

## General Purchasing Terms and Conditions of the EnBW Group

### 1 Contractual Basis

- 1.1 The order is based on the conditions below. Any other conditions of the Agent do not constitute a part of this contract, even if the Principal does not explicitly contradict them. If the Principal accepts the delivery/service without explicit objection, it may by no means be concluded that it has accepted contradicting conditions of the Agent.
- 1.2 Only written orders are valid, unless a stricter form is contractually or legally required.  
Orders made verbally or by telephone are only valid with a written confirmation. Additional verbal agreements and modifications to the contract must also be in written form
- 1.3 The Agent must inspect the order technically and notify the Principal of all errors and irregularities in writing.
- 1.4 The Principal may demand changes to the object of delivery and performance even after the conclusion of the contract, as long as this can be reasonably expected of the Agent.
- 1.5 The following apply consecutively as the basis of the contract:
  - The written order and any enclosed order specification for tenders
  - If applicable, the minutes of the contract award negotiation signed by the Principal and Agent
  - If applicable, the Additional Purchasing Terms and Conditions of the EnBW Group for Tasks in the Networks/Civil Engineering Tasks
  - If applicable, the Additional Purchasing Terms and Conditions of the EnBW Group for Nuclear Power Plants or Conventional Power Plants
  - These General Purchasing Terms and Conditions and appendicesFor civil engineering tasks (excluding pipe laying):
  - The German Construction Contract Procedures (VOB), latest edition:
    - Part B - General conditions of contract relating to the execution of construction work, DIN 1961
    - Part C - General technical specifications in construction contracts

Should individual points in the items stated above contradict regulations with the same priority, the version that grants the Principal more extensive rights and/or better performance shall be valid.

- 1.6 Contractual rights and obligations may only be transferred with the written consent of the Principal. Deliveries and services may only be provided by third-party contractors (subcontractors) and persons who do not have an employment contract with the Agent if this has been indicated in writing to the Principal, the Principal has agreed, and the responsible technical contact person of the Principal on site can be notified of this fact in good time before work commences. If the Agent commissions other third-party contractors (subcontractors), the Agent must ensure that all contractual conditions are fulfilled by its third-party contractors.

## 2 Secrecy/Data Protection/Data Security

- 2.1 The Parties to the Contract undertake to treat as business secrets all knowledge about non-apparent commercial or technical details that they acquire in the course of the business relationship. The same obligation must be imposed on sub-suppliers.
- 2.2 The Agent shall treat the conclusion of the contract as confidential. It shall only refer to business relations with the Principal in advertising materials if it has the written permission of the Principal. This also applies to any projects of the Principal that are under construction or already completed.
- 2.3 The Agent undertakes to observe the regulations of the German Data Protection Act (BDSG), in particular relating to data secrecy in accordance with § 5 of the BDSG, and to take suitable technical and organisational measures in accordance with § 9 of the BDSG and the Appendix to § 9 of the BDSG.
- 2.4 The Principal will only save and process personal data from the Agent in accordance with the provisions of the BDSG.
- 2.5 Should the Agent gain access to electronic information or information systems of the Principal during performance of the contractual relationship, it must comply with the rules of EnBW's "IT Security Policy for External Business Partners" leaflet (attached). It must also obligate employees and third parties whose services it is using to fulfil the contract to comply with these rules and monitor this compliance.

## 3 Place and Time of Delivery/Performance

- 3.1 Deliveries and services are to be provided free to the point of destination (e.g. storage, construction site, power plant, transformer station). The Agent shall bear all costs and risk for loading and unloading and for transport, in particular the

packaging, transport insurance and any applicable customs duties. Other customary clauses are to be interpreted according to the respectively applicable Incoterms.

- 3.2 Delivery and performance schedules (date and time) must be agreed with the Principal. The Principal's offices named in the written order are to be informed about the shipment immediately in writing, specifying the order number.
- 3.3 The decisive factor for compliance with the agreed delivery or performance schedule - depending on the contract - is the receipt of the goods free of defects at the place of receipt/usage as nominated by the Principal or the time of acceptance. The risk for the delivery or service is transferred to the Principal at this time.
- 3.4 If the Agent becomes aware that an agreed shipping deadline cannot be met, it must immediately inform the Principal in writing, citing the reasons and the anticipated length of the delay.

The absence of necessary documents to be supplied by the Principal shall only represent a reason not attributable to the Agent if the Agent has sent a written reminder about the documents and did not receive them within a reasonable period. The Agent is obliged to minimise delays as far as possible using appropriate measures.

- 3.5 The acceptance of a delayed delivery or service in no way implies a surrender of any damage claims or other claims.
- 3.6 If the Agent delivers sooner than agreed, the Principal is entitled to return the goods at the Agent's expense. If the Principal does not return the goods, in agreement with the Agent, the goods will be stored at the Principal's premises until the delivery date at the cost and risk of the Agent. Payment will not be made until the agreed due date.
- 3.7 The Principal will only accept the ordered volumes or unit quantities. Over- or under-deliveries are only permissible with prior agreement. Agreements must be confirmed in accordance with the form requirement specified in section 1.2.
- 3.8 The Principal reserves the right to monitor and test the state and proper execution of the work as per the order as well as the materials used. The Agent must provide the Principal's representatives with all requested information. The checks carried out by the Principal do not release the Agent from its warranty and liability obligations.
- 3.9 The Agent provides its services under its own responsibility and exerts its own managerial authority over the personnel assigned to the execution of the contract. Services that are to be performed on the Principal's business premises must not interfere with operations here or with third parties any more than is unavoidable. The instructions of the authorised representative of the Principal must be followed in this respect. This also applies to directions made by the Principal for safety reasons. For the rest, managerial authority can only be transferred to the Principal with explicit written agreement. The Agent must ensure that an authorised person is available at all times to receive instructions and provide explanations.

- 3.10 If foreign labour is employed, the Agent must ensure that it possesses sufficient knowledge of German or that an interpreter is available on site. If the Agent does not comply with this obligation despite a request to do so, the Principal is entitled to instruct an interpreter at the Agent's cost.  
Foreign employees must be instructed in the relevant health and safety regulations and the specific local conditions in their mother tongue. For each third-party contractor that is carrying out work, there must be at least one on-site supervisor with business-fluent German (written and spoken) present at all times.

## 4 Accident Prevention, Road Safety

- 4.1 When performing its deliveries and services, the Agent must take the necessary measures to prevent accidents, maintain traffic safety on construction sites and thus to observe specifically the provisions of the German safety at work act, the law on technical work materials, the applicable accident prevention regulations, the regulations on hazardous substances and the generally recognised technical safety and occupational medical rules.
- 4.2 For work within electrical systems, an "Accident prevention and liability declaration" must be signed by the Agent.
- 4.3 In addition, the "Additional Purchasing Terms and Conditions Relating to Health and Safety" (attached) must be complied with.

## 5 Contract Penalty

In the event that a deadline is exceeded for reasons for which the Agent is responsible, the Principal is entitled to request a contract penalty of 0.15 % of the order total (net) per working day up to a maximum of 5 %. All other rights remain unaffected.

If the contractual deadlines are changed by mutual agreement, the aforementioned contract penalty will also apply to these newly determined deadlines. The Principal does not need to assert their claim to the contract penalty at the time of acceptance. Rather, it may assert it up until the final payment.

## 6 Prices, Issuing of Invoices and Payment

- 6.1 On conclusion of the contract, the Agent confirms that it has apprised itself of all the circumstances and factors that have an effect on pricing. The agreed prices are fixed prices and are applicable until the contract is performed in full. Flat-rate prices include all services covered by the contract.

- 6.2 For any necessary supplements, unit prices must be agreed in writing under the conditions of the main order. The calculation for these supplement prices must be submitted and proper compliance with the pricing principles demonstrated. Any additional costs that could not be identified at the time the order was placed, must be announced to the Principal immediately in the form of a written quote. Additional costs may not be applied until the quote has been approved by the Principal in writing. Unapproved additional costs will not be paid by the Principal.
- 6.3 Hourly rates, if requested by the Principal, will only be paid following submission of approved time sheets at the charge rates accepted by the Principal.
- 6.4 Submitted invoices (one copy) must include the order number; VAT must be shown separately. Invoices must be sent to the invoice address specified in the order; they must be itemised and enable verification against the prices stated in the contract. Invoices must also satisfy the applicable tax requirements, in particular those specified in § 14 of the German Value Added Tax Act. Incorrectly submitted invoices shall only be valid from the time that the correction is received by the Principal.
- 6.5 Unless otherwise agreed in the written order, payments will be made within 14 days with a 3 % discount, or net within 30 days. The payment term starts on the day the invoice is received, but not before the defect-free goods are received, the service is accepted or, in the case of the contractually agreed delivery of documentation, the documentation is handed over.
- 6.6 Advance payments must be strictly agreed in advance on conclusion of the contract. The discount amount agreed for this will be deducted in full on payment of the final invoice.

## 7 Securities

- 7.1 For advance payments, performance of the contract and rights in the event of shortcomings, the Agent must, on the request of the Principal and at its own cost, provide an appropriate security in the form of an unconditional, directly enforceable guarantee with an unlimited term from a bank accepted by the Principal or a credit insurer. The defence of voidability and offset against claims that are not legally established or are disputed must be excluded.
- 7.2 Unless otherwise agreed, the amount of the guarantee shall be:
- the advance payment amount for advance payments
  - 5 % of the net order total for performance of the contract
  - 5 % of the net invoiced amount for the warranty

## 8 Content of the Performance Obligation, Rights in the Event of Defects

8.1 The Agent shall provide all deliveries and services according to the current state of technology, specifically as set down in the technical regulations

- of EnBW
- in DIN EN or DIN VDE

according to the applicable legal provisions, regulations and guidelines of public authorities, employer's liability insurance associations and professional associations, and with the usual due care and attention.

If deviations from these regulations are necessary in individual cases, the Agent must obtain written agreement to this from the Principal. The Agent's obligation to provide a faultless service is in no way curtailed by this agreement. Should the Agent have doubts about the type of execution desired by the Principal, it must communicate this to the Principal immediately.

8.2 The Agent undertakes to remedy immediately and at its own cost any defects that occur until the end of the limitation period for defect claims or to supply defect-free goods (supplementary performance). The Principal is entitled to continue to use rejected equipment free of charge until a replacement is supplied. Furthermore, the Principal may also assert other legal rights, in particular self-remedy, withdrawal, price reduction and/or compensation for damages.

8.3 The limitation period for defects is 2 years. For work on buildings and structures, excavation or surface works and all types of power lines, it is 5 years. It starts with the handover of the object of the order to the Principal or its authorised representative. For devices, machines and facilities, the period starts on the acceptance date stated in the written acceptance declaration. If deliveries or services are delayed for reasons beyond the Agent's control, the period will begin at the latest 6 months after the provision for delivery or acceptance.

8.4 For delivered parts that cannot remain in operation during the examination and/or repair of the defect, any current limitation period will be extended by the duration of the interruption to operations. For repaired or replaced parts, the period starts again when installation is complete.

## 9 Liability

9.1 The Agent is liable for breaches of duty within the framework of the applicable legal provisions and for damage to property, personal injury and financial loss inflicted on the Principal on the occasion of the order execution.

9.2 The Agent must absolve the Principal from any claims for damages that third parties bring against the Principal for damage that was inflicted on the latter by the Agent during or on the occasion of the performance of the contract.

- 9.3 To cover liability risks in accordance with this contract, the Agent must take out liability insurance with the minimum insured sums per loss event of 1 million euros for personal injury, 500,000 euros for property damage and 250,000 euros for financial loss, and to provide evidence of this on the request of the Principal.
- 9.4 The Agent undertakes to protect its own property at the delivery/performance location until the passing of the risk by taking out insurance against theft, fire and other damage.

## 10 Environmental Protection

- 10.1 General: The Agent undertakes to support the environmental policies of the Principal - see [www.EnBW.com/Umweltgrundsaeetze](http://www.EnBW.com/Umweltgrundsaeetze)
- 10.2 The Agent undertakes to use environmentally friendly products, methods and packaging in its deliveries and services and in the subcontracted supply or supplementary services of third parties insofar as economically and technically possible, and to comply with the applicable environmental regulations in all activities for performance of the contract.
- 10.3 The Agent must dispose of all waste generated during the execution of the order according to the legal regulations regarding waste under its own authority and at its own cost.
- 10.4 The packaging of materials provided by the Principal are transferred to the possession and ownership of the Agent upon handover and must be recycled or sent for recycling by the latter. Excluded from this are reusable transport containers such as drums, wooden EURO pallets, mesh box pallets and sheet steel pallets; these must be made available for return transport to the warehouse concerned.
- 10.5 The Agent agrees to take back the delivered objects for disposal should the Principal wish and to dispose of them properly in accordance with the legal regulations in force at the time of the handover. An agreement regarding the charge for the costs incurred according to time and expenditure and a payment for the recyclable materials at the market values will be made in due course.
- 10.6 The Agent undertakes to make the Principal aware of any hazardous substances brought into the Principal's company.

## 11 Documents

- 11.1 The Agent must supply the Principal with all the necessary documents for the intended use of its deliveries and services, such as drawings, plans, operating manuals, operational documentation, calculations, etc. On request, these must also be made available in a microfilmable format or on data carriers. They then become the property of the Principal.

- 11.2 If the Principal provides the Agent with documents, these remain the property of the Principal and must not be made accessible to third parties without the prior written agreement of the Principal. These documents must be released to the Principal when requested.
- 11.3 Copyrights to the documents provided to the Agent continue to be owned by the Principal. In the event of any copyright infringement, the Agent will be liable to the Principal for any resultant damage.

## 12 Industrial Property Rights

- 12.1 The Agent guarantees that all deliveries and services are free from third-party industrial property rights and specifically that the use of the delivery items does not infringe any patents, licences or other third-party industrial property rights.
- 12.2 The Agent absolves the Principal from the claims of third parties arising from any infringements of industrial property rights and bears all costs incurred by the Principal in this regard.

## 13 Termination, Withdrawal, Suspension

- 13.1 Should the Principal give notice of termination, the Agent will be entitled to pro rata reimbursement of deliveries and services already provided. The statutory rights and claims of the Principal remain unaffected by the notice of termination.
- 13.2 The Principal can choose to withdraw fully or partially from the contract at no cost or to terminate the contract with immediate effect at no cost if the Agent stops payments or becomes bankrupt. In these cases, the Agent will issue to the Principal at the latter's request any parts, materials, etc. that have been fully or partially produced or purchased for this order.
- 13.3 The Principal is entitled to suspend the contract fulfilment or extend it over a longer period. In these cases, the Principal and Agent will endeavour to minimise the impact as far as possible and to agree on an appropriate settlement regarding the costs and the necessary technical measures.

## 14 Non-Competition Clause

- 14.1 Should the Agent submit quotes that are based on agreements restricting competition pursuant to § 298 of the German Criminal Code (StGB) or participate in impermissible restraints on competition in the sense of the Law Against Restraints on Competition (GWB), in particular agreements with third parties concerning the submission or non-submission of quotes, prices to be sought, payment of loss compensation (profit sharing or other contributions) or the establishment of

recommended prices, it must pay 10 % of the net order total to the Principal (without prejudice to proof of higher damages). The Agent is entitled to provide evidence of lower damages.

- 14.2 The same applies in the event that demonstrably unacceptable advantages (§ 299, 333, 334 of the StGB) have been afforded to employees or agents of the Principal in connection with the planning, granting and processing of an order.
- 14.3 In the aforementioned cases, the Principal is entitled to withdraw from the contract for good cause. The Agent must indemnify the Principal for all losses that are caused directly or indirectly by the withdrawal from the contract.
- 14.4 The obligation to pay the flat-rate sum also applies if the contract is terminated or has already been fulfilled.
- 14.5 Other contractual or legal claims of the Principal remain unaffected.

## 15 Final Provisions

- 15.1 Should individual provisions of the contract be or become ineffective this shall not affect the validity of the other provisions.  
In this case, the parties to the contract undertake to make new agreements that correspond to the economic result of the ineffective provisions or come as close to this as possible.
- 15.2 The place of performance for all deliveries and services is the shipment address or usage site specified by the Principal.
- 15.3 During disputes, the performance of contractual obligations must not be fully or partially suspended.
- 15.4 Solely the law of the Federal Republic of Germany shall be in effect; the UN Contract for the International Sale of Goods is specifically excluded.
- 15.5 The contract language is German. If the parties to the contract use a different language in addition, the German wording takes precedence.
- 15.6 The place of jurisdiction is the place where the relevant company of the EnBW Group has its headquarters. For companies with headquarters outside Germany, the place of jurisdiction shall be Karlsruhe.

Karlsruhe, April 2011

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