

## Standard Terms and Conditions of Purchase of Open Grid Europe GmbH (Last revised December 2017)

- Important: Section 15 contains permission  
to process personal data ! -

### 1 Scope

Unless otherwise agreed, these Standard Terms and Conditions of Purchase of Open Grid Europe GmbH (hereinafter referred to as "Open Grid Europe") shall apply to each contract for the purchase of goods and/or services (hereinafter referred to as the "Contract") awarded by Open Grid Europe to the supplier and/or contractor (hereinafter referred to as the "Vendor") of the goods and/or services which are the subject of the Contract. Open Grid Europe herewith expressly rejects the inclusion of all or any of the Vendor's standard terms and conditions.

### 2 Acceptance of Contract

The 'acceptance-of-contract form' attached to the Contract awarded to the Vendor shall be signed and returned to Open Grid Europe within a period of eight (8) days from the date of receipt of said form. Subject to the provisions of paragraph 3 of this Section 2, the Contract awarded shall not become effective until Open Grid Europe has received said 'acceptance-of-contract form' duly signed by the Vendor or by a person authorised to represent the Vendor.

The execution of said 'acceptance-of-contract form' shall be deemed to be the Vendor's agreement with and acceptance of these Standard Terms and Conditions of Purchase. No modification of or amendment to the Contract shall become effective unless accepted by Open Grid Europe in writing. Open Grid Europe shall in no case whatsoever be bound by any unilateral changes or additions made by the Vendor, even if Open Grid Europe does not expressly object to such unilateral changes or additions.

If the Vendor performs a contract without returning the 'acceptance-of-contract form' unchanged and duly signed by the Vendor within the period of eight (8) days referred to in paragraph 1 of this Section 2, such performance shall be deemed to be the Vendor's agreement with and acceptance of these Standard Terms and Conditions of Purchase. However, any non-objection to or acceptance of the goods and/or services under the Contract shall not be deemed to imply that Open Grid Europe accepts any modifications of or amendments to said 'acceptance-of-contract form' received later than the period of eight (8) days referred to in paragraph 1 of this Section 2, but the Contract shall rather be deemed to be concluded in the form submitted. Any changes or additions shall only be deemed to have been agreed after they have been expressly confirmed by Open Grid Europe in writing.

### 3 Delivery Date(s)

Unless expressly otherwise agreed between the Vendor and Open Grid Europe, the agreed delivery date(s) shall be binding.

The Vendor shall notify Open Grid Europe in writing without delay, if it realises that it cannot meet the agreed delivery date(s).

Open Grid Europe reserves its rights under the contract and at law if the Vendor fails to meet the agreed delivery date(s).

### 4 Deliveries and Delivery Notes

Each delivery shall be accompanied by a delivery note carrying the date and number of the Contract as well as the item number(s) to which the delivery relates.

For all deliveries under the Contract, the Vendor shall observe the conditions and marking/labelling requirements specified by Open Grid Europe and/or stipulated by law. If the Vendor's failure to comply with the foregoing leads to significant additional expenditure, Open Grid Europe shall be entitled to reject the delivery.

The office hours of the Dorsten Logistics Centre are Mondays to Fridays 07:00 - 15:30. Deliveries to the Dorsten Logistics Centre must be made in such a way that the delivery can be processed until the close of business on the day of delivery. Open Grid Europe reserves the right to reject the delivery if it cannot be processed on the same day.

### 5 Personal Performance Obligation, Subcontractors

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

If and to the extent that the Vendor wishes to enlist third parties to perform the service or parts thereof, the Vendor shall obtain the prior written consent of Open Grid Europe. The foregoing shall apply mutatis

mutandis if the Vendor wishes to replace any contractor or enlist further subcontractors. The Vendor shall ensure that the subcontractor does not, in turn, subcontract the services assigned to him without Open Grid Europe's prior written consent.

### 6 Invoicing and Payment

For each Contract awarded by Open Grid Europe, the Vendor shall issue a separate invoice after delivery or performance of the service. 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 form with Vendor's printed company name at the bottom of the invoice text). The invoice shall not be enclosed with or attached to the 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.

### 7 Warranty

The Vendor shall at its own expense remedy any defects in the goods delivered or services performed under the Contract at Open Grid Europe's discretion either by repair or replacement within a reasonable period specified by Open Grid Europe ('subsequent performance' by Vendor).

If the Vendor unjustly refuses subsequent performance as requested by Open Grid Europe, or if the Vendor's first attempt at subsequent performance fails, or if subsequent performance by the Vendor does not occur for any other reason within the period specified by Open Grid Europe, then Open Grid Europe 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 Vendor or have any such defect remedied by a third party at the expense of the Vendor and receive from the Vendor a reasonable advance payment for any such remedial action - and Open Grid Europe shall further be entitled to claim and receive from the Vendor damages for and/or the reimbursement of any costs incurred in connection with a breach of duty by the Vendor under the Contract. Open Grid Europe shall also have the aforementioned rights if the Vendor is granted more than one attempt at subsequent performance.

In the event of subsequent performance by the Vendor, 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.

The provisions hereinabove shall apply mutatis mutandis to all goods which have been repaired or delivered in replacement of defective goods and/or to all services re-performed by the Vendor under the Contract.

The provisions contained herein shall be without prejudice to the statutory warranty rights of Open Grid Europe.

### 8 Liability

The Vendor shall be liable in accordance with applicable statutory provisions.

The liability of Open Grid Europe, on whatever legal grounds, shall be limited to wilful acts and gross negligence.

Open Grid Europe shall also be liable for slight negligence in its fulfilment of obligations which are of essence to the performance of the Contract and which ensure fulfilment of the purpose of the Contract. This liability shall be limited to the foreseeable damage typical of the Contract.

The foregoing limitations of liability shall also apply mutatis mutandis to the liability of Open Grid Europe's servants, agents 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.

**9 Change in Material Circumstances**

If any of the circumstances essential for awarding the Contract to the Vendor changes before the Contract has been fulfilled by the Vendor and if any such change is beyond the reasonable control of Open Grid Europe, Open Grid Europe shall be entitled to have the Contract performed by the Vendor at a reasonable date after the date agreed under the Contract or to rescind the Contract either in whole or in part.

**10 Place of Performance**

The place of performance for all supplies and/or services hereunder shall be the place designated by Open Grid Europe in each case. The place of payment shall be Essen, Germany.

**11 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 Vendor undertakes to pay its employees the statutory minimum wage. The Vendor declares that it has not been excluded from the award of public contracts for failing to comply with the Minimum Wage Act (MiLoG).

At the request of Open Grid Europe, the Vendor shall provide proof of payment of the minimum wage by the Vendor 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 work. In addition, the Vendor undertakes to submit to Open Grid Europe 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 Vendor shall at any time grant Open Grid Europe access to the relevant (anonymised) payroll lists on request.

If any of the services are subcontracted, the Vendor shall also expressly obligate the subcontractor to comply with the provisions of the Posted Workers Act (AEntG), the statutory social security regulations (SGB IV) and the Minimum Wage Act (MiLoG) and shall provide written evidence thereof to Open Grid Europe upon request.

The Vendor undertakes to indemnify and hold harmless Open Grid Europe on first written demand from its liability for the minimum wage and all other entitlements including but not limited to legal defence costs in the event of a breach of the Minimum Wage Act (MiLoG) by the Vendor and/or by subcontractors appointed by the Vendor. The foregoing shall apply mutatis mutandis in the event of a breach of the Posted Workers Act (AEntG) 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 Vendor and/or by subcontractors retained by the Vendor.

If the Vendor is in breach of any of the rules and regulations set forth herein, Open Grid Europe shall have a right to extraordinary termination of the contractual relationship without notice. The foregoing shall also apply in the event that the Vendor fails to comply with the obligation to furnish appropriate proof as agreed hereunder.

If Open Grid Europe 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 arising therefrom shall be borne by the Vendor. Claims for damages on account of any further damage are expressly reserved.

**12 Lump-sum Compensation for Damage Under Cartel Law**

The Vendor 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 find that the Vendor was involved in any cartel agreements relating to the agreed service during the period in which the service was provided, the Vendor shall pay Open Grid Europe lump-sum compensation in the amount of 5% of the net amounts invoiced by the Vendor for the service in question plus interest at a rate of 5 percentage points above the base rate, unless the Vendor can prove that no damage or less damage has been caused. Open Grid Europe shall be entitled to assert contractual or statutory claims for damages on account of a cartel agreement that go beyond the preceding provision.

**13 Jurisdiction**

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

**14 Applicable Law**

The Contract between Open Grid Europe and the Vendor shall exclusively be governed by and construed and interpreted in accordance with the laws of the Federal Republic of Germany, even if the Vendor 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.

**15 Data Processing**

If the Vendor is a natural person, the Vendor herewith grants Open Grid Europe permission to acquire and process the Vendor's personal data as required in connection with the general purchase activities of and contracts awarded by Open Grid Europe. In all other respects, the acquisition and processing of any such data shall be governed by applicable statutory provisions, including but not limited to the Federal Data Protection Act (Bundesdatenschutzgesetz, Sections 27 et seq.).

The data so acquired and processed in accordance with the Vendor's permission shall include, without limitation, the Vendor's particulars (name, address, telephone number, date and place of birth, occupation, company) and contract data (quantities ordered and delivered, volumes, costs, invoice data, payments, outstanding payments, secured claims with description of security).

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Date

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Signature of Vendor or Vendor's legal representative