

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

1. Validity of these contractual conditions ..... 2  
2. Obligations during the tender phase ..... 2  
3. Contractual foundations ..... 2  
4. Execution..... 3  
5. Involvement by VW ..... 5  
6. Scope of services / service amendments / additions ..... 5  
7. Compliance with regulations..... 6  
8. Subcontractors ..... 6  
9. Documentation ..... 7  
10. Place of performance..... 8

# **General terms and conditions of purchase for facility management services, VW AG / general purchasing division (current as of 1 May 2018)**

## **1. Validity of these contractual conditions**

### **1.1**

These general terms and conditions of purchase shall supplement the general terms and conditions of purchase, VW AG / general purchasing division and shall apply to all services relating to infrastructural, commercial and technical facility management. They shall be applicable subject to deviating agreements pertaining to individual contracts.

### **1.2**

These general terms and conditions of purchase shall also apply if particular methods or processes (e.g. building information modelling) or the use of special forms of communication (e.g. Internet-based communication platforms) are agreed upon for the collaborative work or the provision of services.

## **2. Obligations during the tender phase**

### **2.1**

The tendering party shall be obliged to check the tender documentation for completeness immediately upon receipt, and to request any missing documents from VW without delay.

The tendering party shall be obliged to draw VW's attention to any possible loopholes and contradictions in the tender, including its various elements, which became apparent either to it or to a specialist company during the tender's examination, this with reasonable care, in a separate covering letter upon its submission of the tender.

### **2.2**

The tendering party shall be obliged to submit a complete tender covering all the goods and services required in order to generate the desired result anticipated by

the tender, taking account of the tender requirements, this irrespective of whether the goods and services are described in detail in the tender documentation or not.

In the event that the tendering party deviates from the tender guidelines and various elements in its tender in any manner whatsoever, it shall be obliged to draw VW's attention to this in a separate covering letter containing brief details of the reasons for this upon submitting the tender.

By submitting a separate proposal / alternative tender, the tendering party shall provide an express guarantee of the comprehensive legal, technical and deadline-related parity of its separate proposal / alternative tender.

### **2.3**

The tendering party shall be obliged to specify which elements of the goods and service obligations it wishes to assign to other contractors upon its submission of the tender. These contractors must be named in a list of respective goods and services components to be enclosed with the tender. Please see fig. 8 for further information.

Any assignment of the services to be provided to subcontractors shall require VW's express separate written consent. The latter shall not apply to the goods and services obligations which do not fall within the scope of the services provided by the tendering party, and which were expressly alluded to in the tender.

## **3. Contractual foundations**

### **3.1**

All agency-, works-related and other services arising from the contractual elements in accordance with fig. 3.4 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.

### **3.2**

Provided that nothing to the contrary has been expressly agreed, the contractual performance shall comprise the service provision arising from the order, including all its components, in a complete manner.

### 3.3

Insofar as the contractual partner shall be obliged to provide independent evaluations, calculations or 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.

In the event that services for existing properties are required in accordance with the call for tenders, the tendering party shall be obliged to view the property in question before submitting its tender and to confirm that this inspection has been carried out in the tender itself via the written provision of the date of the inspection in the tender documentation.

### 3.4

The following contractual foundations shall constitute an intrinsic contractual component:

#### 3.4.1

- the VW order description

#### 3.4.2

- the negotiation records in chronological order

#### 3.4.3

- these special terms and conditions of purchase

#### 3.4.4

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

#### 3.4.5

- the operational resources guidelines (ORG) 1.01

#### 3.4.6

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

#### 3.4.7

- the list of subcontractors

#### 3.4.8

- 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 contractual partner's provision of goods and services

#### 3.4.9

- all official and trade association guidelines related to execution and implementation

#### 3.4.10

- the provisions stipulated by the BGB (German Civil Code)

### 3.5

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.

## 4. Execution

### 4.1

The contractual partner shall be obliged to inform VW of all significant matters arising as a result of the implementation of the contractual activities, and shall participate in all discussions via an authorised agent.

#### **4.2**

The contractual partner shall be obliged to protect the rights of VW within the context of the contract.

The contractual partner shall be obliged to make a continual effort to optimise the property in qualitative and economic terms in the process.

The contractual partner shall be obliged to continue to make the property's improvement a top priority even in the event that it concludes contract with third parties or assigns services to subcontractors, this in accordance with the contractual terms and conditions. The overall responsibility of the contractual partner shall hereby remain unaffected.

#### **4.3**

The contractual partner shall be obliged to support and promote VW's activities. In particular, the contractual partner shall be obliged to take or bring about decisions at the request of VW, making provision for an appropriate verification and agreement period in the process.

#### **4.4**

Provided that nothing to the contrary has been agreed, the contractual partner shall be obliged to ensure that an employee authorised to make decisions and issue instructions is present on the premises at all times. This shall also apply in the event of the contractual partner's assignment of services to subcontractors.

#### **4.5**

VW reserves the right to reject a change in the contractual partner's property management on the grounds of just cause, or to demand the replacement of the contractual partner's project manager on the grounds of just cause. The contractual partner shall be obliged to inform VW of any intended change in the project management in a punctual manner and to obtain the latter's consent. An approval application relating to the future project manager must be submitted, and must include proof of his qualifications and professional experience.

#### **4.6**

The contractual partner shall be obliged to co-ordinate its services with those

executed by third parties commissioned by VW in such a way that no hindrances ensue.

#### **4.7**

The contractual partner shall be obliged to examine all documentation issued by VW or third parties commissioned by VW to the contractual partner for completeness and accuracy without delay, and to inform VW in writing of any possible incompleteness or inaccuracy immediately. In the event that the contractual partner fails to conform to the above requirement, it shall be obliged to bear the costs of VW or the costs of third parties commissioned by VW which are incurred by its failure to inform VW of the abovementioned incompleteness or inaccuracy.

#### **4.8**

The contractual partner shall be obliged to co-ordinate all services whose execution requires the involvement of or decisions by VW or third parties commissioned by VW in such a way that VW or the third party commissioned by VW is left with a sufficient amount of time (usually a minimum of two weeks) to check the said services or to make decisions related thereto.

#### **4.9**

The contractual partner shall be obliged to make the necessary preparations prior to all contributory actions or decisions taken by VW or third parties commissioned by the latter in such a way that VW or third parties commissioned by VW only have to carry out the required actions within the scope of the designated function, this in accordance with the order specifications. For example, the contractual partner shall be obliged to submit applications and decision memos to VW or to third parties commissioned by VW ready for signature or judgement.

#### **4.10**

The contractual partner shall be obliged to contact the responsible departments at VW immediately after the contract has been awarded, this in order to agree on the precise details of the commissioned

services taking account of the applicable regulations in accordance with the order. Furthermore, the contractual partner shall be obliged to inform itself as regards the availability of constructional and other equipment, cables and wiring of all kinds, to adapt their execution / implementation to the inventory in question and to protect the said inventory from all damages during the execution / implementation, this for the purposes of correct execution / implementation.

Moreover, the contractual partner shall be obliged to agree, in an independent manner, on the execution / implementation of all services with VW, this in order to ensure that the said execution / implementation does not hinder VW's operations, nor those of a third party, this contrary to the order requirements.

#### **4.11**

The contractual partner shall be obliged to inform VW of any concerns, irrespective of their nature, in conjunction with the anticipated service provision, including those regarding protection against risk of accidents or as regards services provided by other contractors, this without delay and, if possible, before the works in question are commenced by it or the third party.

#### **4.12**

In the event that the service provision has to take place on Saturdays, Sundays or public holidays, the contractual partner shall be obliged to apply for any special permits or authorisations which may be required in order to carry out the works in question in a punctual manner. In the event that an application regarding VW's formal involvement in this matter is also required, the contractual partner shall also be obliged to obtain this documentation punctually.

### **5. Involvement by VW**

#### **5.1**

Provided that nothing to the contrary is stated in the order, the contractual partner shall receive the documentation specified

in the call for tenders immediately after the contract has been awarded. The contractual partner shall not be entitled to additional documentation, this subject to deviating regulations. Fig. 4.7 of these terms and conditions shall apply accordingly.

#### **5.2**

The contractual partner shall be solely responsible for guaranteeing the correct contractual execution / implementation of the contractual services.

However, VW shall be entitled to monitor the execution / implementation of the aforementioned works via its own agents. This shall not excuse the contractual partner from fulfilling its own obligations in accordance with the contract. The contractual partner shall be obliged to cooperate with VW's authorised representative.

The contractual partner shall submit all plans, drawings etc. which may be required in accordance with the contract to VW and to third parties specified by VW for inspection. VW shall be entitled to specify an appropriate verification period. The contractual partner shall continue to assume full responsibility for the contractually agreed performance in the wake of the examination and approval of the plans, drawings and other documentation by VW or individuals commissioned by the latter. The examination and approval by VW and / or from its designated agents shall not constitute any contributory negligence in terms of § 254 of the BGB (German Civil Code).

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

#### **6.1**

The contractual partner shall be obliged to provide all goods and services required in order to fulfil the scope of the services envisaged by the contract in an accurate, functional, operable and legal manner.

#### **6.2**

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.

### **6.3**

In the event that additional services not covered by the remuneration agreement become necessary during the course of the contract's execution, the contractual partner shall be obliged to inform VW of this in writing without delay before the said execution, and to submit a corresponding additional tender to VW on a short-term basis. Each additional tender must be based on the main tender's pricing principles as stipulated by the current version of the contract.

The additional tender should include details of all costs, i.e. all those time-related costs associated with possible acceleration measures, etc. The contractually agreed discounts should also be taken into account.

### **6.4**

In the event that VW and the contractual partner are unable to agree as regards whether a specific service or instruction issued by VW for the implementation of specific works is included in the scope of the agreed remuneration or not, or in the event that the contractual parties are unable to agree as regards the level of the said remuneration, the contractual partner shall be obliged to provide the service, this subject to its legal position. An agreement regarding possible additional remuneration shall follow. VW shall be obliged to expedite its inspection procedures in this regard.

## **7. Compliance with regulations**

The contractual partner is obliged to comply with the valid legal and police guidelines during its execution and implementation of the contractually stipulated services, with particular reference to the guidelines and ordinances issued by the regulatory authorities, the TÜV (Technical Inspection Agency), the commercial regulatory authority and the Employer's Liability Insurance Association.

The instructions issued by the health and safety protection co-ordinator should also be obeyed. The construction site guidelines issued by the health and safety protection coordinator constitute a contractual component.

In the event of its failure to comply with the aforementioned regulations, the contractual partner shall be solely liable for all resultant penalties, in addition to personal injury and material damage, this even in the wake of the item of property to the AG (PLC). It hereby exempts the AG (PLC) from all claims resulting from its misconduct.

## **8. Subcontractors**

### **8.1**

The contractual partner shall be obliged to perform the service on its own premises. In exceptional cases, and in accordance with figure 2.3 of these terms and conditions of purchase, the service in question may be assigned to a subcontractor with VW's prior written consent.

### **8.2**

The contractual partner may only commission expert, efficient and reliable subcontractors which comply with their legal obligations in terms of the payment of taxes and social security contributions and which fulfil the commercial requirements. The contractual partner may not agree less favourable contractual conditions with the subcontractors than those which have been agreed between it and VW.

Moreover, the contractual partner shall be obliged to comply with regulations

governing both the rights of foreigners and employment rights and those pertaining to the law concerning the posting of employees abroad, both on its own premises and in the case of those employees involved in the execution / implementation, and must encourage its subcontractors to do the same. The contractual partner shall also be obliged to accept these obligations within the context of contracts with its subcontractors. The contractual partner shall be obliged to provide proof of its acceptance of these obligations via its submission of the relevant contracts to VW at the latter's request. Furthermore, the contractual partner shall be obliged to carry out continuous checks to ensure that its subcontractors comply with the abovementioned regulations governing both the rights of foreigners and employment rights, and to document these checks in an appropriate manner. The contractual partner shall be obliged to submit the relevant proof of these checks immediately at VW's request.

In the event that the contractual partner is unable to comply with this obligation, this shall constitute a serious contractual breach and shall entitle VW to terminate this contract, either in whole or in part, on the grounds of just cause, this in the wake of a series of written reminders and deadlines designed to bring about a rectification of this state of affairs.

The contractual partner's relinquishment of corresponding contractual conditions to subcontractors shall not result in its exoneration in terms of its obligation to VW.

## **9. Documentation**

### **9.1**

The contractual partner shall be obliged to store and administrate all correspondence and technical and other documentation, including software programmes relating either directly or indirectly to the contract's fulfilment, in a secure, systematic manner with the due diligence of a prudent, conscientious businessman.

VW shall be entitled to view the said correspondence, documentation and software programmes by prior arrangement with the contractual partner on the latter's premises, and to demand the immediate reproduction and submission of relevant copies and print-outs, this against separate payment as required. VW shall be obliged to take the contractual partner's trade secrets into account in the process. However, the former's right to information shall not be constrained in the process.

### **9.2**

Furthermore, the contractual partner shall be obliged to draw up, maintain, update and administrate all necessary documentary, inventory and other documentation required for the premises' correct, unimpeded and, if possible, optimised operations with the due diligence and care of a prudent, conscientious businessman, taking account of technical requirements and advances in the process, this in accordance with fig. 9.1, above. Here, particular, but not exclusive reference shall be made to descriptions, operating instructions, maintenance instructions, care instructions and infrastructure documentation, etc.

The aforementioned documentation must be kept at the place of employment and updated on a daily basis.

### **9.3**

At the time of the contract's expiry, VW shall be entitled to the restitution of all original documentation, software programmes etc. in accordance with figures 9.1 and 9.2, above, and, in the event that originals are not available, to copies or duplications in addition to all electronically stored data on data carriers.

The contractual partner shall not be permitted to exert any right of retention in connection with the above documentation. The contractual partner shall be obliged to reproduce all necessary documentation and programmes prior to their transfer at its own expense.

In the event of the contract's possible premature termination, irrespective of the reasons for this, these provisions shall also apply to all documentation, plans,

data, software programmes etc. and premises-related correspondence in the possession of the contractual partner at the time of the contract's termination. The contractual partner shall be obliged to perform any possible outstanding services, particularly those pertaining to the updating of documentary and inventory documents without delay, and to submit the resultant documentation to VW.

In the event that the contractual partner asserts remuneration claims, VW shall be entitled to counteract a possible right of retention by the contractual partner via the provision of a security. The aforementioned security shall take the form of a guarantee from a German bank or savings bank.

#### **10. Place of performance**

The place of performance shall be deemed the place specified in the call for tenders or the negotiation records. This shall usually be a VW plant, branch or other business location. In the event that a place of performance is not expressly specified and if this cannot be inferred from the agreements between the parties, Wolfsburg, Germany, shall be deemed the place of performance.