

## General commercial and administrative terms and conditions of purchase orders (CAC) of VERBUND

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## 1 Orders and order confirmation

### 1.1 General

These general commercial and administrative terms and conditions for purchase orders (CAC) are applicable to all contracts (hereinafter also referred to as "Purchase Order") concluded by VERBUND AG and/or its group companies [except for Austrian Power Grid AG (APG) and Gas Connect Austria GmbH (GCA)] as principal (hereinafter "Principal", "PRIN" or "VERBUND") with a contractor (hereinafter "Contractor" or "CON"), unless the order letter (SAP order) and its appendices provides otherwise.

These CAC apply on an exclusive basis. Even if no terms contrary to these CAC are incorporated in Contractor's terms and conditions, the latter will not become part of a contract without Principal's express written consent. These CAC are applicable also to all future business relationships, even if they were not specifically agreed again.

CAC as well as other terms set forth in the Purchase Order and its appendices apply even if the supply/service is unconditionally accepted despite being aware of contrary or deviating terms.

### 1.2 Purchase Order principles and components

The invitation to tender along with its appendices and/or the Purchase Order together with its appendices will describe the principles and components of the Purchase Order. In case of inconsistent provisions, the following order of priority applies, unless otherwise stated: Purchase Order, invitation to tender, CAC. The invitation to tender (if issued) forms part of the Purchase Order, unless specifically agreed otherwise.

### 1.3 Order confirmation

Principal shall receive the order confirmation, which must conform to the Purchase Order and be validly signed by Contractor, within 14 calendar days of the date on which Contractor received the Purchase Order. Otherwise, Principal reserves the right to revoke the Purchase Order without Contractor being entitled to any compensation.

## 2 Scope of supplies/services

### 2.1 Contractor's supplies/services

The scope of Contractor's supplies/services is defined in Principal's Purchase Order (e.g. the specifications) and, unless otherwise stated, includes also all services provided by Contractor up to takeover which are necessary for these supplies/services, including but not limited to identifying the local and operational requirements, obtaining the necessary permits for the provision of the supplies/services, identifying and complying with all pertinent legal provisions, regulations, standards, etc., any planning and calculations, coordination, submission of plans, documentations, packaging and transportation, import and export clearance, insurance, liability, training of personnel, expenses for material and acceptance tests etc., protection of supplies/services from weather elements, contamination, damage and loss, provision of all necessary tools, (measuring) instruments and consumables and supplies. Contractor shall properly dispose of waste in accordance with environmental regulations. Contractor shall demonstrate the type, quantity, origin, and whereabouts of any waste produced in connection with Contractor's activities to the satisfaction of Principal. This includes also substances to be supplied which are not necessary for permanent operation, unless Contractor continues to use or reuses such substances. Contractor shall be subject to these obligations, even if Contractor is allowed to take back waste without a collection or treatment permit. Contractor undertakes to transfer and assign the above obligations also to any subcontractors or suppliers engaged by Contractor.

### 2.2 Items or information or services provided by Principal

The Purchase Order (e.g. specifications) define(s) any items, information or services provided by Principal and/or by third parties engaged by Principal. Where these items, information or services are defined based on information by Contractor, Principal is obligated to provide these only if this is absolutely necessary for the defined scope of supplies/services and not precluded by safety concerns (risk of personal injury and/or property damage).

If Principal and/or third parties engaged by Principal is/are required to provide items, information or services due to defective, delayed or incomplete workmanship or information by Contractor or due to other changes,

improvements, warranty or guarantee cases etc. beyond Principal's control, these items, services or information are provided at Contractor's cost and expense.

If Contractor waives any participation by Principal, in whole or in part, and provides the items, services or information itself, Contractor shall not be entitled to any compensation or reimbursement of costs.

Subject to possibilities, Principal will procure appropriate storage/assembly space, including, if possible, rooms at the workplace that can be locked. Once the work has been completed, such rooms and space shall be vacated and returned to Principal in proper condition within an appropriate deadline. Contractor may not use any storage/assembly space other than that allocated to Contractor; Contractor is also responsible for sufficient ventilation of these rooms.

### **2.3 Coordination/cooperation with third parties (except subcontractors)**

Contractor shall coordinate the implementation of overall performance/an overall system or project with several involved third parties.

In projects which divide the work among several parties, Contractor shall guarantee the technically correct design and documentation of the related supplies/services and their flawless operation in every respect in cooperation with the third parties involved.

Contractor shall communicate with other involved third parties in a timely and binding manner, exchange all necessary documents and adhere to reciprocal requirements whenever Contractor's supplies/services interact with those of other third parties (schedules, software etc), in order to achieve proper workflows.

Any determination shall be made and measure taken in agreement with Principal; the contractors concerned are not entitled to assert additional claims vis-à-vis Principal. In case of disagreements, Principal will make a decision.

### **2.4 Contractor's duty to review and to warn**

Contractor shall promptly review the documents and materials for implementation provided by Principal as well as any items, services or information suggested by Principal and shall promptly report to Principal in writing any defects in materials which Contractor should identify based on his expected expertise and proper diligence, or concerns regarding the planned form of execution. Contractor shall make suggestions for corrective action or improvements within a reasonable deadline, if possible. Principal shall announce its decision within a reasonable deadline. Any failure of Contractor to give such notice will make Contractor liable for any such omission.

Any inconsistency of information provided in the invitation to tender and/or the Purchase Order along with its schedules shall promptly be notified to Principal in writing for a statement.

The duty to review and to warn applies also whenever requirements defined by Principal (e.g. in the specifications) would endanger or frustrate the achievement of the properties and qualities of supplies/services which are defined in the Purchase Order or to be expected according to the state of the art. If Contractor fails to warn Principal, Contractor is not entitled to recover extra costs for rescheduling and reprogramming, and additional or changed services.

### **2.5 Training of personnel, documentation, plans, bills of materials, logs, and other documents**

Principal's (operating) personnel shall be trained and instructed in a proper and comprehensive manner.

The documentation (plans, bills of materials, logs and other documents) shall be submitted to Principal in accordance with requirements specified by Principal.

The documentation which is necessary for operation and maintenance, for the precise understanding of the supplies/services, the rapid identification and remediation of defects, failures or wear, if any, or follow-up orders of materials/spare parts shall be handed over to Principal upon takeover, at the latest. Principal may request Contractor to provide technical drawings without extra cost, especially of parts that are subject to wear and tear or occasional exchange.

At Principal's request, Contractor shall disclose essential data (e.g. critical speed, chemical ingredients, occurring stress, characteristic data of components/materials etc.) and hand over documentation on software,

weight composition, patent specifications of patents applied, as well as other documents relating to the Purchase Order in question.

## **2.6 Completeness of Contractor's supplies/ services**

Contractor undertakes to provide the supplies/services in such a manner that these, in combination with items, services or information provided by Principal or existing components, form a complete, ready-for-operation, functioning and compliant assembly of system with the properties defined in the Purchase Order.

It must be ensured that the supplies/services provided are fit for a flawless, safe and economic operation of the deliverable also in combination with Principal's facilities. If necessary, Contractor shall obtain information on Principal's existing facilities in due time.

This rule of completeness also applies if the Purchase Order and its schedules or the invitation to tender and its annexes do not contain a complete list of necessary supplies/services. Contractor cannot derive any claims from this clause.

## **2.7 Change in the scope of services**

Any changes in the defined scope of supplies/services which Principal requests in connection with the implementation of the contract are binding if made in writing by Principal by way of order changes or additional Purchase Orders.

If these changes reduce the scope of services, the total sum referred to in Section 4.3 will be reduced as well. If changes require Contractor to provide additional services, Contractor can seek an additional compensation only if, prior to execution, he notifies Principal thereof and submits a written offer which is accepted by Principal. At Principal's request, the documents necessary to assess the offered prices shall be submitted in verifiable form for inspection.

Principal reserves the right to obtain comparative offers for additional services compensated based on actual hours, material or cost incurred and additional and extra services. Principal and Contractor will consensually decide whether these services are commissioned by Contractor or Principal. In any event, Contractor assumes overall responsibility for these services.

Additional services compensated based on actual hours, material or cost incurred, additional and extra services are subject to the conditions and technical requirements of the main contract.

In urgent cases, Principal's local construction/assembly supervisor may order minor extra work. Contractor is obligated to seek written confirmation from Principal's construction/assembly supervisor on a daily basis for the services so arising. Unconfirmed services will not be compensated.

## **2.8 Rules of implementation, manufacturing or purchase**

The ordered supplies/services must be implemented in accordance with the latest technical and scientific knowledge relating to planning, calculation and production on the service provision date and must be optimized to local conditions and operational requirements. Unless Principal has predetermined materials, Contractor shall use or instruct Contractor's subcontractors to use the most suitable material. Unless otherwise agreed, the risk of procurement with respect to Contractor's services shall be borne by Contractor.

Contractor shall be liable for compliance with all provisions, standards, orders, etc. imposed by law and authorities, including but not limited to safety laws and laws governing the safety of buildings and compliance with construction regulations, which are necessary for the provision of the supplies/services, including but not limited to the provisions, standards, regulations and factory standards specifically mentioned in the Purchase Order. Similarly, Contractor is liable for compliance with these provisions by Contractor's subcontractors and suppliers.

Contractor shall produce the supplies/services in the agreed manufacturing plants. Any transfer, in whole or in part, to other manufacturing plants or to third parties (subcontractors, suppliers etc.) and any change of established subcontractors/ manufacturers/ suppliers of partial supplies/services is permitted only with Principal's written consent.

If Contractor engages or involves third parties (subcontractors, suppliers, etc.), all provisions shall be imposed upon these, notwithstanding Contractor's overall responsibility.

## **2.9 Subcontractors and suppliers**

Subcontractors and suppliers are vicarious agents of Contractor according to Section 1313a Civil Code (ABGB).

## **2.10 Specifications for the provision of supplies/services**

### **2.10.1 Service provision, conduct and rules at the workplace**

Services (e.g. assembly) shall be provided in a timely manner in coordination with Principal.

Contractor shall comply with reporting duties vis-à-vis authorities or conditions imposed in connection with the supplies/services (e.g. according to Section 3 of the Ordinance on Protection of Construction Workers).

Contractor is required to comply with labour and social laws applicable in Austria.

Contractor is responsible to ensure that staff and/or vicarious agents who work for Contractor possess the necessary qualifications and are permitted to work on site. Upon request, documentary evidence thereof shall be provided to Principal free of charge. Contractor shall submit copies of all permits and authorizations for all non-Austrian citizens who work on job sites for Contractor before these enter Principal's job site for the first time. These include, but are not limited to:

- one-year permit to work in Austria, Employment permit (*Beschäftigungsbewilligung*)
- two-year permit to work in Austria, Work permit (*Arbeitserlaubnis*)
- five-year permit to work in Austria (*Befreiungsschein*)
- four-month permit to work in Austria (*Entsendungsbewilligung*)

according to the relevant provisions, including but not limited to the Act governing the employment of foreign workers (*Ausländerbeschäftigungsgesetz*).

Contractor will provide Principal with the names of those individuals who are responsible for the supplies/services in question and ensures that they are available and can be reached during working hours.

Any staff employed by Contractor or the vicarious agents working for Contractor shall comply with applicable legal and safety regulations. Contractor shall demonstrably inform them of these regulations as well as the special duty of diligence, confidentiality and secrecy according to the Data Protection Act, the contract and these CAC, and of the consequences in case of infringements. Contractor is obligated to demonstrably monitor these requirements.

Contractor is responsible and shall hold harmless and indemnify Principal for and against any legal consequences arising due to non-compliance with these regulations by Contractor and/or staff working for Contractor and/or other vicarious agents.

### **2.10.2 Working hours, interruption of work**

Whenever Contractor provides services at Principal's establishments, Contractor shall ensure that these services are provided at Principal's business hours. Deviations shall consensually be agreed with Principal.

It is Contractor's responsibility to adhere to legal provisions governing working time.

If waiting times occur due to bad weather or reasons within Principal's control, any resulting additional expenses for up to three working days shall be borne by Contractor, while any further claims shall be excluded. Further waiting times will be compensated according to agreed hourly rates. In this context, Principal may assign other reasonable tasks to Contractor.

Agreements will be made in a particular case on the compensation of the costs for long interruptions. Contractor is not entitled to any compensation for downtime of machinery.

### 2.10.3 Keys and staff IDs, reporting duty

Any keys or staff ID cards which were provided (and must be visibly worn) shall be returned, without request after termination of the relevant activities. Contractor is liable for any abusive use of keys or ID cards provided and for any loss thereof and shall reimburse Principal for any resulting costs incurred by Principal.

Contractor must keep a site journal and record the number and activities of Contractor's staff on a daily basis, prepare a weekly report and send these reports to Principal on a monthly basis (or after the provision of supplies/services was completed).

Any material circumstances which affect the target dates or implementation must promptly be reported to Principal in writing (and not only by way of the site journal).

### 2.11 Safety and health at work, security engineering

Contractor shall comply with the laws governing safety and health at work and other relevant laws, such as the Employee Protection Act, the Ordinance Protecting Construction Workers, the Construction Work Coordination Act, etc. Besides the legal provisions and official regulations, Contractor shall adhere to and comply with the "*Arbeitssicherheits- und Umweltschutz-Richtlinie für die Erbringung von Leistungen von Auftragnehmer:innen bei VERBUND-Standorten und/oder Baustellen in Österreich*", the most recent version thereof is available at [www.verbund.com/procurement](http://www.verbund.com/procurement). When work commences on the site, Contractor's work supervisor shall document that this policy was acknowledged and hand this record over to Principal's contact on site.

Relevant internal policies, work instructions etc. will be supplied as supplements or made available to Contractor and form part of the Purchase Order.

In connection with the supply of machinery, partly completed machinery, components, systems, tools and processes that are subject to European directives or national implementation, conformity (proof of conformity assessment procedure, CE marks) and compliance with any resulting additional requirements must be ensured. All resulting claims and measures are Contractor's responsibility and will not be separately compensated by Principal.

Prior to the award of a contract, Contractor shall identify the manufacturer of machinery, partly completed machinery, tools, systems, and processes who will declare compliance vis-à-vis Principal.

A risk assessment which is to be performed to prove the conformity of any machinery, components, systems, tools and processes shall be made available to Principal in complete form for all life cycles without separate request. This applies also to partly completed machinery according to the Machinery Directive.

In case of machinery designed to work together, as defined in the Machinery Directive, the manufacturer of the assembly of machinery who will declare compliance of the assembly of machinery (CE marking of the assembly of machinery) vis-à-vis Principal must be identified prior to the award of the contract.

Supplies/services are deemed accepted only once Contractor has handed over to Principal all legally required documents for safe operation as well as the necessary technical documents (e.g. instructions according to paragraph 1.7.4 of the Austrian Ordinance on the Safety of Machinery [*Maschinensicherheitsverordnung*]). The receipt of that documentation must be recorded in the takeover record.

## 3 Implementation, target dates, deadlines, transfer of ownership, acceptance, takeover, transfer of risk

### 3.1 Target dates, deadlines, timetables

The Purchase Order defines the target dates, deadlines, and/or timetables.

### 3.2 Deadline monitoring, changes of target dates

Contractor is obligated to monitor deadlines in a precise manner and shall demonstrably report any circumstances which affect deadlines to Principal as early as possible in writing. Contractor is obligated to catch up for lost time by all available means.

Principal may check deadlines at any time; for this purpose, Contractor will also grant Principal's representative access to the manufacturing plants of Contractor or those of Contractor's subcontractors or suppliers.

At Principal's request, Contractor shall prove the manufacturing status in writing.

### **3.3 Production control, acceptance, commissioning, readiness for operation, and trial operation**

The scope of production controls/acceptance is set forth in the Purchase Order and depends on Principal's requirements. The specific dates which are binding shall be communicated to Principal's competent organizational units 14 calendar days prior to a production control/acceptance to allow Principal to send a representative.

All significant plans, construction drawings, circuit diagrams shall be sent to Principal before work (in the workshop) commences.

Furthermore, Principal may carry out production controls at any time; for this purpose, Contractor will also allow Principal's representatives to enter the manufacturing plants of Contractor or those of Contractor's subcontractors or suppliers. Any control, acceptance etc. by Principal does not release Contractor in any manner whatsoever from Contractor's obligations, warranties, and guarantees.

Contractor will inform Principal after delivery/installation/assembly that commissioning may take place.

In connection with commissioning, checks are also being made as to whether all connections are correctly connected and integrated into the assembly of the system with the necessary interfaces, and to prove whether the supplies/services work properly and possess the warranted properties.

The system is "ready for operation" once the checks and measurements to be made in the context of commissioning were successfully completed and Principal has determined that the supplies are ready for operation and free of defects, and once the necessary documentation was handed over to Principal.

After it was determined that the relevant supplies/services are ready for operation, a four-week trial operation under the direction, supervision and responsibility of Contractor will commence, if agreed. Trial operation is supposed to prove smooth permanent operation. During this time, checks may be consensually conducted and measurements performed to prove the guaranteed values and properties. Principal is entitled to inspect the test results.

If it is necessary to disable the supplies/services for more than 24 hours for reasons beyond Principal's control or if the total number of downtimes exceeds 48 hours, trial operation will recommence for the entire duration.

Trial operation is deemed to have ended only once the supplies/services faultlessly correspond to the conditions set forth in the Purchase Order during the agreed time of trial operation and, in addition, if all other requirements for takeover are met.

### **3.4 Transfer of ownership, transfer of risk**

Ownership and risk will transfer to Principal with the takeover of supplies/services. Contractor may not claim a longer or more expansive reservation of proprietary rights.

### **3.5 Takeover of supplies/services**

Principal takes over all supplies/services either after "readiness for operation" was established or, if a trial operation is planned, after its successful conclusion. Takeover also requires Principal's operating personnel to be instructed on operation and maintenance, so that it is safe to entrust them with the operation of the supplies/services, as well as the delivery of the entire documentation (e.g. operating rules) to Principal in the agreed scope and final form.

Based on the takeover form used by Principal, Contractor and Principal will prepare a joint takeover record which is to be validly signed by both. This record shall contain at least the following information:

- the exact moment of takeover (date, time);
- information whether contractually agreed target dates were or were not met;
- determination of properly provided supplies/services, of agreed properties and guarantee values;
- delivery and determination of the completeness of documentation, including but not limited to the necessary operating and maintenance rules;

- determination of completed instruction of staff selected by Principal;
- determination of reported defects or supplies/services to be provided subject to a deadline for corrective action; insignificant defects of individual items of deliverables should not affect the takeover of supplies/services.

The risk will transfer to Principal upon takeover.

If takeover is delayed for reasons beyond Contractor's control, Contractor may give written notice to Principal and insist that takeover takes place within a reasonable period of time. In this case, takeover will take place 6 months after the agreed takeover date, at the latest.

### **3.6 Penalties**

If a penalty date set forth in the Purchase Order is exceeded, Principal may charge a penalty as set out below, whether or not Contractor is at fault and whether or not there is proof of damage.

If the Purchase Order contains a penalty date, the penalty is 0.2 percent per calendar day of the exceeded time, up to a maximum of 10 percent of the total sum according to Section 4.3.

If the Purchase Order contains several penalty dates, the penalty is 0.2 percent per calendar day of the exceeded time, up to a maximum of 10 percent of the total sum according to Section 4.3 per penalty date. However, the maximum penalty for the failure to observe penalty dates is 20 percent of the total sum according to Section 4.3.

If several partial services/lots are jointly awarded to Contractor, the penalty is calculated on the basis of the total sum of all partial services/lots according to Section 4.3.

If there is a reason for exoneration, Section 8.1 (6), (7) and (8) will apply. Principal's right to claim a penalty is excluded only in the events of force majeure according to Section 8 of these CAC.

The amount of damage and the recoverability of damage does not affect the amount of any penalties. This does not limit or exclude Principal's right to assert any damage which exceeds the amount of the penalties.

## **4 Financial matters**

### **4.1 Price**

The agreed (total) price constitutes compensation for all supplies/services to be provided for the performance of the Purchase Order (the contract). It is a fixed net price for delivery to the place of performance/place of installation (DDP Incoterms 2020).

### **4.2 Terms of payment / payment schedule**

If the Purchase Order does not define a payment schedule, payment will be made after takeover of the supplies/services and after receipt of the verifiable final (overall) invoice.

Significant changes in target dates or deadlines or changes in the production program require new agreements on the established payment schedule.

### **4.3 Invoicing, assignment**

Contractor shall claim each payment from Principal in writing via a (partial/overall) invoice which contains the Purchase Order number and a reference that the relevant conditions (the manufacturing status) were fulfilled.

Invoices must be issued in verifiable form and comply with the conditions imposed by value added tax law. Any documents necessary to verify an invoice shall be attached.

Invoices may be issued by third parties or claims against Principal assigned only with Principal's prior written consent.

In addition to the information referred to above, the final (overall) invoice must state the total sum, consisting of the original order value, increases and reductions of the original order value, as well as changes in prices due to price escalations. Value added tax (VAT), if required by law, as well as all partial payments already made must be indicated as well.

The above total sum, exclusive of VAT, forms the basis for the calculation of penalties and retention money. Contractor is required to assert all claims under the Purchase Order with the final (overall) invoice.

Invoices are due for payment,

- if all requirements referred to above are fulfilled;
- after expiration of 30 calendar days of the date of receipt of an invoice;
- however, 30 calendar days of the date indicated in the payment schedule, at the earliest.

Principal may set off any claims against claims owed to Contractor.

Once Contractor has unconditionally accepted the final payment, Contractor may not lodge any claims later on.

Principal carries out bank transfers only once a week, on the payment date. The deadline for payment is extended accordingly on the three calendar days prior to that date, or is reduced accordingly on the three calendar days after that date. If the payment date is a public (bank) holiday, the money will be transferred on the next work day. The time at which Principal instructed its bank to transfer the money is relevant for the timeliness of a payment. Principal is deemed to be in default only after Contractor has given prior notice.

#### **4.4 Performance Bond**

In order to secure Principal's claims, Contractor shall provide a performance bond as set out below.

Contractor is obligated to provide Principal with a bank guarantee issued by a bank acceptable to Principal as performance bond, equal to 20 percent of the agreed (total) price, exclusive of VAT, to secure partial payments as well as all claims and entitlements of Principal vis-à-vis Contractor. The bank guarantee shall be delivered together with the first partial invoice and starts to run on the Purchase Order date. The performance bond expires 60 calendar days after the takeover date, but is valid at least until Principal has acknowledged the final (overall) invoice. As a precondition for payment by Principal, Contractor must submit the attached template performance bond [Appendix 1: "Specimen Bank Guarantee (Performance Bond)"].

#### **4.5 Retention Money**

10 percent of the total sum according to Section 4.3 will be retained from the final (overall) invoice as retention money up to 60 calendar days after the expiration of the general warranty period.

The retention money can be released if a bank guarantee is provided. Contractor shall provide a bank guarantee issued by a bank acceptable to Principal in an amount equal to the payment to be transferred for the non-retained amount of retention money. The security as well as the invoice shall be sent to Principal. The bank guarantee shall be issued according to the attached template [Appendix 2: "Specimen Bank Guarantee (Retention Money)"].

### **5 Withdrawal from the Purchase Order, default**

#### **5.1 Withdrawal by Principal**

Principal may forthwith withdraw from the Purchase Order at any time in writing without stating any reason. In this case, Contractor is entitled to a compensation equal to the total sum according to Section 4.3, while the following amounts will be credited:

- savings in costs due to withdraw,
- income earned or to be earned through any other use of Contractor's labour force or facilities or
- income earned through the sale of parts produced as well as finished and semi-finished products.

Principal's right to give extraordinary notice of withdrawal for good cause shall not be affected. Principal may forthwith withdraw from the Purchase Order for good cause.

Good cause is found to exist if Contractor's financial condition deteriorates or is at risk and the fulfilment of liabilities vis-à-vis Principal is therefore jeopardized, if the opening of insolvency proceedings with respect to

Contractor's assets is dismissed for lack of assets to cover the costs or if these insolvency proceedings were cancelled due to a lack of assets to cover costs, if insolvency proceedings were opened with respect to Contractor's assets and the legal provisions do not prohibit a withdrawal from the contract, if Contractor provides inaccurate information on material circumstances or does not fulfil or is unable to fulfil obligations under the Purchase Order. Contractor's services shall be settled as of the withdrawal date. In case of Principal's extraordinary withdrawal, Contractor shall not have any other claim for compensation. Contractor shall repay to Principal any overpayments immediately after the final invoice was issued.

Partial withdrawal is permissible.

## **5.2 Withdrawal by Contractor**

Contractor may withdraw from the Purchase Order only for good cause as set out below:

Without granting a grace period if the opening of insolvency proceedings with respect to Principal's assets is denied for lack of assets or if such proceedings are cancelled on the grounds of lack of assets, or if insolvency proceedings were opened with respect to Principal's assets and withdrawal is not prohibited by legal provisions.

Subject to granting two grace periods of at least 30 calendar days each, with each letter already having to include the notice of withdrawal, if Principal obstructs the proper provision of supplies/services by Contractor in a significant and sustainable manner or if Principal fails to pay to Contractor despite proper invoicing material claims, which are undisputed in terms of merit and amount and were already ordered in writing.

The grace period shall be set and notice of withdrawal given in writing. In this case, Contractor is entitled to a compensation for the supplies/services already provided.

## **5.3 Contractor's default**

If Contractor is in default and does not meet a certain calendar date or fails to fulfil its contractual obligations despite a grace period granted, Principal - notwithstanding any claims for the compensation of damage - may, at its election:

- either reject the previously provided (partial) supplies/services, in whole or in part, and request defect-free and complete performance, or
- request a reasonable price reduction, or

forthwith withdraw from the contract and procure substitute performance at Contractor's cost and risk.

## **5.4 Other consequences of default**

If Contractor or Principal are in default of payment, default interest at the rate of the applicable 1-month EURIBOR, plus 400 base points p.a., is agreed.

## **6 Packaging, loading, transportation, and shipping**

Contractor is obligated to adhere to all environmental provisions. In particular, Contractor is responsible for any necessary import and export clearance etc. (includes sensitive products, special waste etc.) at Contractor's own cost and risk.

Contractor shall procure at its own cost proper and appropriate packaging of all supplies and, in case of supplies of hazardous goods according to the Act on the Transport of Hazardous Goods (*Gefahrgutbeförderungsgesetz*), shall clean and decontaminate transport containers. Contractor shall properly dispose of packaging material in accordance with environmental regulations. If Contractor does not fulfil that obligation within a reasonable grace period, Principal will procure substitute performance at Contractor's cost and risk.

All goods will be loaded, unloaded, stored on an interim basis and transported to Principal's place of use at Contractor's cost and risk.

All shipping documents (two copies) and all packages or other deliverables must contain the PO number and an attribute.

Contractor shall fulfil the obligations applicable to the packaging, labelling and transportation of hazardous goods and attach two copies of the safety data sheet to the shipment.

COD shipments and non-agreed partial shipments shall require Principal's written consent.

Contractor is required to assume any financial burden which Principal incurs due to Contractor's failure to comply with provisions, including but not limited to shipping regulations.

This applies also to supplies/services based on warranty/guarantee obligations of Contractor.

## **7 Warranty, guarantee, damage repair, spare parts**

### **7.1 Warranty**

Contractor fully warrants that Contractor's supplies/services possess the properties that were explicitly agreed in the Purchase Order and are normally expected in accordance with the codes of practice and the relevant legal provisions.

Any review of plans, calculation results etc. as well as the performance of controls, acceptance audits and any other monitoring measure taken by Principal does not limit Contractor's warranty.

The general warranty period for moveable and immoveable goods is 36 months. By way of derogation from the above, the special warranty period for corrosion protection is 60 months for moveable and immoveable goods. The warranty period commences on the date on which Principal takes over the supplies/services.

Whenever corrective action is taken, it will be subject to the same warranty conditions as of the date on which corrective action is completed. The warranty period for the supplies/services replacing the defective supplies/services starts to run again on the date on which a defect is remedied. However, if such a defect also affects or prevents the agreed use of other parts or the entire supply/service, the deadline for these parts or of the entire supply/service is extended by the time during which use is affected or prevented.

If a material part is improved or replaced during the warranty period by corrective action, the entire warranty period for the entire supply/service starts to run again as of the date on which that part is put into operation.

Principal is not required to ensure that the same conditions that existed during initial assembly also exist during Contractor's corrective action.

Any costs and risk whatsoever arising in connection with corrective action shall be borne by Contractor.

In addition to other extensions, if any, the warranty period is extended by the time it takes to carry out corrective action.

### **7.2 Guarantee**

Contractor guarantees as of the date on which Principal takes over the supplies/services to remedy defects of supplies/services occurring within the guarantee period upon request and at no additional cost for Principal.

Contractor undertakes to repair, to re-deliver or to rebuild all those parts which turn out to be unusable or noticeably compromised in their use during the guarantee period due to non-compliance with technical conditions, the use of inappropriate materials, defective execution, inaccurate or improper dimensioning, construction, assembly or any other non-compliance of conditions as per the order, and to restore the condition as per the order and carry out any ancillary work.

Furthermore, the guarantee shall be subject to Section 7.1 by analogy. The guarantee period corresponds in particular to the warranty period, unless otherwise agreed.

If the defect is demonstrably due to

- unsuitable or improper use of supplies/services by Principal,
- Principal's operator errors, unless these are due to missing, misleading or inaccurate operating or maintenance instructions of Contractor, or

- natural wear and tear, although all parts subject to natural wear and tear shall be designed in such a manner that the guarantee period is achieved as service life and also regularly significantly exceeded,

Contractor shall be released to perform under the guarantee.

### **7.3 Remediation of defects or repair of damage**

Principal will report a defect to Contractor in text form and allow a reasonable deadline for corrective action.

Principal will check the supply/service for defects within a reasonable period of time. This obligation is limited to defects that manifest themselves during an inspection of incoming goods in the context of an external examination, including shipping papers, and during sample checks conducted in connection with quality controls. Notice of a defect shall be deemed to have been given in due time if it is given within 8 calendar days of receipt of the goods or, if the defect occurs later on, within a reasonable deadline. If the parties have agreed on mandatory formal acceptance, Principal is not obligated to check supplies/services upon delivery.

Contractor is generally obligated to minimize any damage caused (including but not limited to defects subject to warranty or guarantee) and, more specifically, to do anything in Contractor's power to reduce downtimes or energy failures caused by defects or damage or by corrective action to a minimum. As a result, prior to any repair of damage or remediation of a defect, for example by replacing supplies/services, Contractor shall take preliminary remedial action at its own cost and in agreement with Principal which facilitates the improvement or continuation of operations.

Should Contractor not remove defects or repair damage within the reasonable deadline set, Principal is entitled to take corrective action or have corrective action taken by third parties. The resulting costs shall be borne by Contractor. In this case, Contractor's warranty/guarantee obligation survives.

If a defect occurs in one instance in supplies/services of the same kind, Principal's notice and request for improvement will interrupt the expiration of the warranty period for all supplies/services of the same kind. In this case, Contractor must carry out remedial action also with respect to all other supplies/services of the same kind at Contractor's cost.

If parts of the plant are changed or exchanged for other parts under a guarantee or warranty, Contractor shall also change or exchange the relevant spare parts and the documentation (operating instructions etc.) at Contractor's cost and expense.

Exchanged parts are taken over by and transfer to Contractor's property, unless Principal wants to use them otherwise. If exchanged parts are waste, Contractor shall properly dispose of that waste in an environmentally sound manner.

### **7.4 Supply of spare parts**

Contractor is obligated to supply the necessary spare parts for a period of at least ten years after takeover of the supplies/services by Principal.

## **8 Liability, insurance**

### **8.1 Contractor's liability**

Contractor is liable for the performance of the supplies/services, free of defects, in accordance with the Purchase Order and the relevant provisions, standards etc.

Contractor is liable in accordance with the legal provisions for any personal injury, property damage, and any other disadvantage which was incurred by Principal and caused by Contractor, the personnel engaged by him as well as any third parties engaged by him.

In the absence of gross negligence and/or premeditation, claims will not be asserted for the compensation of damage which Principal incurs due to energy failures (generation or transmission).

Any damage which Principal incurs (lack of generation and/or transmission) shall be calculated in such a manner that the energy which could have been generated and/or transmitted during a failure had operation been optimal, is valued at market prices.

If Contractor is a consortium (ARGE), their members shall be jointly and severally liable.

Relief is granted only in events of force majeure. Events of force majeure are exclusively natural disasters, mobilization, war and riots.

Target dates can be extended only by the maximum duration of an event of force majeure and its consequences for Contractor. In any event, Principal is entitled to compensation for damage, regardless of a contractual penalty.

In case of damage, Contractor shall prove that Contractor is not at fault and shall make available any documents and information to clarify the circumstances.

Should third parties assert claims for the compensation of damage vis-à-vis Principal in the course of the performance of the contract, Contractor shall hold harmless and indemnify Principal so that no burden is put on Principal, provided that the cause is within Contractor's domain and organization.

Any limitation of liability according to the provisions set forth above do not apply for the benefit of Contractor if Contractor has insured the risk and if the damage is covered by insurance.

## **8.2 Insurance**

Contractor shall purchase and pay for liability insurance providing at least 10.0 million Euro coverage for personal injury, property damage, and financial loss, including in particular assembly and transport risks, disassembly and installation costs as well as other field/workshop actions. Contractor is liable to provide evidence on effective insurance cover at Principal's request. In case of damage, Contractor will assign his claims vis-à-vis the insurance company to Principal upon request, provided this is admissible according to the insurance terms.

## **9 Confidentiality, data privacy, proprietary rights, ICT provisions**

### **9.1 Confidentiality**

Contractor undertakes to keep confidential and not to disclose any information and data, notices, documents, business and trade secrets, know-how, etc, disclosed, provided or made available either in connection with the implementation of the contract either in written form, orally or via electronic data transfer or otherwise ("Confidential Information").

Contractor undertakes to use Confidential Information only to perform the contract and undertakes not to transfer Confidential Information as a whole, in part or in extracts, to third parties or to make it available in any other form to third parties. Furthermore, Contractor undertakes not to otherwise process or otherwise use and exploit Confidential Information, in particular not for its own purposes. Publications relating to the project, including photographs of any kind, as well as any advertising on the construction site is permitted only with Principal's consent.

Contractor shall take adequate precautions to prevent any unauthorized use of Confidential Information and/or to avoid any access to Confidential Information by third parties.

Contractor shall verifiably oblige all persons who may get access to Confidential Information due to this contract to similarly comply with all confidentiality obligations imposed upon Contractor, also after they have ceased their activities for Contractor's business or after the contractual relationship between Principal and Contractor has ended.

Contractor may engage vicarious agents for the performance of the contract only with Principal's prior written consent. The above confidentiality obligations shall also verifiably be transferred to these vicarious agents by way of contract.

Contractor shall be liable for any damage if he fails to transfer and assign these confidentiality obligations.

At Principal's request, Contractor shall immediately return to Principal, destroy or permanently erase Confidential Information at any time, also after termination of the contract, including paper and electronic copies and any documents referring to Confidential Information. At Principal's request at any time, Contractor shall provide documentary evidence in a particular case that such information was erased or destroyed.

In case of an infringement of the confidentiality obligations, Principal may forthwith terminate the contract without notice or withdraw from the contract immediately.

Principal is not subject to a confidentiality obligation whenever Confidential Information must be transferred to insurance companies, experts or suppliers who were engaged by Principal and need to know that information due to their tasks, provided that they are not competitors of Contractor. If possible, Principal will pass on the obligation to keep that information confidential to these persons.

## **9.2 Data protection**

Contractor confirms that he is familiar and in compliance with the relevant applicable data protection provisions, including but not limited to the General Data Protection Regulation (GDPR). Contractor guarantees to procure the security and therefore confidentiality, integrity and availability of personal data of the Principal which Contractor gets to know in the course of the contract according to Article 28 and Article 32 GDPR.

Contractor shall particularly not only adhere to special legal confidentiality obligations in the course of its processing operations, but also safeguard the confidentiality of data which Contractor gets to know subject to the terms of the contract. Furthermore, Contractor shall ensure that any person who may get to know data is subject to a confidentiality obligation under this contract prior to commencing their activities. This confidentiality obligation survives also after these persons have ceased to carry out their activities and have left Contractor.

Contractor is liable vis-à-vis Principal for any property damage, financial loss and physical injuries caused by Contractor itself or by any action and omission of any of its employees or agents or any other persons engaged by Contractor. Contractor is liable in particular for any disadvantage which Principal suffers due to a breach of any provision of this contract or of applicable data protection provisions.

These data protection obligations survive also after termination of the contract. In case of an infringement of the data protection obligations, Principal may forthwith terminate the contract without notice or withdraw from the contract immediately.

Whenever Principal instructs Contractor to process personal data as processor according to Art 4 (8) GDPR, Contractor undertakes to conclude the processing agreement drafted by Principal according to Art 28 GDPR with Principal prior to concluding a contract. Furthermore, other additional statements shall be issued and documents and evidence provided according to Art 28 GDPR also directly to the Data Protection Officer (for example, if Principal itself acts as contractor).

## **9.3 Proprietary rights**

Any information, document, template etc. in connection with Principal's Purchase Order will remain copyrighted and may be used by Contractor only for the performance of the contract. These documents etc. shall be returned at the Principal's request.

Besides title to supplies/services, Principal also acquires the transferable right to use, to process, and to exploit the supplies/services for an unlimited time and at any location.

The agreed price covers the use and exploitation of intellectual property rights (e.g. patents, designs, trademarks and utility model copyrights) by Principal to the extent this is necessary for the free use of Contractor's supplies/services.

Contractor accepts sole liability vis-à-vis third parties for any infringement by any item supplied or service provided by it of intellectual property rights and data protection in the countries of the European Union and declares to hold harmless and indemnify Principal for all resulting legal consequences and expenses in connection with the relevant Purchase Order and to guarantee vis-à-vis Principal the unrestricted use of supplies/services.

## **9.4 Special terms for ICT components as part of a supply/service**

Besides the other CAC provisions, the special terms referred to herein apply to information and communication technology (ICT) components which are part of Contractor's supplies/services (e.g. software, hardware).

Principal may use ICT components of services/supplies for any ICT application, transfer these to another location, sell ICT components or combine these with ICT components of other producers, without affecting any other liability/warranty/guarantee accepted by Contractor.

Principal acquires the right to use standard ICT components as is necessary on all its current and future systems and, in case of disasters, on a back-up system, and to create the necessary reproductions for the purpose of back-up and archiving.

For this purpose, any facilities operated by and/or for companies that are affiliates of Principal on the utilization date are systems of Principal. Principal's facilities also include those which are operated by and/or for facilities with partial legal capacity that are predominantly financed by Principal.

Principal acquires all intellectual property rights to use individual ICT components etc. and customized ICT adjustments, present and future, on an exclusive and worldwide basis. Contractor will procure and prove (e.g. list of signatures, language in subcontractor contracts) that these rights are also transferred to Contractor by all those involved in the activities in Contractor's sphere of influence.

Principal will exclusively retain all rights to elaborations made by Principal. These elaborations constitute Principal's business and trade secrets.

## **10 Publications**

Both Contractor and Principal may publish the supplies/services in question in general and in consideration of the above, including but not limited to Section 9.1. In no case may figures (such as performance indicators) on Principal's facilities and their operation be published without Principal's consent.

## **11 Special terms for continuing obligations**

### **11.1 General**

Besides the other CAC provisions, the special terms referred to herein apply exclusively to continuing obligations such as framework agreements relating to maintenance, cleaning or equipment leases.

### **11.2 Termination**

Principal may terminate the contract with 30 calendar days' notice without good cause. Principal may also terminate parts of supplies/services. Notice of termination shall be given in writing.

In this case, the final invoice is issued at the end of the notice period for the supplies/services provided until then according to the terms of the contract. Immediately after the final invoice was issued, Contractor shall repay to Principal any prepayments made for periods after the contract termination date.

### **11.3 Early termination for good cause**

Principal may terminate the Purchase Order at any time and with immediate effect for good cause, notwithstanding any other agreement. Principal's early termination may also refer to parts of a Purchase Order. Good cause for termination is found to exist, in particular, if Contractor's financial condition deteriorates or is at risk and jeopardizes the fulfilment by Contractor of liabilities vis-à-vis Principal, if the opening of insolvency proceedings with respect to Contractor's assets is denied on the grounds of lack of assets or if these insolvency proceedings are cancelled on the grounds of lack of assets, if insolvency proceedings were opened with respect to Contractor's assets and the termination of the contract is not prohibited by law, if Contractor provides incorrect information on material circumstances or does not or is unable to fulfil Contractor's obligations under the Purchase Order. In this case, the final invoice is issued on the effective termination date for services provided until then. Contractor shall repay to Principal any overpayments immediately after the final invoice was issued.

Contractor may terminate the Purchase Order only for good cause as follows:

Without granting a grace period, if the opening of insolvency proceedings with respect to Principal's assets is denied for lack of assets or if such proceedings were cancelled on the grounds of lack of assets, or if insolvency proceedings were opened with respect to Principal's assets and the cancellation of the Purchase Order is not prohibited by legal provisions.

Subject to granting two grace periods of at least 30 calendar days each, with each notice already having to include the termination statement, if Principal obstructs the proper provision of supplies/services by Contractor in a significant and sustainable manner or if Principal fails to pay to Contractor, despite proper invoicing, material claims, which are undisputed in terms of merit and amount and were already ordered in writing.

The grace period shall be set and notice of termination given in writing. In these cases, Contractor is entitled to a compensation for supplies/services already provided.

## **12 Jurisdiction**

Exclusive jurisdiction lies with the court having jurisdiction *ratione materiae* and *ratione loci* at Principal's corporate seat. The contract shall exclusively be governed by and construed in accordance with Austrian law, to the exclusion of the conflict of law rules of international private law and the UNCITRAL rules.

## **13 General provisions**

Contracts and contract amendments shall be drawn up in writing. It is specifically agreed that Principal will send SAP orders and SAP-order changes electronically (e.g. via e-mail) and that these documents are legally valid and binding.

Any amendment or modification of the Purchase Order shall be made in writing. This form requirement may only be waived in writing. Principal's purchase order number must be indicated in any correspondence. There are no oral side agreements.

Should any term of the Purchase Order, including any term hereof, be or become invalid, the remaining terms shall not be affected. In this case, Principal and Contractor undertake to replace the invalid term by a valid term that closest reflects the economic and technical purpose of the invalid term intended by the parties.

## **Appendices**

1. Specimen Bank Guarantee (Performance Bond)
2. Specimen Bank Guarantee (Retention Money)

## Appendix 1: Specimen Bank Guarantee (Performance Bond)

Issued by (bank/company name) and address \_\_\_\_\_

Bank guarantee to the billing address of Principal/beneficiary) \_\_\_\_\_

You (Principal's/beneficiary's company name and registry number) \_\_\_\_\_

have concluded a purchase order (contract) with (Contractor's company name) \_\_\_\_\_

on [date of purchase order] \_\_\_\_\_

purchase order number \_\_\_\_\_

Under this Purchase Order, it was agreed to provide a performance bond to secure all legal claims.

To secure the instalments as well as all claims and entitlements under the above Purchase Order, we hereby guarantee on behalf of the above company (Contractor) or its legal successors to pay out a sum of up to

€ \_\_\_\_\_ (in words: \_\_\_\_\_ EURO),

and irrevocably undertake, upon your first demand, to make a payment to you up to the sum referred to above within three banking days without reviewing the legal ground and thereby waiving any defence. You may also draw portions of that guarantee up to the above amount.

This bank guarantee secures also your claims under Sections 21 *et seq* of the Austrian Insolvency Code (*IO*).

This guarantee expires, unless you have drawn it by notice given by registered letter, fax or courier on

\_\_\_\_\_ (day/month/year)

at the latest (date of receipt by us).

You do not need to return this guarantee letter to us after the expiry date.

Claims arising out of or in connection with this bank guarantee can be asserted, at the beneficiary's election, also before the court which has jurisdiction in commercial matters at the beneficiary's corporate seat. This bank guarantee shall exclusively be governed by and construed in accordance with Austrian law, to the exclusion of the conflict of law rules of international private law and the UNCITRAL rules.

\_\_\_\_\_  
(Place, date)

\_\_\_\_\_  
(Authorized signature issuer)

## Appendix 2: Specimen Bank Guarantee (Retention Money)

Issued by (bank/company name) and address \_\_\_\_\_

Bank guarantee to the billing address of Principal/beneficiary) \_\_\_\_\_

You (Principal's/beneficiary's company name and registry number) \_\_\_\_\_

have concluded a purchase order (contract) with (Contractor's company name) \_\_\_\_\_

on [date of purchase order] \_\_\_\_\_

purchase order number \_\_\_\_\_

Under this Purchase Order, it was agreed to pay out retention money.

To secure these payments, we hereby guarantee to you, on behalf of the above company (Contractor) or its legal successors, to pay to you a sum of up to

€ \_\_\_\_\_ (in words: \_\_\_\_\_ EURO),

and irrevocably undertake, upon your first demand, to make a payment to you up to the sum referred to above within three banking days without reviewing the legal ground and thereby waiving any defence. You may also draw portions of that guarantee up to the above amount.

This bank guarantee secures also your claims under Sections 21 *et seq* of the Austrian Insolvency Code (*IO*).

This guarantee expires, unless it was drawn by you by notice given by registered letter, fax or courier on \_\_\_\_\_ (day/month/year)

at the latest (date of receipt by us).

You do not need to return this guarantee letter to us after the expiry date.

Claims arising out of or in connection with this bank guarantee can be asserted, at the beneficiary's election, also before the court which has jurisdiction in commercial matters at the beneficiary's seat. This bank guarantee shall exclusively be governed by and construed in accordance with Austrian law, to the exclusion of the conflict of law rules of international private law and the UNCITRAL rules.

\_\_\_\_\_  
(Place, date)

\_\_\_\_\_  
(Authorized signature issuer)