



## Standard Terms and Conditions of Purchase of Open Grid Europe GmbH (Version June 2023)

### 1 Scope

Unless otherwise agreed, these Standard Terms and Conditions of Purchase of Open Grid Europe GmbH (hereinafter referred to as the "Client") shall apply to all orders placed by the Client for supplies and/or services. They shall apply exclusively to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB).

The Client hereby expressly rejects the inclusion of any of the Contractor's standard terms and conditions.

### 2 Dates

Unless expressly agreed otherwise, the agreed delivery and performance dates shall be binding.

The Contractor undertakes to inform the Client immediately in written form within the meaning of Section 126b of the German Civil Code (BGB) if it realises that it will not be able to meet an agreed delivery or performance date.

### 3 Deliveries and Delivery Note

Each delivery shall be accompanied by a delivery note stating the order date, the order number and the order item.

Deliveries shall be made in compliance with the provisions and marking/labelling requirements prescribed by the client and/or by law.

If the Contractor fails to comply with the preceding sentence, the Client shall be entitled to refuse acceptance of the delivery if such failure leads to more than insignificant additional expenditure.

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

Unless expressly agreed otherwise, the Contractor shall perform its services personally and within normal business hours.

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 has been agreed prior to the provision of services or has been subsequently approved and confirmed. The Contractor shall not be entitled to subsequent approval of its services.

If and to the extent that the Contractor wishes to retain third parties to provide the service or parts thereof, the Contractor shall obtain the prior consent in written form from the Client. The foregoing shall apply mutatis mutandis if the Contractor wishes to replace any subcontractor or enlist further subcontractors. The Contractor shall ensure that the subcontractor does not, in turn, subcontract the services assigned to it unless the Client has given its prior consent in written form.

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 of Purchase. The foregoing shall be without prejudice to the rights and obligations of the Contractor vis-à-vis the Client.

Unless otherwise agreed, proof of performance by the Contractor shall be submitted in a form specified by the Client, on a daily basis, stating the order number and the order item, for the purpose of checking and confirmation.

### 5 Electronic Invoicing and Payment

For each purchase order, the Contractor shall issue a separate electronic invoice after delivery or performance of 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](mailto: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.

### 6 Warranty

Claims for defects shall be governed by the statutory provisions, taking into account the following provisions.

The Contractor shall, upon receipt of a notice of defect, remedy at its own expense any defects in the goods delivered or services performed at the Contractor's discretion either by repair or replacement within a reasonable period specified by the Contractor ("subsequent performance" by Contractor).

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.

### 7 Safety Requirements for Contractors

The "Safety Requirements for Contractors" as applicable at the time of performance (<https://oge.net/en/we/suppliers/suppliers-overview#Contract-documents>; "Safety Requirements for Contractors") shall be part of the order and shall be complied with by the Contractor as a minimum standard.

### 8 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.

### 9 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

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).

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 to the period specified in Section 17(1) of the MiLoG. Such proof shall be provided by submitting corresponding records of hours worked and remuneration paid for such work. In addition, the Contractor undertakes to submit to the Client a clearance certificate ("Unbedenklichkeitsbescheinigung") from the collection agencies confirming the payment of the total social security contributions as well as a certificate of exemption ("Freistellungsbescheinigung") issued by the tax authorities.

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

If any of the services to be performed are subcontracted, the Contractor shall also expressly oblige such subcontractor to comply with the provisions of the Posted Workers Act (AEntG), the statutory social security regulations (SGB IV), the Act to Combat Clandestine Employment (SchwarzArbG) and the Minimum Wage Act (MiLoG) and shall provide written evidence thereof to the Client upon request.

The Contractor undertakes to indemnify and hold harmless the Client upon first written request from its liability for the minimum wage and all other claims, including legal defence costs, in the event of a breach of the MiLoG by the Contractor and/or by subcontractors employed by the Contractor. The foregoing shall apply mutatis mutandis in the event of violations of the AEntG, 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.

If the Contractor is in breach of any of the rules and regulations set forth herein, the Client shall have a right to extraordinary termination of the contractual relationship without notice. The foregoing shall also apply in the event of a breach by the Contractor of the obligations to furnish appropriate proof as agreed hereunder.

If the Client exercises the aforementioned right to extraordinary termination, it shall be entitled to have a third party perform the part of the service not completed at the time of termination. Any additional costs incurred as a result shall be borne by the Contractor. Claims for damages on account of any further damage are expressly reserved.

### 10 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 interest 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.

#### **11 Place of Jurisdiction**

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

#### **12 Applicable Law**

The contractual relationship between the Contractor and the client shall be exclusively 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.

#### **13 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.

#### **14 Code of Conduct for Suppliers**

The Client has developed a Code of Conduct for Suppliers (<https://oge.net/en/we/suppliers/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.