

Standard Terms and Conditions for the Procurement of Plant, Machinery and Electrical Equipment of Open Grid Europe GmbH (Last revised December 2017)

1 Scope

- 1.1 The following 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, unless otherwise agreed, 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 individual 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 modification of or amendment to the Contract shall become effective unless accepted 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 modifications of or amendments 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 delivery date(s) 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 writing without delay, if it realises that it cannot meet one of the aforementioned delivery dates.
- 3.3 The Client reserves its rights provided by law or this Contract if the Contractor fails to meet the agreed delivery dates.

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 in duplicate for approval in accordance with the technical specifications / service description.
- 4.2 Work on site may only commence after the Client has approved all submitted documents or 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 must 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 produce the detailed technical specification for the task. Accordingly, in this case, the Contractor shall be liable for the complete preparation of the tendered deliveries and/or services in the above sense in accordance with the requirements defined in the functional specification.

5 Personal Performance Obligation, Subcontractors

Unless expressly agreed otherwise, the Contractor shall personally provide the service to be rendered under the Contract.

If and to the extent that the Contractor wishes to enlist third parties to perform the service or parts thereof, the Contractor shall obtain the prior written consent of the Client. The foregoing shall apply mutatis mutandis if the Contractor wishes to replace the approved subcontractor or enlist further subcontractors.

The Contractor shall ensure that the subcontractor does not in turn subcontract the services assigned to him without the Client's prior written consent.

6 Site Manager

- 6.1 The Contractor shall name to the Client the person responsible and his 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 must 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 must 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 and warrants that it will 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 At the request of the Client, the Contractor shall provide proof of payment of the minimum wage by the Contractor and, if necessary, by its subcontractors at any time. The foregoing obligation shall apply for the period specified in Section 17 (1) of the Minimum Wage Act. Said proof shall be provided by submitting appropriate records of hours worked and the remuneration paid for such hours. 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 at any time grant the Client access to the relevant (anonymised) payroll lists 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 demand 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 appointed 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, alternative identity document or replacement 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 and keep said notification for the duration of the services and to present it on request when there is an inspection.

8 Preparing / Securing the Site

8.1 Prior to commencing work, the Contractor shall obtain all necessary information about the 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 pipelines 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 soil moving work must be trained in accordance with DVGW GW 129. Proof of this shall be submitted to the Client before the work commences.

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

The Contractor shall undertake, at its own expense, all measures to secure the site (i.e. the building plot and adjacent public and private areas used during project execution, e.g. 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, 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 effect 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 Special rates for services performed outside normal working hours (overtime, hours worked on public/bank holidays and Sundays, night work etc.) shall only be paid if such rates have been agreed in the Contract and the performance of such services outside normal working

hours is agreed with the Client in writing before the services are rendered, or is subsequently agreed in writing and confirmed by the Client. The Contractor shall have no right to any subsequent approval.

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

11 Changes to Scope of Services

11.1 The Client shall be entitled, for whatever reason, to request a change to the services 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 inspection 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 additional costs or cost reduction ("**Supplementary Offer**").

The Client shall be entitled to reject Supplementary Offers which do not contain the minimum information and minimum documentation required and to 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 should not be possible prior to the conclusion of an Contract, to reach a final agreement on the costs for supplementary services, 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 request the Contractor to do so in writing.

12 Proof of Hours Worked

12.1 The Contractor shall only use the time sheets and forms provided by the Client for billing hours worked and/or materials used. Said time sheets and forms shall be obtained from the Client prior to the commencement of work.

12.2 Consumables, building materials, operating materials and auxiliary materials are already included in the order volume for which an agreed lump-sum is due and payable, unless the Client provide such materials free of charge as agreed between the parties hereto.

12.3 The Contractor shall be responsible for ensuring that the duly completed time sheets and forms are submitted to the Client for each contact on a daily basis for inspection and approval. These records shall state the Contract/order number and the relevant item number(s), in individual cases with details of the costs centre to which they are charged. One original shall be kept by the Client for its files.

12.4 The Contractor shall draw up regular reports on its daily work from the start of activities and hand them over to the Client without delay, as a rule within 2 weeks, unless otherwise agreed. The daily reports shall contain all information that may be relevant for the execution and billing of the Contract, including but not limited to information on staff deployment (number of employees, qualifications), services rendered, number and type of large equipment used, concreting times, interruptions including reasons, accidents and general conditions (weather, temperature, humidity).

12.5 For hourly work and special rates as provided for in Section 10.2, respectively, the following shall apply:

The working time shall commence and end at the place of work or at the collection point for personnel as agreed between the Contractor and the Client. Travelling times to and from work shall not be paid except for the travelling times of the driver responsible for personnel transportation, which shall be paid at the standard rate without any overtime supplement. Any other arrangements shall be subject to written agreement.

13 Tests and Inspections

13.1 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.

13.2 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.

- 13.3 The Client shall be informed in good time of any tests planned by the Contractor. The Client reserves the right to attend such tests.
- 13.4 The tests and inspections referred to under Sections 14.3 to 13.3 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.
- 13.5 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.

14 Plant 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 tests at its own expense. The results shall be recorded in a test report.

15 Completion and Final Acceptance

- 15.1 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 13 and/or 14 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 at least two weeks in advance.

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

Fictitious or implied acceptance shall be excluded. The foregoing shall also apply if the work is put into use before acceptance.

- 15.2 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 remaining work still to be completed shall be listed 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).
- 15.3 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.
- 15.4 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.

16 Preliminary takeover instead of acceptance

- 16.1 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 fulfilled:
- 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.
- 16.2 Preliminary takeover shall not affect the Contractor's obligation to fulfil the contractually agreed performance characteristics (specified acceptance criteria).
- 16.3 The Contractor shall provide proof of compliance with the agreed performance characteristics within 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 15.
- 16.4 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

forementioned 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 15.

17 Rescission from Contract / Damages Prior to Transfer of Risks

- 17.1 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 compensation.
- 17.2 If the Client rescinds the Contract, 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.
- 17.3 If the Client exercises its right to terminate the Contract extraordinarily as provided for in Section 22.3, 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. Claims for damages on account of any further damage are expressly reserved.

18 Warranty

- 18.1 The Contractor shall at its own expense remedy any defects in the goods delivered or services performed under the Contract either by repair or replacement as requested by the Client and/or any defects in the services performed under the Contract promptly within the reasonable period specified in the notice of defect issued by the Client (subsequent performance by Contractor).
- 18.2 If the Contractor unjustly refuses subsequent performance as requested by the Client, or if the Contractor's first attempt at subsequent performance fails, or if subsequent performance by the Contractor does not occur within the period specified by the Client for any other reason, the Client shall be entitled to rescind the Contract or demand a reduction in price - or, in the case of a contract for work and services, to remedy any such defect itself at the expense of the Contractor or have any such defect remedied by a third party at the expense of the Contractor and receive from the Contractor a reasonable advance payment for any such remedial action - and the Client shall further be entitled to claim and receive from the Contractor damages for and/or the reimbursement of any costs incurred in connection with a breach of duty by the Contractor under the Contract. The Client shall also have the aforementioned rights if the Contractor is granted more than one attempt at subsequent performance.
- 18.3 In the event of subsequent performance by the Contractor, the warranty period applicable under the Contract shall be extended by the period from the date on which the notice of defect was served until the date on which the defect was successfully remedied or the defective service was successfully re-performed and accepted.
- 18.4 The provisions hereinabove shall apply mutatis mutandis to all goods which have been repaired or delivered in replacement of defective goods and to all services re-performed by the Contractor under the Contract.
- 18.5 The period of limitation for warranty claims shall be as defined by applicable statutory provisions.
- 18.6 Defects occurring within 6 months after acceptance shall, in case of doubt, be deemed to be the consequence of services not in accordance with the Contract, unless the Contractor can provide proof to the contrary.
- 18.7 The provisions contained herein shall be without prejudice to the Client's statutory warranty rights.

19 Invoicing

- 19.1 All invoices shall show net prices. Value-added tax shall be shown separately.
- 19.2 Any necessary measurements shall be made jointly by the parties hereto and shall be recorded in writing.
- 19.3 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 these partial services have been completed. The Contractor shall record the results of these inspections in writing. Such inspections and written records do not have the character of partial acceptance or acceptance.

- 19.4 If, due to a fault of the Contractor, a measurement is not recorded jointly in accordance with Section 19.2 above, the Client shall be entitled to take the necessary measures to check the invoiced services at the Contractor's expense.
- 19.5 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.
- 19.6 Amounts withheld in accordance with Section 15.2 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.
- 19.7 Invoices for any instalments agreed shall be accompanied by verifiable documentation.
- Request for instalments, if agreed, shall be accompanied by verifiable calculations of quantities/dimensions and/or measurements pursuant to Section 19.2 above. Such calculations shall be based on the actual services performed. If no other written agreements have been made on the percentage of the total remuneration to be paid as an instalment, 90% of the amount invoiced and considered to be correct by the Client upon verification will be paid by the Client. Said amount shall be determined on the basis of the services actually performed and the calculations of quantities/dimensions and measurements made. The remainder including any amounts withheld shall be paid following the issuance of a final acceptance certificate and receipt by the Client of a verifiable final invoice.
- 19.8 The Contractor shall issue a separate invoice for each individual Contract for goods delivered or services completed. Every such invoice shall show the date and the number of the Contract as well as the item number(s) to which the invoice relates. Every invoice shall be submitted in writing or in text form in the sense of Section 126 b German Civil Code (BGB) (invoice format with Contractor's printed company details at the end of the invoice text). The invoice shall not accompany the actual delivery.
- Payments shall be made net cash within thirty (30) days from the date of delivery and/or acceptance of the services performed and receipt of the invoice.
- 20 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.
- 21. Insurance**
- 21.1 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 EUR 5 million 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.
- 21.2 Insurance cover shall commence in good time before the start of the work and shall only end after the warranty period pursuant to Section 18 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 and such cover 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 is entitled to rescind the Contract or demand a reduction in price.
- 21.3 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.
- 22 Termination**
- 22.1 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.
- 22.2 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.
- 22.3 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.
- 22.4 The foregoing shall be without prejudice to the right of both parties to terminate the contract for good cause.
- 23 Liability / Indemnification**
- 23.1 The Contractor shall be liable as provided by applicable law.
- 23.2 The liability of the Client, for whatever legal reason, shall be limited to wilful misconduct and gross negligence.
- The Client shall also be liable for any simple negligent breach of obligations that are essential to the fulfilment of, and to achieving the purpose of the Contract (so-called "cardinal obligations"). In this case, however, liability shall be limited to the foreseeable damage that is typical of a contract of this kind.
- The foregoing limitations of liability shall also apply mutatis mutandis to liability for the Client's servants, agent and employees.
- The foregoing limitations of liability shall not apply in the event of injury to life, limb and/or health, when assuming a guarantee or procurement risk, or in the event of fraudulent intent.
- Moreover, the foregoing limitations of liability shall not apply in cases in which liability is prescribed by law (e.g. Product Liability Act) or in other cases in which liability cannot be limited by any transactions.
- 23.3 The Contractor shall indemnify and hold harmless the Client from and against any claims for damages made by or awarded to third parties, which causally related to the work, if and to the extent that the Client is not responsible for the damage concerned.
- 23.4 Any additional expenditure due to missing, incorrect or incomplete documents within the meaning of Section 4 shall be borne by the Contractor. The relevant documents shall then be submitted at a later date.
- 24 Lump-sum Compensation for Damage Under Cartel Law**
- The Contractor shall be obliged to offer the agreed service only at prices and terms/conditions which are not determined by cartel agreements. If the anti-trust authorities produce a binding finding that the Contractor was involved in any cartel agreements relating to the agreed service during the period in which the service was provided, the Contractor shall pay the Client lump-sum compensation in the amount of 5% of the net amounts invoiced by the Contractor for the service in question plus interest at a rate of 5 percentage points above the base rate, unless the Contractor can prove that no damage or less damage has been caused. 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.
- 25 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.
- 26 Place of Performance**
- The place of performance for all supplies and/or services hereunder shall be the place designated by the Client in each case. The place of payment shall be Essen, Germany.
- 27 Jurisdiction**
- The courts at Essen, Germany shall have exclusive jurisdiction in all questions arising from the Contract.
- 28 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. The United Nations

Convention on Contracts for the International Sale of Goods (CISG)
shall not apply.