

General Terms of Purchasing of Raffinerie Heide GmbH – Contract for Work and Labour

These General Terms of Purchasing for Construction Services (AEBW) apply exclusively to contracts for work and labour.

1. Bases of contract

(1) The services to be performed shall be determined according to their kind and scope by the contract and the following parts of the contract. In case of discrepancies, the following shall apply with the priorities and in order as listed below:

- the provisions of the contract,
- the transcript of negotiations,
- our General Terms of Purchasing – Contract for Work and Labour (AEBW),
- Our Refinery Policies,
- our General Terms of Purchasing – Contract for Services (AEBD),
- our General Terms of Purchasing – Purchase Agreement (AEBK),
- The service specification with the additional technical requirements for the relevant construction site and construction service,
- VOB [German Construction Contract Procedures], Part B and Part C in the version current on submission of the tender,
- the generally accepted rules of technology,
- the BGB [German Civil Code], in particular Sec. 631 seqq. BGB

(2) Any opposing agreements or conditions, or such that deviate from our AEBW shall apply only if we have expressly agreed in writing to their applicability.

(3) The AEBW shall also apply to all future contracts of the same kind, without requiring us to refer to them in each individual case. Changes to our AEBW shall apply as of the date of their introduction or in any case, as of notice given in text form.

2. Scope of service and execution

(1) You shall perform all planning, delivery and construction services that are required for the defect-free, functional, professional, technically correct and complete [sic delivery] ready for operation and on schedule in accordance with the contractual bases pursuant to Section 1, even if not all services required for this purpose are described in the parts of this contract. This also includes obtaining all permits, certificates and licenses for the individual case and coordination with administrative offices, authorities, and utilities.

(2) All bases of the contract provided by us shall be reviewed for completeness, correctness and the absence of contradiction from the perspective of a competent contractor in the course of the drafting of the tender. Should you discover any incompleteness, mistakes or contradictions in the review, you are obligated to inform us in writing thereof without delay.

This also applies in case incompleteness, mistakes or contradictions are discovered only in retrospect.

(3) You are obligated for the entire duration of your work at the construction site to provide a technical supervision that is appropriately qualified for the kind and scope of the construction project.

(4) You are obligated to ensure the timely coordination with us, planners or authorities, as required for the performance of your work and labour, and to submit to us the documents required for the execution for a timely review/release whilst allowing for an appropriate review period.

(5) You are required to take and check all measurements at the construction site in your own responsibility, which are necessary for the production and installation of certain components.

(6) In the execution of all work, our Refinery and Safety Policies, relevant accident prevention regulations and safety rules of the professional associations as well as related statutory provisions must be observed.

(7) During the entire construction period, the construction ground and construction site equipment must be kept clean. Any dirt, rubble, etc. caused by you shall be disposed of continually at your own cost and in consideration of the legal and regional regulations. You will remain the owner of the waste material produced/left behind by you. If the producer of the waste cannot be identified, the cost for the necessary cleaning/disposal will be allocated to the companies engaged at the time in question.

(8) You assure that neither you yourself nor your subcontractors employ any workers without valid and/or proper employment papers. You are obligated to always keep copies of the employment papers (social insurance cards, employment permit, residence permit) on hand at the construction site. We have the right to check the presence of the employment papers at any time.

3. Subcontractors

(1) Insofar as you intend to engage subcontractors for the services to be performed by you, our prior written agreement must be obtained.

(2) You are obligated and shall ensure that all agreements with us will become subjects of the subcontractor agreement in the case that services are assigned to subcontractors.

(3) We are entitled to demand that the subcontractor appointed by you will not be engaged in case there are verifiable concerns as to its professional qualification or reliability. This shall also apply if we have already made (negative) experiences with the subcontractor appointed by you in the past and in connection with other construction projects.

4. Compensation

(1) The agreed prices are fixed prices. Price changes are excluded. Thus, no adjustment will be made, e.g. due to changes in wages, material and equipment costs. All expenses necessary for the complete and proper performance of the services must be included in the **calculation of the prices**. All secondary services, all internal costs and all external costs that are incurred by you in the context of your work and labour shall be settled by the agreed compensation.

(2) You are obligated to seek information prior to submitting a tender about the local conditions at the construction site, the characteristics of existing structures, the premises and all further questions relevant for the performance of your contract. No objections or subsequent requests will be accepted that are made at a later point in result of a lack of familiarity with the construction site.

(3) Hourly wage work will be compensated only if it has been expressly contracted by us prior to the execution. The timesheets for hourly wage work must specify the work including the date, precise place of performance, name and qualification of the worker, name of the person initiating the work, working/driving hours, used equipment and consumed materials. Signing off on timesheets is merely deemed an acknowledgement with regard to the kind and scope of the performance. We reserve reviewing whether these are services exceeding the contractually owed target and if the services are appropriate.

5. Changed/additional services

(1) If we instruct changes of services or order services not provided for in the contract, you will be obligated to inform us in writing of the resulting additional costs within due time before the execution and on the basis of the updated contract calculation. The calculation of the new prices including the calculation bases of the contractually agreed prices shall be submitted to us for examination and review, and the required information shall be provided to us. The notice must be given in the normal case at least 10 days before the planned start of execution.

(2) You may not execute your work for as long as no written agreement has been concluded on the price changes due to costs and schedules. In the interest of the unobstructed execution of the construction project, however, we are entitled to instruct that you to perform the changed or additional services even if no written agreement on the costs and effects on the schedule has been concluded yet, in particular if we have acknowledged the claims to additional compensation and extension of deadlines on the merits – whereas subject to review of the amount – and/or the if the performance of the service must not be postponed in order to continue the construction project.

(3) You are not entitled to a claim of additional compensation for changed and/or additional services if the additional costs have not been notified to us prior to the execution or if you perform changed and/or additional services before a written agreement has been concluded and respectively before we have

instructed their immediate performance. An exception shall apply only if the immediate performance of the service is necessarily required for technical or economic reasons or the notification of the additional costs was omitted at no fault, or we have culpably omitted agreeing on the price.

6. Invoicing and payment

(1) Invoices shall be submitted to us in two official copies including all related documents and data in a proper and verifiable form, whereas the second copy shall be marked visibly as copy.

(2) Payment shall be made in the commercially customary manner and notably by the 30th day of the month following upon the acceptance of the service and receipt of a correct invoice.

(3) You are entitled to request instalment payments subject to the conditions of Sec. 632a BGB. Instalment payments will be made up to an amount of 95% of the invoice total and notably in the commercially customary manner by the 30th day of the month following upon the acceptance of the service and receipt of a correct invoice.

7. Security

(1) As security for warranty claims, we shall withhold 5% of the unreduced net final invoice total before instalment payments. The rights in your entitlement pursuant to Sec. 17 (2) to (4) VOB/B remain unaffected.

(2) The defences pursuant to Sec. 770 to Sec. 772 BGB and the right to deposit shall be waived in the warranty bond document. The waiver of the defence of set-off shall not apply if your claim is uncontested, found valid by final and absolute judgement or if it is in reciprocity with our claim pursuant to Sec. 320 BGB. Furthermore, the warranty bond document shall include the guarantor's declaration that the bond claim does not fall under the statute of limitation before the secured main claim does. Any agreements on the limitation period of the main claim concluded between you and us after the conclusion of the warranty bond agreement shall only be binding on the guarantor with its written agreement.

(3) With regard to the return of the warranty bond, Sec. 17 (8) no. 2 VOB/B shall apply, subject to the stipulation that it shall be returned only upon the expiration of the agreed limitation period for warranty claims and that only such claims according to clause 2 therein shall grant a right to (partial) withholding of the security that we have justly claimed.

8. Execution deadlines and contract penalty

(1) Binding contract deadlines are deemed in particular the date of the commencement of work and completion of the performance (completion date) as well as further interim dates that are designated as being binding.

(2) Should you culpably miss the completion deadline, you shall pay a contract penalty to us in the amount of 0.1% of the net contract sum per calendar day past the deadline, at most however 5% of the net amount on the final invoice. It shall be at your discretion to prove that missing the deadline was outside of your responsibility. We are entitled to claim a forfeit contract penalty up until the final payment, even if we have not reserved the right to assert it on acceptance. Further damage

compensation claims shall remain unaffected and they are expressly reserved. The contract penalty, however, shall be deducted from such claims.

9. Insurance

(1) You shall provide us with written verification, at the latest prior to the start of the service performance, that you have sufficient insurance cover for construction service and public liability and that you shall maintain this cover throughout the entire term of the contract.

(2) You are obligated to inform us immediately if or insofar as the insurance cover is no longer existing or contested.

(3) Should you fail to verify the insurance cover to us within the prescribed period, we will be entitled to set a grace period of two weeks to you for fulfilment. If you do not verify the insurance within said grace period either, we will be entitled to cancel the contract for good cause. This also applies if the insurance cover is no longer existing or contested.

10. Acceptance and assumption of risk

(1) Upon the completion of all services, a formal acceptance will take place. Fictional acceptances are excluded. This also applies if the work result is taken into operation before the acceptance.

(2) The statutory provision in Sec. 644 BGB shall apply to the assumption of risk in deviation from Sec. 7 VOB/B.

11. Warranty rights

(1) Our warranty rights are determined pursuant to Sec. 13 VOB/B. The limitation period for warranty rights relating to all services shall be 5 years in deviation from Sec. 13 (4) VOB/B.

(2) If you do not fulfil a request for the repair of defects during the construction execution (before acceptance) in spite of an appropriate period having been set, we will be entitled at our discretion to have the defects be repaired at your cost instead of exercising the rights following from the VOB/B. Sec. 13 (5) no. 2 VOB/B applies accordingly. Prior cancellation pursuant to Sec. 8 (3) in conjunction with Sec. 4 (7) VOB/B is not required.

12. Cancellation

(1) A cancellation is permissible on the conditions of Sec. 8, 9 VOB/B. In deviation from Sec. 8 (3) VOB/B, the cancellation, however, can be limited to a separable part of the work owed.

(2) Beyond the reason for cancellation provided for in Sec. 8, 9 VOB/B, we will be entitled to cancellation for good cause, in particular if

- you, persons who are occupied with the preparation, conclusion or execution of the contract, or associates of yours offer, promise or grant an incentive so that you will receive preferential treatment in the award of contract for construction services of this contract or future contracts. Such actions are held equal to actions by persons, who are authorised, contracted or employed by you. In this respect, it is irrelevant whether such incentives have been offered or promised directly to the persons or in their interest to a third party;

- you violate the provisions of the Law against Illicit Labour, the Employee Secondment Act and/or SGB IV [Social Security Code, Book IV] and do not stop such violations in spite of written request with grace period having been set and including a threat of cancellation.

(3) In the case of a cancellation or other termination of the contract, you shall complete your service, so that we can accept the service without difficulties and arrange for the continuation of the same by a third party.

13. Confidentiality and reservation of title

(1) We reserve property and copyrights to plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents shall be used exclusively for the contractual service and be returned to us upon the end of the contract. The documents shall be kept secret from third parties and notably also after the termination of the contract. The confidentiality obligation shall expire only if and insofar as the knowledge contained in the provided documents has become generally known.

(2) The foregoing provision shall apply accordingly for substances and materials (e.g. software, finished and semi-finished products) as well as tools, templates, samples and other items that we make available to you for production. Items of this kind shall be retained by you separately at your cost – for as long as they are not processed – and be insured to appropriate extent for destruction and loss.

14. Assignment, offsetting

(1) You are not permitted without our prior approval, which shall not be refused unfairly, to assign your claims against us to another party. This shall not apply to monetary claims.

(2) You may only offset claims against uncontested claims, or such that have been found valid by final and absolute judgement, or against claims according to Sec. 320 BGB resulting from this contractual relationship and assert only for such claims a right of withholding.

(3) We are entitled to offset claims that are in the entitlement of one of our affiliates in the definition of the Stock Companies Act (cf. Sec. 15 AktG) against your claims.

15. Industrial property rights and copyrights

(1) You guarantee that your service performance does not infringe on any industrial property rights of third parties and in particular not on any copyrights, patents, utility patents or license rights. You shall indemnify us and our customers from claims of third parties based on property rights.

(2) The results of your service performance, in particular any documents, drawings, drafts, computer programs, files, etc. created according to special requirements, shall transfer to our ownership upon payment of the compensation. We shall be entitled to the limited, transferable, sublicensable right without limitation in terms of content and time to use the results of your service performance in any optional way, reproduce, modify them and make them publicly

accessible, publish or exploit them. You shall be obligated to your employees, freelance staff or other third parties to ensure that the rights to use the results of your work and labour are in our exclusive entitlement without limitation of time.

16. Final provisions

(1) These AEBW and the contractual relationships established on this basis are governed by the law of the Federal Republic of Germany in exclusion of international harmonised law, in specific the UN Convention on Contracts for the International Sale of Goods.

(2) Should individual parts of these AEBW be or become invalid or impracticable, the validity for the rest will not be affected thereby. Instead of the invalid or impracticable provision, the Parties shall agree on a provision that comes closest to the invalid or impracticable agreement within the legally permissible meaning and ensures its intended economic success. The foregoing agreements shall apply accordingly if omissions in the provisions of the contractual relationship were to become apparent in retrospect.

(3) The place of jurisdiction – to the legally permissible extent – is Hamburg.