

**Special terms and conditions of purchase for facilities, VW AG / general purchasing division (current as of 1 May 2018)**

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**General terms and conditions of purchase for facilities, VW AG / general purchasing division (Current as of 1 May 2018)**

**1. Validity of these contractual conditions**

These contractual conditions shall supplement the general terms and conditions of purchase, VW AG / general purchasing division and the general terms and conditions of purchase for facilities and construction works, VW AG / general purchasing division. They shall be applicable subject to deviating agreements pertaining to individual contracts.

**2. Contractual foundations**

**2.1**

All design-, manufacture-related and other services arising from the contractual elements in accordance with fig. 2.4 of these special terms and conditions of purchase on an individual basis shall be included in the scope of the services to be rendered by the contractual partner.

**2.2**

Provided that nothing to the contrary has been expressly agreed, the contractual performance shall comprise those goods and services arising from the order, including all its components, in a complete manner and ready for operation.

**2.3**

Insofar as the contractual partner shall be obliged to provide independent design services for the purposes of the tender preparation and after the contract's conclusion, the tender documentation and additional documentation transferred to the contractual partner shall merely constitute an indicative basis for the evaluation of the scope of services to be provided, taking account of the performance required from the contractual partner in the process.

**2.4**

The following contractual foundations shall constitute an intrinsic contractual component:

**2.4.1**

the VW order description

**2.4.2**

- the negotiation records in chronological order

**2.4.3**

- these special terms and conditions of purchase

**2.4.4**

- the general terms and conditions of purchase, VW AG / purchase division for facilities and construction works

**2.4.5**

- the general terms and conditions of purchase, VW AG / general purchasing division

**2.4.6**

- the planning permission and building regulations clearance documents

**2.4.7**

- the operational resources guidelines (ORG) 1.01

**2.4.8**

- the contractual documentation in accordance with the call for tenders (with particular reference to the specifications)

**2.4.9**

- the list of subcontractors

**2.4.10**

- the draft advance payment guarantee

**2.4.11**

- the draft guarantee security documentation

#### **2.4.12**

- the standards, specifications, regulations, manufacturer specifications etc. and all TÜV (Technical Inspection Agency) guidelines, industrial law guidelines and all laws, ordinances and local by-laws pertaining to the project in question.

#### **2.4.13**

- all legal, official and trade association guidelines related to the facilities' manufacture.

#### **2.4.14**

- the regulations and provisions of the BGB (German Civil Code), with particular reference to the law applicable to works and services.

### **2.5**

In the event of any contradictions within the contractual documentation or their appendices, the order of precedence shall be as follows. In the event of contradictions in the appendices, the order of precedence as regards numbering shall apply (e.g. 1 precedes 2, etc.); in other cases, the most recent appendix shall take precedence.

## **3. Scope of services / service amendments / additions**

### **3.1**

Provided that nothing to the contrary has been agreed, the scope of the contractual partner's service provision shall comprise the manufacture / delivery of a complete facility containing all the parts and elements necessary to faultless, failure-free operation, this in compliance with all quality-related regulations and agreements, even if these are not listed in detail in the call for tender documentation. Furthermore, the contractual partner shall be obliged to check all VW specifications

relating to the contractual execution of its services in a punctual, responsible manner and to notify VW of any concerns in writing promptly, in order to ensure that a contractually appropriate solution can be found and the agreed dates and deadlines can be upheld as far as possible.

### **3.2**

All facility elements and parts must be designed and arranged so that they can be maintained, inspected and replaced quickly and easily.

### **3.3**

The contractual partner shall be obliged to provide VW employees with training and instructions in the German language, this in order to ensure that the facilities' flawless operation is guaranteed. The contractual partner shall provide VW with information regarding the level of prior training and / or expertise required by its employees in this regard in a punctual manner. VW shall thereupon appoint individual employees to receive instruction and training.

The contractual partner shall be obliged to submit a list of all training and instruction measures it intends to use, this in relation to structure and content, to VW for approval in a punctual manner, and to agree with VW on the precise manner of their implementation.

### **3.4**

VW shall be entitled to alter the scope of services, including the manner of their execution and the time of performance, and to issue alternative instructions. The contractual partner shall be obliged to execute altered services in accordance with the terms and conditions of the contract, this unless the contractual partner's premises is not equipped to execute the said services in the required manner, and the contractual partner is unable to guarantee the correct execution of the said services via their assignment to a third party, or the contractual partner is unable to carry out the correct execution of the altered services for other reasons. Figure 6 of the general terms and conditions of purchase for facilities and

construction works, VW AG / general purchasing division shall also apply.

#### **4. Involvement by VW**

##### **4.1**

The contractual partner shall be obliged to carry out any “works acceptances” or trial runs which fall within the scope of its service provision, this in accordance with the separately agreed schedule, and, in all cases, in a punctual and responsible manner. Figure 5.2 of the general terms and conditions of purchase for facilities and construction works, VW AG / general purchasing division, shall apply accordingly.

##### **4.2**

As far as nothing to the contrary has been agreed, the contractual partner shall be obliged to procure the forms of energy required in order to provide the goods and services in question (with particular reference to construction water, electricity, pressure and steam etc.) in an independent manner. The same shall apply to delivery areas, storage areas and the construction site set-up, etc. The contractual partner shall not be entitled to use areas and means belonging to VW.

#### **5. Due dates / deadlines**

##### **5.1**

The contractual partner shall be obliged to submit a schedule to VW for approval one week at the latest after being assigned the commission in question. This schedule should take account of all contractual obligations and must be subdivided in accordance with the specific types of work to be carried out. Thereafter, the contractual partner shall be obliged to incorporate justified suggestions by VW without delay and to update the approved schedule on a daily basis.

##### **5.2**

The contractual partner shall be obliged to agree an updated and new binding schedule with VW in the event of any alterations to the execution deadlines, this

within an appropriate period of time after VW's request to this effect. In the event that the contractual partner fails to draft a replacement schedule within a reasonable period of time, VW shall be entitled to specify an updated schedule in accordance with the principles of equitable discretion (§ 315 BGB (German Civil Code)).

#### **6. Contractual penalty**

##### **6.1**

In the event that the contractual partner is responsible for exceeding the agreed completion deadline or is in default in any way, the contractual partner shall be obliged to pay 0.15% of the net order total and a maximum of 5% of the net order total for every working day which the deadline is exceeded or delayed.

##### **6.2**

In the event that the contractual partner is responsible for exceeding an agreed interim deadline or delays this interim deadline in any way, the contractual partner shall be obliged to pay 0.15% of the net order total in proportion to the interim deadline and a maximum of 5% of the net order total in proportion to the interim deadline for every working day which the deadline is exceeded or delayed. In the event that deadlines are exceeded or delayed, subsequent contractual penalties shall be taken into account in conjunction with contractual penalties levied in the case of preceding interim deadlines, this in order to ensure that an accumulation of individual contractual penalties is excluded.

##### **6.3**

The total contractual penalty shall be limited to a maximum of 5% of the net order total and the maximum amounts specified in figs. 6.1 and 6.2 shall not apply individually.

##### **6.4**

VW shall not be obliged to assert its right to levy the contractual penalty at the time of acceptance, but may delay this until the final payment.

## 6.5

VW shall remain entitled to demand that the contractual partner compensates it for any possible damages incurred above and beyond the contractual penalty imposed (e.g. off-setting the imposed contractual penalty against the overall damages).

## 7. Technical documentation

### 7.1

All documentation placed at the disposal of the contractual partner by VW, e.g. prototypes, drawings, models, software programmes etc. shall remain the property of VW. The contractual partner may not use this documentation for purposes apart from those which have been contractually agreed, and nor may it make it accessible to third parties.

Documentation of this type should be returned to VW in the event that they are no longer required in order to complete the commission in question, this unsolicited.

### 7.2

All documentation placed at the disposal of the contractual partner must be checked by the latter for completeness and dimension-related accuracy in a punctual manner prior to the start of production, and must be corrected or supplemented by the contractual partner after consultation with VW as necessary.

### 7.3

The contractual partner shall only be permitted to use the production facilities provided by it in accordance with VW's information or documentation, such as dies, setting jigs, matrices, models, prototypes, forms, welding moulds, software programmes etc., in order to execute VW-related commissions. The contractual partner shall not be permitted to use these production facilities for its own purposes, and nor may it make them available to third parties or to any other individuals.

### 7.4

All technical documentation (drawings, plans, calculations, replacement parts

lists, software programmes etc.), in particular that required for assembly, monitoring, operation or maintenance purposes and for the manufacture or procurement of replacement parts in addition to obtaining official permits must be submitted to VW in the desired number and design in a punctual manner, and by the contractually specified deadlines at the latest.

Fig. 11 of these terms and conditions shall apply accordingly.

## 8. Acceptance

### 8.1

The contractual partner shall guarantee that its service provision shall be free of quality-related defects at the time of the final formal acceptance of the contractual service provision, e.g. that it is in possession of the contractually agreed qualities, complies with the recognised technological regulations and is free of defects of title. The service provision shall be deemed free of quality-related defects in the event that it is suited to the use specified in accordance with the contractual terms and conditions, that its condition complies with the standard specifications for works of the type in question and which VW is entitled to expect in this context, and, in all other cases, is suited to the use in question and is in possession of a condition which complies with the standard specifications for works of the type in question and which VW is entitled to expect.

In particular the following defects in the services provided by the contractual partner are classified by VW as material, subject to an examination in each individual case, and as precluding acceptance:

- Defects that have an impact on the overall function of the facility
- Defects that have an impact on the production process at VW
- Defects that have an impact on products manufactured by VW
- Defects that have an impact on safety, environmental

protection, fire safety and health protection

- Defective or missing test and/or measuring equipment, training and documentation
- Contractual execution that deviates from the agreements of the contract if the impact is not merely negligible
- Missing tests and/or marking, non-compliance with legal requirements, standards such as certificates, EC marking or deficits of a similar significance.

### **8.2**

The contractual partner shall be obliged to provide VW with a written guarantee certificate in accordance with regulations issued by VW by the time of the final acceptance at the latest.

### **8.3**

VW shall invite the goods' formal acceptance.

Acceptance reports should be drawn up and signed by both contractual parties. The contractual partner shall be obliged to bear the costs of necessary repeat acceptances and / or performance and functional checks, test runs or efficiency statements of all types in the event that it is responsible for the implementation of the said procedures.

### **8.4**

In the event that the provision of a trial run and / or efficiency statement has been agreed, the contractual partner shall be obliged to execute this / these in an independent manner and at its own risk in agreement with VW, this via the use of the agreed software programmes. The contractual partner shall be responsible in the event that VW places operating and / or auxiliary staff at its disposal for this purpose.

The contractual partner shall be obliged to bear responsibility for damages caused to VW's machinery / facilities during the trial run, this unless the contractual partner is able to prove that VW's operating staff acted in a grossly negligent manner, in direct defiance of operating guidelines issued and explained to them by the

contractual partner. The contractual partner shall not bear the costs of damage occurring during trial operation to the facility which results from unsuitable materials provided by VW. Should the contractual partner have been in a position to realise that the materials were unsuitable by exercising due care, section 254 of the BGB (German Civil Code) applies correspondingly.

VW shall be entitled to use the facility / machinery during the trial run / efficiency statement for its own production purposes, this as far as is realistically possible.

### **8.5**

The acceptance procedure may not be bypassed via prior use, commissioning or official acceptance, nor via the contractual partner's notification of the services' completion.

### **8.6**

Works relating to the rectification of deficiencies also require formal acceptance.

## **9. Defect-related claims**

### **9.1**

In the event that no other limitation periods have been expressly agreed, the contractual partner shall be liable to the extent of the provisions outlined in the BGB (German Civil Code). The legal regulations stipulated by § 199, para. 3 of the BGB for the determination of the limitation period in the case of defects which have been maliciously concealed by the contractual partner or by any subcontractors commissioned by it shall not be affected.

### **9.2**

The contractual partner shall be obliged to assign all its guarantee-related claims against third-party subcontractors or manufacturers employed by the contractual partner in order to execute the scope of its contractually agreed services to VW. The abovementioned assignment shall take place by way of security and in accordance with the escrow condition that the contractual partner shall file for

bankruptcy should this be necessary. The contractual partner's guarantee obligations shall hereby remain unaffected.

### **9.3**

In principle, the contractual partner shall be liable to VW for the full extent of any damages caused, even in the event that the subcontractor's liability shall be limited via contractual regulations or a court order.

## **10. Securities**

### **10.1**

The contractual partner shall be obliged to provide VW with an unlimited guarantee from a German or international warrantor in the form of a security for the down payment / advance payment.

The following shall be recognised as such: domestic banks or savings banks, foreign banks with a long-term rating of at least "BBB-" issued by Fitch Ratings or Standard and Poor's, "Baa3" issued by Moody's.

The guarantee must be formulated in accordance with the sample text from the call for tenders. The right to make guarantee claims may not lapse prior to the secure claims which may be asserted against the contractual partner.

### **10.2**

The contractual partner shall be obliged to provide an unlimited guarantee from a major German bank or a German credit insurer in the form of a security for defect-related claims, which must be formulated in accordance with the appendix enclosed with the call for tenders. Unless otherwise agreed, the security amount should be 5% of the net invoice total.

The security for defect-related claims shall extend to the settlement of all claims of this nature, including compensation, and the reimbursement of excess payments including any interest. The right to make guarantee claims may not lapse prior to the secure claims which may be asserted against the contractual partner.

VW shall have the right to retain 5% of the net invoice, or a percentage that has been

agreed otherwise, as a security for defect-related claims including compensation and the reimbursement of overpayments including any interest until the security for defect-related claims is provided. The amount retained shall be paid out to the contractual partner once the security for defect-related claims has been provided.

## **11. Industrial property rights, know-how**

### **11.1**

Unless otherwise agreed, the contractual partner shall grant VW the gratuitous right to use industrial property rights and know-how applied by the contractual partner for the purposes of the contract's fulfilment, during the project's subsequent operation and that of its facilities.

All documentation, drawings and software programmes created by the contractual partner in conjunction with the project-related service provision shall be subject to VW's unlimited property rights and rights of disposal. The contractual partner shall not be entitled to additional remuneration in this regard. The contractual partner shall transfer property rights to the respective documentation, drawings and programmes to VW immediately following their creation or production. VW and the contractual partner agree that the respective documentation, drawings, and programmes shall remain in the direct possession of the contractual partner as bailee and safe-deposit company for VW until the respective documentation, drawings, and programmes are transferred to the direct possession of VW in line with the applicable regulations.

VW shall be entitled to create replacement and expendable parts for the project's facilities, or to commission their manufacture or repair by third parties, this on the basis of the documentation supplied by the contractual partner.

### **11.2**

Unless otherwise agreed, the contractual partner shall assign VW the usage and application authorisations for all services protected by copyright in conjunction with the contract's execution. Furthermore, the

contractual partner shall provide VW with assurances to the effect that it is not aware of any circumstances, particularly those pertaining to the industrial property rights of third parties, which impede the manufacture of those objects and processes required in order to fulfil the contractual conditions, nor of any claims which have been, or could be asserted against it pertaining to possible breaches of existing industrial property rights.

### **11.3**

The contractual partner shall release VW from all third-party claims pertaining to the possible breach of industrial property rights arising from the contractual partner's violation of the obligations outlined in figures 11.1 and 11.2, above.

In the event that the owner of an industrial property right demands the facility's decommissioning, and in the event that it proves impossible to convert the facility in a manner which guarantees that the industrial property right in question is no longer violated, this at the contractual partner's expense, the contractual partner shall be obliged to remove the facility at its own expense, and to reimburse VW for any advance payments, this plus interest calculated at the rate of eight percentage points above the basic rate of interest. VW's additional rights as regards the off-setting of reimbursed payments shall hereby remain unaffected.

### **11.4**

Regardless of the regulations outlined in figures 11.1 – 11.3, above, the contractual partner shall be obliged to inform VW of all existing industrial property rights which could conflict with an application of the services provided by the contractual partner without delay.

### **11.5**

Furthermore, the contractual partner shall be obliged to inform VW of all inventions arising in connection with the execution of the commission in question and involving it or its subcontractors, and to submit all the documentation and other information required to use the said inventions to VW, this at the latter's request. The contractual partner's obligation to inform shall also

apply to know-how arising in conjunction with the execution of the contract.

The contractual partner shall ensure that the rights of the inventors as regards employees and other independent individuals are applied and assigned to VW accordingly. VW shall thereafter be entitled to register the invention on a national and international basis in order to create an industrial property right, and shall be responsible for the costs incurred as a result.

Each party shall be obliged to remunerate their own employees / inventors independently in accordance with the relevant legal regulations.

Use of the inventions, industrial property rights etc. for deliveries and/or services to third parties shall require the prior, individual, express written consent of VW (licence). If a licence is to be granted to the contractual partner, the contractual parties shall agree on the details in advance, this with particular reference to an appropriate licence fee.

The contractual partner shall be obliged to make agreements with all its employees and subcontractors and other vicarious agents appointed within the context of the contractual execution in a punctual manner, with the effect that the latter recognise the above agreements in a binding manner.

The contractual partner shall be obliged to refrain from submitting a plea for annulment or formal objection in conjunction with industrial property rights arising as a result of the services provided and registered by VW, or to support third parties during their submission of similar pleas, this irrespective of the regulations outlined in figures 11.1-11.5, above.

## **12. Payments**

In the event that the parties have agreed on a payment plan, VW shall only be obliged to make advance payments proportionate to the proven defect-free provision of services; VW's rights relating



to the presence of possible defects prior to acceptance shall hereby remain unaffected.

Provided that nothing to the contrary has been agreed, the down payments / advance payments made by VW shall be offset against outstanding partial payment invoices until the down payments / advance payments have been offset completely. The contractual partner may demand a down payment / advance payment security from VW in return for the granting of a down payment / advance payment security reduced by the offset amount.

### **13. Termination**

Without prejudice to its right to an ordinary termination, VW is entitled to terminate the contract for cause if it is not reasonable to expect VW to continue contractual relations until the plant has been completed, taking into consideration all of the circumstances in each individual case and the interests of both sides. Section 314(2) and (3) of the BGB (German Civil Code) apply accordingly. Partial termination is possible; it shall apply to a definable part of the plant in question.

Such cause shall also be considered justified in the event that a contractual partner permissibly institutes insolvency proceedings in respect of its assets.