

# General Conditions of Business

Position as at: July 2020



## 1. General Conditions of Sale, Supply and Payment of AGO GmbH Energie + Anlagen

- 1.1 The supply of all goods and services by the contractor shall be governed solely by the contract terms set out below.
- 1.2 The nature and scope of the goods and services supplied by the contractor and orderly execution of the order shall be determined by the following, in the order of priority as listed:
  - 1.2.1 the order confirmation from the contractor;
  - 1.2.2 the tender by the contractor;
  - 1.2.3 the following terms and conditions:
    - 1.2.4 where the contract is for the performance of services rather than the supply of goods, the "German Construction Contract Procedures, Part B and Part C" [Vergabe- und Vertragsordnung für Bauleistungen (VOB), Teil B und Teil C] as last amended at the time of formation of the contract;
    - 1.2.5 the provisions of the German Civil Code [Bürgerlichen Gesetzbuch, BGB] and the German Commercial Code [Handelsgesetzbuch, HGB].
- 1.3 No contractual terms of the client shall form part of this contract. This shall also apply even if the contractor has not expressly repudiated these, or has supplied the goods and services despite being aware of conflicting or divergent conditions on the part of the client.
- 1.4 These contractual conditions shall also apply to all future business with the client without any express reference to them being necessary.
- 1.5 These contractual terms and conditions shall also apply in full to any additional or supplementary orders.

## 2. Offers and formation of contract

- 2.1 Offers by the contractor shall not be binding unless expressly issued or confirmed as binding in writing by an authorised representative.
- 2.2 A contract shall be formed either when the client accepts the binding offer of the contractor within the specified period, or when the contractor confirms the written order from the client or executes it.
- 2.3 The client acknowledges that he shall also be represented by any persons he nominates to the contractor as contact persons, and that these persons shall also be authorised and empowered to conclude agreements, including oral agreements, to give instructions, and to order the performance of additional services. This shall also apply to hourly-paid work. Should the client wish not to be bound by declarations or instructions from persons he has nominated to the contractor as contact persons, he must declare this in writing to the contractor. This declaration shall then only be effective in the future.

## 3. Scope of services and supply

- 3.1 The nature and scope of supply of goods and services by the contractor shall be determined by the order confirmation from the contractor, or failing this by the offer from the contractor.
- 3.2 The contractor shall have the right, but not the obligation, to supply goods and services for consideration without an order from the client if such supply is or will be necessary for proper discharge of contractual obligations, and this is in the interests of the client.  
These shall be paid for separately.

## 4. Planning and design documents

- 4.1 The client shall at his own expense provide the contractor with all the calculations and plans necessary for performance by the contractor of the supply of goods and services under the contract, and any other necessary documents, before work is started. These documents must be marked with the client's release mark.

- 4.2 The client shall at his own expense obtain the authorisations and licences under private law and permissions under public law necessary for performance of the supply of goods and services under the contract.
- 4.3 The contractor shall only be required to point out to the client that the planning and design provided to him are incomplete or contain errors inasmuch as this is obvious to him. The contractor shall have the right to withhold the performance in question until incomplete aspects, errors or contradictions are rectified.
- 4.4 The client shall be solely responsible for the completeness and freedom from errors of the documents he provides to the contractor.
- 4.5 The client shall inform the contractor in writing, without this being specifically requested, of any factors to be taken into account when performing the supply of goods and services under the contract, in particular any statutory regulations, regulations imposed by authorities, or other regulations to be observed.
- 4.6 The client may not pass on, publish or duplicate the offers and documents handed to him by the contractor without the contractors' prior consent, nor may he use them for purposes other than the agreed contractual purposes.

## 5. Performance

- 5.1 The client shall ensure that the contractor is able to perform the supply of goods and services due under the contract without any legal or other impediment and without delay. He shall ensure unhindered access to the sites and provide free of charge all the aids and energy, and also electricity and water, necessary for performance of the supply of goods and services due under the contract.
- 5.2 The contractor shall have the right to engage subcontractors without the prior consent of the client.
- 5.3 The client shall be solely responsible for his information, instructions or deliveries. The contractor shall not be bound to check these, in particular in relation to whether they are unauthorised or unsuitable.
- 5.4 The contractor shall only be bound to examine preliminary work done by other companies for suitability for his own work inasmuch as these are accessible for examination by him without technical aids.
- 5.5 In the case of supply of goods, the client is bound to examine the goods without delay after delivery and notify the contractor of any defects. Apart from this, Section 377 HGB applies.

## 6. Remuneration / price

- 6.1 The remuneration/price shall be as specified in the order confirmation from the contractor, or in the absence of such, in the offer from the contractor. It shall only apply to the supply of goods and services expressly stated therein. If neither an order confirmation nor an offer from the contractor exist from which prices can be taken for certain goods and services, the contractor shall be paid at least the customary local price for the goods and services actually supplied.
- 6.2 All prices are net and free of any deductions, in other words without VAT, fees or other charges.
- 6.3 Price adjustments may occur, including without any written agreement, if:
  - 6.3.1 variable pricing has been agreed;
  - 6.3.2 the scope of supplies and services is increased due to instructions from the client (irrespective of the nature of the increase, e.g. extension of construction time, change in plans or the type of performance);
  - 6.3.3 the client demands the performance of additional work for which no provision has been made in the contract, in which case oral communication shall suffice;

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- 6.3.4 performance of the contract is changed because the information given to the contractor by the client did not correspond to the actual conditions (e.g. was incomplete or incorrect).
- 6.4 If performance is interrupted or impeded for reasons for which the contractor is not responsible, the contractor shall be reimbursed by the client for the additional costs thereby incurred.
- 6.5 The contractor shall also receive remuneration from the client for such supply of goods and services as are necessary for performance of the contract and correspond to the presumed intention of the client. The provisions of the German Civil Code regarding agency without authority (Section 677 et seq., German Civil Code) shall remain unaffected.
- 6.6 The contractor shall not be bound to give notice of additional remuneration before starting with the performance of the supply of goods and services. This shall also apply to hourly-paid work.
- 6.7 If changes in the construction design or other instructions of the client result in cancellation of part-performances by the contractor, this shall be deemed to be partial termination of the contract. The contractor shall be entitled to the agreed remuneration. However, he must allow cost savings resulting from the cancellation of the contract, or revenue earned from the alternative use of his labour force and business, or revenue which has omitted to earn in bad faith, to be set off against this (Section 649 German Civil Code).

## 7. Payments

- 7.1 Payment of the contractor's claims shall be due immediately after completion of performance in full of the supply of goods and services, without any deductions. The client shall be in default on his payment obligations if he does not pay within two weeks of receipt of the invoice. Payment shall be effected without using cash and at the risk and expense of the client.
- 7.2 Instalment payments shall be effected in the sum of the contractual supply of goods and services as proved, within one week of receipt of the invoice.
- 7.3 In the event of default in payment by the client, the contractor shall have the right to demand default interest in the amount of at least 9 percentage points above the base rate current at the time (Section 288(2), German Civil Code). The right to prove greater losses is reserved.
- 7.4 The contractor may allocate incoming payments against older mature claims and unpaid interest or costs.

## 8. Right of set-off and retention by the client

- 8.1 The client may only set off such counter-claims against remuneration and purchase price claims of the contractor as are unappealable, uncontested or acknowledged by the contractor. Any other setting off shall be excluded.
- 8.2 The client shall only be entitled to exercise his right of retention if his counter-claim is based on the same legal relationship, and the counter-claim is unappealable, uncontested or acknowledged by the contractor.

## 9. Retention of title

- 9.1 The goods supplied by the contractor shall remain his property until payment in full of all claims, including subsidiary claims, and until then shall remain subject to his unlimited right of disposition. This shall apply in commercial transactions until payment in full for all goods and services supplied and for any other claims of the contractor arising from the business relations with the client.
- 9.2 The client shall safeguard the goods free of charge over which the contractor has exercised a right of retention. He may neither pledge them nor transfer them as security.
- 9.3 In the event of seizure or other interventions by third parties, the client shall inform the contractor in writing without delay

and give him all the information and provide all the documents necessary for safeguarding the rights of the contractor.

- 9.4 If the goods supplied and manufactured by the contractor are fixtures on real property or are attached to, mixed or processed with other goods, the contractor shall always be deemed to be the manufacturer. If title of the contractor is extinguished as a consequence, it is hereby agreed that the contractor shall acquire joint title in the resulting goods. His co-ownership share shall be determined as the fraction represented by the invoice amount for the goods and services supplied by the contractor as a proportion of the value of the resulting goods. The co-ownership share of the contractor shall pass to the client upon payment in full for all goods and services supplied and any other claims of the contractor from the business relationship/ with the client.

- 9.5 If the goods owned or co-owned by the contractor are sold on, the client hereby assigns to the contractor as security the claims due to him arising from the selling on, in the sum of the claim in question.

## 10. Performance periods

- 10.1 Information on the beginning of performance or the period for performance and on the observance of interim periods or completion dates shall only represent binding contractual deadlines if they are designated as such by the client and expressly agreed in writing when the contract is awarded.
- 10.2 The contractor shall commence performance at the earliest when the client makes the property where the contract is to be performed available to him in such a way that he can perform the supply of goods and services due under the contract correctly in an orderly manner, without any legal or other impediment and without delay. In particular, all necessary approvals and permissions under public law must have been obtained, and all planning and design documents must be available. Furthermore, all major technical points must have been settled.
- 10.3 The performance deadline shall be extended as appropriate:
- 10.3.1 by circumstances which fall within the area of responsibility of the client, particularly if the contractor does not receive information or documents necessary for performance in good time;
- 10.3.2 by changes in the building design or other construction documents, or other instructions from the client;
- 10.3.3 if unforeseen events occur for which the contractor is not responsible, for example interruptions to business operations, strikes, lock-outs or similar events or circumstances over which the contractor has no influence;
- 10.3.4 if the client is in default of the duties incumbent upon him, in particular his duties to provide various items and facilities.

## 11. Conventional penalties

- 11.1 A conventional penalty can only be agreed as binding in writing when the contract is awarded.
- 11.2 The client must always reserve the right to charge the conventional penalty at the time of acceptance, failing which it may not be charged.

## 12. Transfer of risk

- 12.1 If partially- or fully-completed performance or goods already stored on the construction site are destroyed before acceptance by unavoidable circumstances for which the contractor is not responsible, he shall be reimbursed for the goods and services supplied and the costs already incurred by him.

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12.2 The client shall bear the risk before acceptance if performance by the contractor is interrupted for reasons for which the contractor is not responsible.

12.3 Risk shall also pass to the client for such partial performance as he has accepted, as described in Section 13 below, or in respect of which he is in default.

## 13. Acceptance in the case of contracts for services

13.1 The contractor may demand the acceptance of partial performance and acceptance of the entire performance after completion. This shall apply in particular to self-contained parts of the performance.

13.2 Conduct by the client from which approval of the goods and services supplied by the contractor may be implied shall be sufficient for acceptance.

13.3 The contractor may also demand formal partial acceptance or final acceptance. In this case a joint inspection visit shall take place, which shall be minuted in a document that the client shall sign.

13.4 Performance within the meaning of Section 12(5)(1) VOB/B shall be deemed to have been accepted when 12 working days have elapsed after notification in writing of completion of performance. If the client has started to use the performance or part thereof, acceptance shall be deemed under Section 12(5)(2) VOB/B to have taken place when 6 days have elapsed since the start of use. Early commissioning shall in this context also be deemed to be acceptance. Where parts of a construction project are used to continue the work, this shall not be deemed to be acceptance.

## 14. Liability for defects

14.1 The contractor shall be liable for proper execution of the supply of goods and services assumed by him. Information on the nature of individual items of performance and materials used shall not represent any agreement on the nature if this information has no effect on the use foreseen under the contract, or the usual use of the goods and services supplied by the contractor. The contractor shall not assume any guarantees. This shall also apply to any agreed nature.

14.2 Liability for, and rectification of, defects shall be governed by statutory provisions. Claims for defects in respect of contracts for services shall be subject to the statutory limitation period as provided in Sections 13(4)(1) and 13(4)(2) VOB/B. Contracts for the supply of goods shall be governed by Section 438 of the German Civil Code.

14.3 Defects becoming apparent after acceptance or handover shall be rectified by the contractor. If the contractor does not comply with the extension period set by the client, the client shall be entitled to have the defect rectified at his own initiative and demand compensation for the necessary expenditure if the contractor cannot legally refuse the subsequent performance. The contractor may refuse to carry out the subsequent performance if it is associated with disproportionate costs, is impossible, has failed twice, or is unreasonable for the client. In such cases, the client may reduce the remuneration without setting a time period.

14.4 The contractor shall not assume any liability for defects for damages and defects arising from natural wear and tear, wear during use, inadequate maintenance, incorrect or negligent treatment or operation, or excessive loadings.

14.5 The contractor shall not assume any liability for defects in the goods and services supplied by the client.

14.6 If while the contract is being performed, work performed by the contractor is acknowledged as defective and in breach of contract, the contractor undertakes to rectify this after notification by the client within a reasonable additional period to be set in writing.

14.7 The contractor shall only be liable for defects in his goods and services supplied due to previous defective performance by third parties in the event of wilful or grossly negligent breach of his duty to inspect.

## 15. Liability in other cases

15.1 The contractor shall be liable for wilful and grossly negligent misconduct. This limitation of liability shall not apply in the event of damage to life and limb or to health, assumption of a guarantee, liability under the Product Liability Act or any breach of fundamental conditions of the contract. Liability for breach of fundamental conditions of the contract shall however be limited to rectification of such damage as the contractor should have foreseen as a possible consequence at the time of formation of the contract and on the basis of circumstances recognisable to him (typical loss for the contract). Unless otherwise provided by the contract, the amount of our liability shall be limited to the sum of the net contract price.

15.2 All limitations of liability shall apply equally to agents and servants.

15.3 The above rules do not entail any change in the burden of proof to the detriment of the client.

## 16. Legal venue and applicable law

16.1 The legal venue for merchants, legal persons under public law or specially-funded bodies under public law shall be the registered office of the contractor. The latter shall however have the right to raise an action against the client at the latter's general legal venue.

16.2 Contractual relations shall be governed solely by the substantive law of the Federal Republic of Germany, to the exclusion of the UN Sale of Goods Convention.

16.3 A client whose registered office is outside Germany shall nominate a party to receive service in Germany no later than 14 days after formation of the contract.

## 17. Final Provisions

17.1 The client agrees to his data being used and processed by the contractor in accordance with the provisions of the German Federal Data Protection Act and the respective Federal State Data Protection Act inasmuch as this is necessary for proper conduct of the contractual relationship.

17.2 Should any provision of these conditions be or become invalid, the validity of the other provisions shall remain unaffected. In such case the invalid provision shall initially be re-interpreted or amended in such a way that the intended purpose of the invalid provision shall be achieved as far as possible. The same shall apply in the event of a gap requiring a rule to cover it.