been completed. For the duration of the removal, the Contractor shall take other appropriate measures to ensure that there is no risk of accident.

8.4 Electricity, water and compressed air or other energy source shall be provided by the Contractor for the performance of its services, unless expressly agreed otherwise in writing. If these supplies fail where provided by the Client, the Contractor cannot make any claims for compensation if the Client is not responsible for the failure.

The foregoing shall apply mutatis mutandis to the proper discharge of waste water including the keeping of records of disposal by the Contractor.

8.5 Any inconvenience or nuisance to any third parties (other companies, local residents, employees of the Client etc.) as well as damage to property shall be limited to the absolute minimum that is necessary and unavoidable.

8.6 Unless agreed otherwise, the Contractor shall ensure that the site is thoroughly secured around the clock against weather damage, fire, theft and unauthorised access.

8.7 The site shall be properly cleaned every day. In particular, all waste, dirt and debris shall be removed. Site installations shall be removed once all work has been fully completed, or if the work is interrupted for a longer period of time. If the work by the Contractor has an adverse impact on the site itself or its surroundings, the Contractor shall restore the site and surroundings to their original condition without delay.

## 9 Waste Disposal Obligation

The Contractor shall dispose of all waste arising from the contractual work properly and professionally at its own expense.

## 10 Other Obligations

10.1 The Contractor shall be responsible for the receipt, unloading, safe storage and assembly of the materials and/or components to be supplied for the work.

10.2 The Client's mere confirmation of services rendered outside normal working hours or additional hourly work recorded on a 'Proof of Services Rendered by Contractor' form shall not be construed as an acknowledgement of any obligation to pay if there is no agreement / approval in accordance with Section 5.2.

## 11 Changes to Scope of Services

11.1 The Client shall be entitled, for whatever reason, to request a change to the services to be provided under the Contract, e.g. if there is an increase/reduction in the scope of services required following changes to the technical specification/service description. The Contractor shall comply with such a request, if and to the extent that it is not unreasonable.

Deviations from the services to be rendered under this Contract arising from the aforementioned changes to the services specification shall be recorded and documented by the Contractor in the respective as-builts and/or revision documents.

11.2 If the basis for the price of a contractually agreed service changes due to changes in the service description (e.g. increase or decrease in quantities) or if additional services are required, the Contractor shall specify any increase or decrease in costs ("Supplementary Offer").

The Supplementary Offer shall show all expenses for the Contractor's own services in a detailed calculation, and the services shall be priced using the respective cost / billing rates as well as the relevant markups for overheads, risk and profit. If third-party services are quoted, the Contractor shall provide evidence of, and include in its bid, the costs incurred. The Contractor is permitted to charge a reasonable handling fee which is customary in the industry. Further surcharges on third-party services, however, are not permitted.

The Client shall be entitled to reject Supplementary Offers which do not contain the minimum information and minimum documentation required, and may demand that a verifiable Supplementary Offer be submitted.

11.3 The Client and Contractor shall agree on the respective Supplementary Offer before work commences. Even if, in individual cases, it is not possible to reach a final agreement on the costs for supplementary services prior to the conclusion of a Contract because the Client and the Contractor cannot agree on the amount and/or who should bear the costs in a given situation, the Contractor shall perform the services if the Client requests the Contractor to do so in writing.

## 12 Tests and Inspections

12.1 The Client shall be entitled to inspect or have inspected all materials and components during manufacturing and to conduct or have conducted any necessary tests and inspections on the supplies and/or services provided by the Contractor and its subcontractors and vendors.

12.2 Upon the Client's request, the Contractor shall prove in an appropriate manner that the materials and components have the contractually agreed properties and quality. All services provided by the Contractor in connection with such proof shall be considered secondary services which are free of charge.

12.3 The Client shall be informed in good time of any tests planned by the Contractor. The Client reserves the right to attend such tests.

12.4 The tests and inspections referred to under Sections 12.1 to 12.3 do not involve acceptance of the goods or services provided under the Contract and shall have no effect whatsoever on the Contractor's warranty obligations.

12.5 The Contractor shall bear any and all costs resulting from Client personnel having to attend repeat tests or inspections because the original tests or inspections revealed defects in the contractual supplies and/or services. The foregoing shall include tests and inspections in preparation for provisional or final acceptance.

## 13 Prior Testing

Before final acceptance testing, the Contractor shall perform a full and complete operational test of the plant, machinery and/or electrical equipment to ensure perfect functioning and the absence of defects, or have such a test performed. The Contractor shall provide the necessary staff and equipment for such test at its own expense. The results shall be recorded in a test report.

## 14 Completion and Final Acceptance

14.1 After completion of the entire plant, machinery and/or electrical equipment in accordance with the agreed scopes of supplies and

services, the remedying of any defects discovered during testing in accordance with Sections 12 and/or 13 and handover of a complete set of documentation in accordance with Section 4.4, joint final acceptance testing shall take place. The Contractor shall notify the Client in writing of the date for such final acceptance tests at least two weeks in advance.

Acceptance testing of autonomous and/or self-contained parts of the services rendered by the Contractor shall only be performed where further work progress would render testing of such parts and the detection of any defects impossible.

There shall be no fictitious or implied acceptance, which is expressly excluded. The foregoing shall apply even if the work (goods supplied and/or services performed) is put into use before acceptance.

- 14.2 The result of the acceptance test shall be recorded in a test report to be signed by the Contractor and the Client. Any defects detected or any remaining work still to be completed shall be listed along with an appropriate deadline for removal or execution. The prorated payment due for deliveries/services which are either defective or outstanding shall be withheld until the defects have been remedied or the remaining work has been carried out. The foregoing shall be without prejudice to the option to withhold a higher amount as permitted by law, particularly pursuant to Section 641 (3) of the German civil Code (BGB).
- 14.3 If acceptance testing shows that the service is essentially free of defects, the Client shall sign the acceptance test report to confirm final acceptance with effect from the date of said tests. Final acceptance shall mark the start of the warranty period.
- 14.4 If substantial defects are discovered during acceptance testing, no final acceptance certificate will be issued, and a second date for acceptance testing shall be agreed, by which date all defects shall have been remedied.

#### 15 Preliminary takeover instead of acceptance

- 15.1 Preliminary takeover of the plant, machinery and/or electrical equipment by, and the transfer of risks to, the Client may take place instead of acceptance if all of the following prerequisites are met:
- The supplies and/or services have been provided in full and in accordance with the Contract. There are no defects preventing operation.
  - The Contractor has indicated that the supplies and/or services are ready for acceptance.
  - Acceptance is not possible for the Client because the necessary up-front inspections or acceptance tests cannot be carried out.
- 15.2 Preliminary takeover shall not affect the Contractor's obligation to ensure compliance with the contractually agreed performance characteristics (specified acceptance criteria).
- 15.3 The Contractor shall provide proof of compliance with the agreed performance characteristics within twelve (12) months after preliminary takeover at any time once the Client has created the appropriate preconditions for this purpose, without any additional remuneration. Acceptance is then carried out as described in Section 14.
- 15.4 Preliminary takeover will be declared unilaterally by the Client. The date of the Client's written declaration of preliminary takeover shall only be deemed to mark the start of the warranty period if the aforementioned proof of compliance with the contractually agreed performance characteristics has been provided.

If the contractually agreed performance characteristics are not met during a subsequent inspection, the Contractor shall immediately carry out the necessary corrective work on the systems, machinery and/or electrical equipment or parts thereof. Thereafter, a new acceptance test shall be carried out in accordance with Section 14.

#### 16 Rescission from Contract / Damages Prior to Transfer of Risks

- 16.1 If it becomes evident during the term of the Contract that the Contractor will not complete the contractual services in time or in the contractually agreed quality, the Client may without further notice rescind the Contract and/or, if and to the extent that the Contractor is to blame, demand damages as compensation.
- 16.2 In the event of rescission, the Contractor shall indemnify and hold the Client harmless from and against any related claims for damages as long as the Client is not responsible therefor, and reimburse to the Client the costs resulting from such a rescission.
- 16.3 If the Client exercises its right to terminate the Contract extraordinarily as provided for in Section 21.3, it shall be entitled to have the unfinished part of the service performed by a third party after termination of the Contract. Any additional costs arising therefrom shall be borne by the Contractor. The Client expressly reserves claims for damages on account of any further damage.

#### 17 Warranty

- 17.1 Claims for defects shall be governed by the statutory provisions, taking into account the following provisions.
- 17.2 The Contractor shall at its own expense remedy any defects in the goods delivered or services performed under the Contract either by proper repair or replacement as requested by the Client promptly within the reasonable period specified in the notice of defect issued by the Client (subsequent performance by Contractor).
- 17.3 The right to have notified defects remedied shall become statute-barred after two (2) years, calculated from receipt of the written request, but not before expiry of the statutory warranty period or the warranty period agreed in deviation therefrom.

#### 18 Electronic Invoicing and Payment, Site Measurements and Settlement

- 18.1 For each purchase order, the Contractor shall issue a separate electronic invoice after delivery or performance of the service, stating the order date, the order number and the order item. The invoice shall not be enclosed with or attached to the delivery. Invoices shall be sent as an e-mail with all verifiable attachments as one single pdf file to rechnung@oge.net. Each invoice shall be sent with a separate e-mail. It is not possible to process several invoices attached to one e-mail.

Payments shall be made net cash within thirty (30) days from the date of delivery and/or acceptance of the works or services performed and proper receipt of the invoice.

- 18.2 All invoices shall show net prices, with value-added tax shown separately.
- 18.3 Any necessary measurements shall be made jointly by the Contractor and the Client and shall be recorded in writing.
- 18.4 Parts of individual services which will no longer be visible or accessible at the time of acceptance shall be inspected jointly by the Contractor and the Client after completion. The Contractor shall notify the Client as soon as such partial services have been completed. The Contractor shall record the results of such inspections in writing. Such inspections and written records do not have the character of partial acceptance or acceptance.
- 18.5 If, due to a fault of the Contractor, a measurement has not been recorded jointly in accordance with Section 18.3 above, the Client shall be entitled to take the necessary measures to check the invoiced services at the Contractor's expense.
- 18.6 The Client's participation in the process of determining the scope of services shall not be deemed to be a recognition or acceptance of such services. The originals of the measurement sheets, weighing notes and similar billing documents shall be handed over to the Client, and the copies thereof shall be handed over to the Contractor.
- 18.7 Amounts withheld in accordance with Section 14.2 shall be paid after all defects and/or outstanding work recorded in the acceptance report have been remedied and/or completed and the Client has issued a written confirmation that the defects have been remedied and/or the outstanding work has been completed.
- 18.8 Invoices for any instalments agreed shall be accompanied by verifiable documentation.

#### 19 Proprietary Rights / Indemnification

The Contractor shall be liable for any claims made by third parties due to the infringement of their patents, trademarks, patterns/designs and other proprietary rights caused by the Contractor's deliveries and services and shall indemnify and hold the Client harmless from and against any such claims, provided that the Client is not to blame for the assertion of such claims.

#### 20 Insurance

- 20.1 The Contractor shall maintain an appropriate liability insurance policy at its own expense. Unless otherwise provided in the Contract, the insured sum shall be at least five (5) million euro per event and shall be available twice a year. The amount of the sums insured shall not limit any further claims for damages on the part of the Client.
- 20.2 Insurance cover shall commence in good time before the start of the work and shall only end after the warranty period pursuant to Section 17 has expired. The Contractor shall provide proof to the Client of the existence of insurance cover prior to the start of its service hereunder, and the main terms and conditions of the insurance shall not be reduced or prematurely terminated before the due end of cover as stipulated hereinabove without the prior written consent of the Client. If proof of insurance cannot be provided, the Client shall be entitled to request that the Contractor take out and provide proof of insurance within a reasonable period of time. If

the Contractor fails to do so, the Client shall be entitled to rescind the Contract or demand a reduction in price.

- 20.3 The Client shall take out a contractors' all-risks (CAR) and/or an erection all-risks (EAR) insurance for the supplies and services to be provided by the Contractor. Upon request, the Contractor shall receive information on the existence and scope of cover of the insurance as applicable in individual cases. In the event of a claim, any deductibles shall be borne by the Contractor.

## 21 Termination

- 21.1 The Client shall have the right to terminate the Contract with due notice at any time prior to the completion of the contractual services without giving any reasons.

- 21.2 In the event of such termination, the Client shall pay for the services already performed by the Contractor on the basis of the agreed contract prices. Furthermore, the Client shall, upon presentation of proof, reimburse any costs and expenses which the Contractor has already incurred in the belief that the Contract would continue to exist for services it will no longer be able to render as a result of the Client's termination of the Contract.

Any further claims, including but not limited to loss of profits, shall be excluded.

- 21.3 Should the Contractor fail to comply with the provisions of Section 7, the Client shall be entitled to terminate the contractual relationship without notice. The foregoing shall also apply in the event of a breach of the Contractor's obligations to provide evidence as agreed therein.
- 21.4 The foregoing shall be without prejudice to the right of both parties to terminate the contract for good cause.

## 22 Liquidated Damages for Cartel Damage

The Contractor shall be obliged to offer the agreed service only at prices and terms/conditions which are not subject to any cartel agreement. If it has been established with binding effect by the cartel authorities that the Contractor was involved in a cartel agreement relating to the agreed service during the period of the purchase of said service, the Contractor shall pay the Client liquidated damages of five (5) per cent of the net amounts invoiced by the Contractor for the service in question plus interest of five (5) percentage points above the base rate, unless the Contractor can prove that no damage or less damage has been incurred. The Client shall be entitled to assert contractual or statutory claims for damages on account of a cartel agreement that go beyond the preceding provision.

## 23 Advertising / Press Releases

The Contractor may only make and/or publish articles, photographs, films and press releases relating to the subject matter of the Contract if the Client has given its prior written consent in each individual case.

## 24 Place of Performance

The place of performance for all goods supplied and/or services performed by the Contractor shall be the respective place of destination specified by the Client; for payments it shall be Essen/Germany.

## 25 Jurisdiction

The courts at Essen, Germany shall have exclusive jurisdiction in all questions arising from the Contract.

## 26 Applicable Law

The Contract between the Client and the Contractor shall exclusively be governed by and construed and interpreted in accordance with the laws of the Federal Republic of Germany, excluding the conflict of laws rules, even if the Contractor does not have its registered office in the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

## 27 Data Protection

The Client and the Contractor shall comply with applicable data protection rules and regulations, including but not limited to the General Data Protection Regulation (Regulation (EU) 2016/679; GDPR) and the Federal Data Protection Act ("Bundesdatenschutzgesetz").

If and to the extent that the object of the service is, either in whole or in part, the collection and processing of personal data on behalf of the Client, a separate agreement on contract data processing ("Vereinbarung zur Auftragsdatenverarbeitung" or "AVV") shall be concluded.

## 28 Code of Conduct for Suppliers

The Client has developed a Code of Conduct for Suppliers (<https://oge.net/en/we/purchasing-department/supplier-code-of-conduct>) based on the principles of the UN Global Compact and the United Nations Sustainable Development Goals. Compliance with the requirements of the Code of Conduct by the Contractor shall be an indispensable part of any business relationship with the Contractor.