

General Purchasing Terms and Conditions for Construction and Erection Services

Jünger+Gräter GmbH (Version 03/2013)

1. Area of application

- 1.1 These General Purchasing Terms and Conditions are applicable for the procurement of construction, erection and ancillary construction services.
- 1.2 Even if Jünger+Gräter GmbH (J+G) does not expressly object to them, the general terms and conditions of business of the contractor (the Contractor) do not form part of the contractual relationships unless there has been a written agreement to the contrary.
- 1.3 On execution of the order, these Terms and Conditions are accepted in their entirety, unless a written agreement to the contrary has been reached.

2. Basis of contract

- 2.1 The contractual basis for the execution of construction, erection and ancillary construction services are:
 - an order issued by J+G or a letter of confirmation for commercial purposes with a description of the service, service specifications and the associated drawings and annexes (technical order specifications);
 - J+G's invitation to tender or enquiry;
 - these General Terms and Conditions for Construction and Erection Services;
 - the most recent versions of the VOB ["Vergabe- und Vertragsordnung für Bauleistungen": German Construction Contract Procedures], Part B and C, in force when the contract was signed, along with the annexes and DIN standards introduced;
- 2.2 The above-mentioned documents and regulations are applicable in the order of priority outlined above.

3. Offers, orders, other declarations and commercial clauses

- 3.1 All offers are submitted free of charge to and with no binding effect on J+G.
- 3.2 Orders, agreements and other declarations are only binding when issued or confirmed by J+G in writing. The absence of a response to offers, including any offers delivered in electronic form, shall not be regarded as acceptance.
- 3.3 All papers including documentation must be delivered in German, unless expressly agreed otherwise.

4. Scope of services, completion clause

- 4.1 Included in the scope of services – even if not expressly and separately listed in the contractual documents – is observance of all legally binding technical and other regulations for the services due, in particular in respect of industrial safety and protection of the environment.
- 4.2 The scope of services also extends to the obligation to deliver execution documents (documentation) in accordance with the technical specification or a specific agreement.
- 4.3 The Contractor's service also includes informing J+G in good time and in detail if, and to what extent, any modification of the scope of services becomes necessary for fulfilment of the contract.
- 4.4 Also included in the scope of services are all components or services contained in the contractually agreed scope of services and required for fulfilment of the contract in accordance with the latest state of the art, irrespective of whether they actually appear individually in the invitation to tender, in the offer, in the technical specification or in miscellaneous written communications. Any such services do not entitle the Contractor to submit any additional claims.

5. Duty to seek information

The Contractor undertakes to visit the relevant locations and construction sites, approach roads, installation sites for working machinery, foundations and frameworks and other installations and items of relevance for the provision of the service prior to signing the contract, and undertakes to familiarise itself with the local conditions. If circumstances were identifiable on conclusion of the contract, the Contractor may not at a later date invoke hindrances and difficulties, and in view of such circumstances acquires no right to additional remuneration. The Contractor shall itself undertake as its own responsibility any measuring and drawing checks to establish compliance with the existing systems, installations and buildings, as required for execution of the order in respect of constructional requirements and for erection and commissioning.

6. Prices and pricing

- 6.1 Unless otherwise agreed, prices are fixed (Incoterms 2010: DDP deployment location). All prices are subject to the addition of sales tax at the statutory level.
- 6.2 Prices are all-inclusive, and in order to deliver its due service at the agreed place of fulfilment, the Contractor must ensure this is actually the case. Furthermore, prices include all and any costs and charges arising for any testing certificates required, documentation, technical acceptance procedures, certification procedures, clearance certificates or the like from expert assessors, testing organisations and authorities.
- 6.3 Unit prices agreed remain applicable even if excess quantities or shortages arise or if individual supplies and services are do not apply. If the discrepancy should be more than 20% (up or down), then at the request of a partner a new price shall be agreed taking into account the

higher or lower costs; this is to be applicable in respect of the relevant item, unless the contract should contain an arrangement to the contrary.

- 6.4 If J+G should require modifications to the construction project after the contract has been signed, and these result in additional or lesser services, then the lump sum shall be renegotiated on the basis of the overall contract, with the additional and lesser costs taken into account.
- 6.5 The agreed prices include all costs for the protection of building components at risk from frost, snow, heat and water damage, and the elimination of any such damage arising thereof.

7. Deviations from the contract

- 7.1 Services deviating from the contract (modified or additional services) provided by the Contractor do not entitle it to any claim to additional remuneration, unless J+G expressly agrees to the deviations prior to execution of the services.
- 7.2 Agreement to deviating services shall take the form of the issue in writing of a supplementary order, unless J+G should specify a different arrangement in the individual case.
- 7.3 In the event of a dispute between the Contractor and J+G as to whether a service should be considered as additional or modified, then it shall be incumbent on the Contractor to prove that the disputed service was not included in the scope of the contract to date, or did not exist in this form. This also applies even if provision of the disputed service has been expressly ordered by J+G.

8. Packaging

The proper disposal of packaging materials is a task for the Contractor and shall be undertaken at this party's cost.

9. Documents required for execution

- 9.1 The documents required for execution shall be provided by J+G at the express request of the Contractor.
- 9.2 J+G shall accept documents required for execution from the Contractor purely for inspection purposes. If J+G should sign off on these documents, this signature indicates no more than acknowledgement of these documents; with this J+G shall accept absolutely no responsibility for construction, execution or freedom from defects. Any suggestions for modifications, indications and complaints on the part of J+G do not release the Contractor from its general responsibility to deliver a successful project as per contract. J+G is entitled to issue the Contractor with instructions to guarantee that the set objective for the contract is achieved and to ensure faultless fulfilment. Where instructions are issued, J+G shall only bear liability under the terms of § 645 BGB (Civil Code) if the Contractor has raised any reservations without delay in writing, and justified them.

10. Execution

J+G is entitled to check the execution of the services on site or on the Contractor's premises and those of its sub-contractors, to object to any imperfect execution and to discard any faulty components. On suspicion of any shortcoming or damage in connection with parts supplied for the service covered by the contract or sub-contracted services, the Contractor is obliged to provide J+G on demand with details of the supplier, distributor or sub-contractor along with all of the details and information required to pursue claims against these parties.

11. Transfer of contract, change of company name, sub-contractors, stipulations concerning the deployment of staff on construction sites

- 11.1 The Contractor must notify J+G without delay of any transfer of contract effective under law or of any change in its company name.
- 11.2 For the fulfilment of its obligations, the Contractor may call on sub-contractors only with the prior written consent of J+G. J+G must be notified of any sub-contractors planned at the Contractor's own initiative, in good time and before the Contractor signs the agreement with the sub-contractor. The Contractor remains solely responsible to J+G. J+G may forbid the involvement of a specific sub-contractor or the commissioning of a specific supplier.
- 11.3 If services of the Contractor due under the contract are carried out by sub-contractors, J+G is entitled to have direct contact with the sub-contractor. At the request of J+G, the Contractor must establish the corresponding contact. If the Contractor so desires, such contacts will take place in the Contractor's presence.
- 11.4 J+G will not conclude any agreement and/or make any arrangements with the sub-contractor at variance with the terms of the contract signed with the Contractor. The Contractor bears liability for suppliers and sub-contractors as it would for its own fault.
- 11.5 The Contractor undertakes to observe the following stipulations for the deployment of workers:

The Contractor provides an assurance that,

 - the employees deployed for this order are properly registered for social security and are in possession of the required social security card and proof of identity,
 - the Contractor is properly paying income tax and social security contributions for these employees, and that any foreign employees deployed are in possession of the necessary work permit, and
 - at least the responsible management staff members on the construction site have an adequate knowledge of German or English, so as to guarantee the smooth progress of work.
- 11.6 The Contractor hereby undertakes to observe all of the applicable accident prevention regulations and other industrial safety regulations. The Contractor guarantees that sub-contractors will likewise observe the above conditions. J+G can request evidence of observance of the above obligations at any time. If the Contractor should fail to fulfil the above obligations, entirely or partially, then J+G may withdraw the contract from the Contractor with immediate effect, entirely or partially, and demand compensation for damages incurred.

12. Deadlines, default of services

- 12.1 The conditions and legal consequences of the delay shall be measured in accordance with the statutory regulations, with the stipulation that both the exceeding of expressly designated contractually set periods, such as intermediate deadlines and missing of the deadlines set for operational readiness, overall completion and acceptance justify the delay, unless the Contractor demonstrates that in the individual case it has not been responsible for the deadline being exceeded.
- 12.2 If circumstances should arise in the Contractor's operation representing a hindrance or interruption to the services, or which are liable to result in such, or if the Contractor should believe that such circumstances are present, especially if realising that due to *force majeure* or other circumstances for which it is not responsible it is unable to meet set delivery times or deadlines, then it must notify J+G accordingly, in writing and without delay. Should the Contractor fail to fulfil this obligation, then it may not invoke any corresponding circumstances at a later date, unless these were evident to J+G at the time.
- 12.3 If set periods or deadlines are not observed for reasons for which J+G or, under the terms of Point 12 Para. 2 Clause 1, the Contractor is not responsible, the set periods shall be extended or the deadline set back for a period to be determined to reflect the effects of the causes of the delay and individually in each case arising thereof.
- 12.4 Normal or predictable influences of weather have no effect on contractual set periods and deadlines; these should be calculated into the agreed set periods or deadlines in advance. In the case of quite unusual and unforeseeable weather conditions giving rise to conditions of a quasi-catastrophic nature, the set periods for completion or deadlines shall be extended appropriately without this giving rise to the invoicing of additional costs to J+G. The conditions of *force majeure* in Point 13 remain in force unaffected.
- 12.5 Any official approvals for Sunday and public holiday working required for deadlines to be met must be obtained by the Contractor.
- 12.6 To the extent that J+G is entitled to withdraw, the withdrawal – to the extent that the delay is restricted to a part of the service which can be clearly demarcated – is restricted to this part, with the rest of the contract remaining in place. Otherwise, the contractual regulations on withdrawal apply accordingly.

13. Force majeure

All events representing *force majeure* entitle the partners to the contract to postpone fulfilment of obligations undertaken or, if fulfilment of the contract should become unreasonable, entirely or partially, to withdraw from the contract without this giving rise to any claims to compensatory damages in favour of the other party. Deemed to be *force majeure* are all events occurring unexpectedly and not caused through the fault of either party, in particular: natural catastrophes, fire, lightning strike, explosion, escape of poison or gas, flooding, general interruptions to supplies, the effects of acts of war, terrorism, civil unrest or comparable events, industrial disputes or severe interruptions to the operation in a party's own or external operations, and in the event of measures being imposed by the sovereign state.

14. Acceptance

- 14.1 Unless otherwise specified in the contract, the Contractor's service must be formally accepted. For all contracts based on these conditions, acceptance is a precondition for the Contractor's claim to remuneration becoming due for payment. J+G will accept the services at the place of fulfilment, as soon as on completion the Contractor has requested this in writing and all of the set conditions for acceptance have been fulfilled. Acceptance requires the production of a written record as an essential condition, which is to be signed by both J+G and the Contractor. The possibility of verbal acceptance or implied acceptance by taking over the service is excluded.
- 14.2 The material costs arising from the acceptance procedure shall be borne by the Contractor. The personnel costs arising from acceptance shall be borne individually by the Contractor and J+G as incurred respectively.

15. Defects

- 15.1 Unless otherwise agreed in the order or the contract, a warranty period of five years shall apply for the construction services. If the construction services should prove to be not in accordance with the contract or faulty, and this calls for either remedial work or replacement, then the Contractor must bear all costs arising for J+G in connection with the shortcoming. This applies likewise for those costs associated with any independent procedure to provide proof before a court. The warranty period commences on acceptance of the overall service representing the object of the order. A new warranty period commences for repaired and replaced supplies and services on written acceptance of these supplies and services.
- 15.2 Where the Contractor's services display material and legal defects, J+G is entitled to the statutory rights. The option as to the manner of supplementary performance, remedial work or replacement delivery is at the discretion of J+G. J+G is entitled to set an appropriate period for supplementary performance. Where acceptance would be unreasonable, J+G is entitled to refuse supplementary performance. Without prejudice to the statutory regulations, an unreasonable situation may, in particular, be present if the supplementary performance would result in a disproportionate delay, especially in the case of a threatening claim for compensatory damages or the application of contractual penalties on the part of J+G. The same legal effect is applied to a period set for supplementary performance by mutual agreement as to a deadline set by J+G.
- 15.3 To the extent that on the basis of legal or contractual conditions, J+G is entitled to withdraw in the event of service not, or not properly, provided, the withdrawal may be restricted – where the non- or poor fulfilment is restricted to a part of the service which can be clearly demarcated – to that part, with the rest of the contract remaining in force unaffected.

16. Insurance

- 16.1 The Contractor must take out a standard public liability insurance policy with exclusion of any recourse against the party placing the order – to the extent that no other sum of insurance is specified in the contract – providing a minimum amount of insurance cover of five (5) million euros, and must maintain this policy throughout the entire term of the contract, unless otherwise agreed in the individual contract. At the

request of J+G, proof of this insurance cover must be provided through the submission of a certificate from the insurer.

16.2 Furthermore, the Contractor must take out an adequate erection insurance policy at its own cost, and maintain this policy through to complete acceptance of the services agreed under the contract. In the event of a claim, any existing fire or third party insurance policies held by the Client are deemed subordinate to the erection insurance policy. At the request of J+G, proof of this insurance cover must be provided through the submission of a certificate from the insurer.

16.3 If the Contractor should act in breach of the above obligations, then it must place J+G in such a position as if the insurance cover required by the contract had been established and/or maintained. In this case, J+G is also entitled to proceed to extraordinary termination of the contract.

17. Invoicing, payment and assignment

17.1 Only invoices in a suitable condition for checking must be submitted, clearly setting out the services provided. As a basic principle, invoices will only be processed where the delivery notes and invoices indicate the order and job numbers or cost centres assigned by J+G. The invoice must fulfil the requirements of the applicable sales tax legislation. Unless a different agreement has been reached in writing, J+G will make payment 30 days after acceptance and checking of invoices. In making payment, J+G neither acknowledges that the services are free of defects nor does it waive any claims against the Contractor. Payments do not represent any acceptance that invoices are correct and/or that services have been provided in accordance with contract, but are made provisionally, conditional on subsequent checking.

17.3 The Contractor may not assign claims held against J+G either entirely or partially without prior consent in writing. J+G will not withhold such consent without substantive grounds.

18. Offsetting and retention by the Contractor

18.1 The Contractor may proceed to offsetting only with undisputed claims or claims which have been confirmed with legal effect.

18.2 The Contractor only holds rights of retention where these are based on the same contractual relationship.

18.3 In the event of differences of opinion on additional or modified services, the Contractor holds no right of retention or any other right to refuse performance, specifically any right to discontinue construction or erection work.

19. Secrecy

19.1 All documents required for execution, orders and information from and about customers of J+G, of whatever nature and origin, of which the Contractor and the proxies and vicarious agents acting on its behalf (such as its own employees and sub-contractors) may gain knowledge, must be kept secret by these parties and by the Contractor. Without the prior written consent of J+G, this information may not be published or reproduced, made accessible to any third party or used for any purpose other than that originally envisaged. The same applies for photographic images created within the works grounds of J+G customers.

19.2 All items ordered may only be used or published beyond the context of the order with prior written consent.

19.3 The Contractor must pass on the above obligations to the proxies and vicarious agents acting on its behalf and provide evidence of this for J+G on request.

19.4 The Contractor may identify J+G or J+G clients as a reference for third parties, only with written consent from J+G.

20. Termination and temporary suspension of the service

20.1 J+G may terminate the contract at any time, without stating the reasons, up to complete provision of the contractual supplies and services.

20.2 In this case, the supplies and services delivered must be invoiced at the agreed contractual prices. In addition, remuneration will also be made for such costs and outlays, upon presentation of evidence, as have arisen to the Contractor for supplies and services no longer to be provided, as have already been incurred in the belief that the contract would continue in force. Any further claims, in particular to loss of profits and the like, are excluded.

20.3 The right of both parties to the contract to termination on substantive grounds remains unaffected.

20.4 If, in respect of the Contractor's assets, an application should be made to implement insolvency proceedings, or if there are adequate grounds for believing that the conditions for requesting insolvency proceedings have arisen, or in the absence of sufficient assets, then J+G acquires an immediate extraordinary right of termination, with the exclusion of any claims on the part of the Contractor to compensation.

20.5 J+G is entitled, without the need to state a reason and at any time, to instruct the Contractor to entirely or partially halt and discontinue its works (suspension). Any corresponding instruction must be issued in writing and must state the duration of the suspension. The suspension may be extended or curtailed by means of a further written instruction. J+G may instruct the Contractor in writing to resume its activity within a period of 14 days.

20.6 If suspension of execution of the object of the services should extend beyond six (6) months, this entitles the Contractor to proceed to extraordinary termination of the contract, to be notified in written form.

20.7 Any fixed periods for services and service deadlines agreed are extended by the duration of the suspension of service.

20.8 Any additional costs arising for the Contractor as a direct consequence of the suspension of the service (e.g. storage, personnel travel costs) shall be paid for, on receipt of written evidence, by J+G to the amount of 1% of the value of the order per week, up to a maximum amount of 10% of the value of the order.

21. Concluding conditions

21.1 If any individual term in these conditions should be ineffective, entirely or partially, the remaining conditions remain fully effective.

- 21.2 The place of fulfilment for construction and direction services of supplies is the delivery and performance location stipulated in the order.
- 21.3 Any change or addition to the General Terms and Conditions of Purchasing must be made in writing.
- 21.4 Agreed as the place of jurisdiction for all legal disputes are exclusively those courts with material responsibility for the head office of the company Jünger+Gräter GmbH. Similarly, deemed to be agreed as solely applicable is German law with the exception of the United Nations Convention on the International Sale of Goods (UN Purchasing Law / CISG).