

**1. Obligations of the contractor (C)**

- (1) The C obligates itself to execute the aforementioned task for the principal (P).

**2. Deployment of employees by the C**

- (1) The C must supply the requisite number of personnel in order to fulfil the contractual object.
- (2) These employees must have the necessary qualifications, have adequate knowledge of German (in both speaking and writing) and be equipped with suitable tools and the relevant equipment. Personnel who are unqualified or inadequately equipped will be rejected by the P and are to be replaced by suitable employees. The same applies to devices, tools and transport equipment.
- (3) The C is obliged to observe the statutory regulations on the employment of foreign workers and shall release the P from all claims in this respect vis-à-vis third parties.
- (4) Sub-suppliers commissioned by the C who are in an employment relationship with the P may not be employed by the C or deployed for the fulfilment of the contractual object.
- (5) Use of former employees of the P for fulfilling this contract may take place after consultation with the personnel department of the P only.
- (6) The C shall ensure diligent compliance with the requirements of the minimum wage law (MiLoG) as last amended.
- (7) If the C employs a third party to execute this contract with the P's consent, the C is obliged to ensure that the third party is liable under contract to observe the requirements of the MiLoG.
- (8) The C shall provide the P with a realisable security for the liability risk which the P must bear from § 13 of the MiLoG in conjunction with § 14 of the law concerning the posting of employees abroad (AEntG). Unless otherwise agreed to in the contract, a security can be provided through the retention or depositing of money or through a bond from a bank or credit insurer.
- (9) Each time the P invokes § 13 MiLoG, the C guarantees to cover all the costs incurred from recourse or to refund the P these costs.

**3. Remuneration**

**a) In the case of fixed price agreements**

- (1) The agreed fixed price includes the delivery of the individual parts mentioned in the explanation report ex-works with unloading and inward transfer. The P makes it explicitly clear that it will only pay for work mentioned in this contract.
- (2) The agreed fixed price is not subject to any amendments, especially any amendments based on wage, energy or material cost changes and/or any customs or tax increases.

**b) Relating to orders based on complexity**

- (1) The contractual object is fulfilled based on complexity and in accordance with the amounts listed in this contract. The P makes it explicitly clear that it will only pay for work mentioned in this contract.
- (2) The agreed hourly rate and/or additionally agreed basic prices are not subject to any amendments, especially any amendments based on wage, energy or material cost changes and/or any customs or tax increases.

**c) Common clauses (fixed price and complexity)**

- (3) If changes occur in implementation, or if services have to be performed differently from the contract, then consent for this must be sought in writing from the P's coordinator authorised to give instructions mentioned in the order header prior to commencing such work in accordance with DGUV [German Statutory Accident Insurance] provision 1 – principles of prevention, § 6, para. 1.
- (4) Severance payments, weekend trips back home, dirt surcharges and suchlike will not be remunerated by the P.
- (5) Every day, prior to commencing and finishing work, the C's fitters must report to the office of the coordinator cited in the order header. When signing out, the working times performed must be approved by the coordinator and the assembly slip must be countersigned. One copy is kept by the department; a second copy is to be enclosed with the invoice as supporting documents.

**4. Transfer of risk**

- (1) The risk of deterioration and loss of the contractual object for which neither party can be held responsible shall be transferred to the P upon joint acceptance of the contractual object.

**5. Assembly/business liability insurance**

- (1) The C is duty bound to take out the following insurance for the entire duration of its work on the building site, and to maintain it until inspection and then in the remaining necessary scope until the building site is cleared:

- a) Standard industrial assembly and construction work insurance to cover the full value of building site risks such as damage to the plant and its accessories, to the site equipment, building material and all other moveable items of equipments stationed or operated at the site.



b) (Business) liability insurance against personal injuries and damage to property and assets arising due to or in the context of work execution involving sub-contractors or sub-suppliers, with a general insurance sum of at least 5,000,000.00 EUR per damaging event.

- (2) The C must provide proof of these insurance policies to the P upon contract conclusion. Work at the location of contractual fulfilment may not be performed by the C nor its sub-contractors or sub-suppliers without these insurance policies being in place.
- (3) If the C does not take out one of the insurance policies stated in paragraph (1), or does not maintain this policy, the P has the right to take out these insurance policies itself and maintain them, to pay the premiums and offset the contributions made against payments it owes to the C, or demand that the C reimburses these contributions.

#### **6. Dates for services and deliveries**

- (1) All stated dates and deadlines are deemed contractual dates/deadlines.
- (2) Dates and deadlines for deliveries and performances must be met exactly. Should delivery arrears, delays or impairments to work nonetheless arise, these must be communicated to the P as soon as they become known. The P is not duty bound to accept partial or excess deliveries that have not been expressly agreed.
- (3) An assembly/construction timetable must be created within two weeks of the contract being awarded at the latest, and this must then be agreed with the P's coordinator. All individual deadlines of this plan are considered to be contractual deadlines; and all individual dates as contractual dates.

#### **7. Invoices**

- (1) Unless otherwise agreed, invoices are to be sent to the P's main administration office at 35254 Stadtallendorf following the performance of services – separately for each order.
- (2) Invoices may neither be sent enclosed with goods nor directly to the works departments. Invoices which do not display the order number will be sent back to the C without being processed. Invoices are not also considered an order confirmation.
- (3) Invoices completing an order process must be marked with the keywords "final invoice".

#### **8. Responsibilities of the contractor**

- (1) The C must make itself aware of which specific regulations are to be observed in each case.
- (2) The C must check the drawings and other documentation handed over to it for performing the services, as well as those of the specialist engineers, with regard to their technical accuracy and completeness and to notify the P in writing in the event of any detected inconsistencies.
- (3) The C obligates itself to notify the P of the type description and manufacturer for the parts available on the market and to provide them with the documentation.

#### **9. Claims for defects**

- (1) The C is liable for rectifying defects and supplementary performance for a period of 24 months (§ 438 of the BGB [German Civil Code]) in the case of multi-shift operation. One exception is wear parts which the C makes the P aware of in writing by conclusion of the planning at the latest with specification of the downtime (should this not be the case, the P shall assume that there are no wear parts in / on the contractual object). This right to defect rectification or supplementary performance starts from the day of acceptance or following rectification of all defects mentioned in the acceptance protocol or a comparable document.
- (2) In the event of material defects, the P is entitled to assert the legal claims. In urgent cases, or if the C has failed to meet its supplementary performance obligation immediately following a corresponding written demand from the P, the P is entitled to replace or repair damaged parts and to eliminate damages incurred at the C's cost.
- (3) The C provides a guarantee to the P regarding the quality of the material, the construction and the proper and professional performance of its work.
- (4) The C is duty bound to retrospectively supply and install its devices free of charge insofar as the responsible inspection bodies justifiably demand their installation. This provision applies to regulations and laws only that were in force at the point of production commencement of the contractual object on the P's premises. The C is liable for all damage incurred by the P due to non-observance of this obligation; the C indemnifies the P from all claims insofar as claims are charged against the P in a case of this type.
- (5) Notices of defects in the sense of § 377 of the HGB [German Commercial Code] are considered to have been provided on time when the P is notified of open defects within three weeks of assembly / processing of the contractual object; concealed defects within three weeks of their discovery. The period of limitation begins on the date the notice of defects is raised by the P within the warranty period.
- (6) The provisions in relation to rectifying defects or supplementary performance and liability apply accordingly to rectification work, and spare parts used as part of rectification work. The deadlines in this respect commence upon completion of defect rectification.

**10. Safety-relevant requirements**

- (1) The entire scope of delivery must adhere to the state of science and technology, and all statutory requirements in their respective valid versions in relation to device safety and occupational safety, at the point of commissioning. In the case of absent legal characteristics, the state of science and technology is determined by reference to the accident prevention regulations of the Institutions for Statutory Accident Insurance and Preventions, VDE regulations, the knowledge of occupational medicine and hygiene, and other relevant standards of the C.
- (2) Contractually agreed provisions and other technical specifications may be deviated from only if another solution is proposed and agreed by the P in writing (in advance); this solution must achieve at least the safety level of these regulations or technical specifications.

**11. Commissioning / test operation**

- (1) In the case of assembly of plants or plant components on the factory site of the P, the contractor is duty bound to allow a test of proper assembly and secure function by a capable person compliant with § 10 of the Ordinance on Industrial Safety and Health to take place, and to confirm this on the "Commissioning of Resources" form (cf. template enclosed). Upon the date of production commencement, confirmed by the P, the obligation for safety-compliant implementation of the mandatory technical, organisational, and personnel measures is transferred to the P.

The FW implementation guidelines – which can be accessed through the Internet [www.fritzwinter.de/en/downloads](http://www.fritzwinter.de/en/downloads) – must be observed.

**12. Acceptance**

- (1) Acceptance occurs when the delivery / service of the C is supplied without defects.
- (2) Acceptance is to be documented in writing (document / record with signature and date).

**13. Property rights**

- (1) The C guarantees that the existing property rights of third parties shall not be violated either by the use, installation or resale of supplied materials or equipment.
- (2) The C expressly agrees to indemnify the P from all claims of third parties, and if necessary, to reimburse all damages arising to this extent. This also particularly includes the eventuality that the P must compensate the license holder by way of payment of the license fee demanded by the license holder.
- (3) In such cases, the P also reserves the right to withdraw from the contract, or demand that those parts in relation to the contravention of the third-party property rights are replaced.
- (4) Insofar as commercial property rights are embodied in the contractual object that were present on the premises of the C before conclusion of this contract or during its execution, which however are not linked to this contract, the P and third parties to whom the contractual object is sold receive a right of use that is non-exclusive, irrevocable, and restricted to the utilisation of these rights in the contractual object as a whole or significant parts of such. This right of use is deemed satisfied by the contractual price according to § 2.

In relation to copyright-protected performance objects (documentation, drawings, etc.) the C grants the P a gratuitous, exclusive, irrevocable, unlimited, and without restriction of territory or content right of utilisation and use for all known types of use. This right of use also includes the right to duplicate, distribute, exhibit, publically demonstrate, send, or reproduce by means of video and audio recordings the copyright-protected performance objects.

The P has the right to process or rework the copyright-protected performance objects, in addition to the right to publish, utilise, or use in another more specific manner these objects or processed or reworked form of them, without the requirement of specific agreement on the part of the C.

In relation to the performance object or performance rendering according to this contract on the premises of the C, the P receives an unrestricted, exclusive, irrevocable, transferable, and sub-licensable right of use to the protected and unprotected products that have been created. This right of use is deemed satisfied by the contractual price according to § 2.

Inventions created as part of execution of work on the premises of the C are claimed by the C and registered for the purpose of property rights. The C must inform the P about the inventions in a timely manner. The C will, insofar as something to this effect does not arise from the German Employee Invention Act, contractually create the conditions so that it has the right to dispose of the inventions. Upon request of the P, the C will transfer the inventions to the P instead of the granting of usage rights to these inventions compliant with the aforementioned paragraph of this § 12 (4).

Insofar as the C has not made the registration, or the P desires the registration in further countries, the P has the right to make property rights registrations in its own name and at its own cost. The P will inform the C if the former does not want to register the invention itself for the purpose of property rights, or it wants to dispose of this invention. In this case, negotiations may take place about reassignment of the invention.

Insofar as employees or vicarious agents of both parties are involved in the invention, the parties will come to an agreement in relation to the registration on a case-specific basis.

**14. Publications**

Marketing publications making reference to the name of the other party require prior written consent.

**15. Copyright, confidentiality and secrecy**

- (1) The P reserves the copyright to all documents handed over with the tender of the P and within the course of contract implementation. The contractual partners obligate themselves to treat as strictly confidential documents, software, information, data and know-how which are made accessible or come into one's knowledge during the course of the cooperation, and not to distribute or communicate them to third parties, regardless of the means. Any transmission to a third party as part of a joint project requires the prior written consent of the P. These conditions shall remain in force irrespective of the term of the current contract.
- (2) The C obligates itself to treat with the strictest confidence the details associated with the contract concluded with the P, and all technical and commercial details relating to its implementation, as the commercial secrets of the P. The contractor shall pass on this obligation to its contractual partners and vicarious agents.

**16. Information and provisions on contract implementation**

- (1) Before commencing work on the premises of the P, the C will contact the coordinator mentioned in the order header in order to ensure technical processing (co-ordinator authorised to give instructions according to DGUV [German Statutory Accident Insurance] provision 1 – principles of prevention, § 6, para. 1).
- (2) All deliveries delivered to the P (including by sub-suppliers) must be accompanied by a delivery note. The delivery notes must clearly state:
  - 1.) The P's order number
  - 2.) C
  - 3.) Sender
  - 4.) Name of the P's coordinator
  - 5.) The unloading obligation must be entered on the consignment note / in the shipping documents (§ 11, Para. 2f of the KVO [Road Traffic Act])
- (3) If deliveries are executed without the above accompanying papers, or if these papers are incomplete, the P will refuse acceptance. Potential deadline delays arising for this reason will be the responsibility of the C, and the costs arising from this will be borne by the C alone.
- (4) The drawings provided contain approximate dimensions only. The exact dimensions may be established on the building or assembly site by the C together with the management of the building or assembly site of the P.
- (5) It is the responsibility of the C to check all relevant dimensions on the construction and to inform the coordinator about any deviations detected. Additional costs arising due to any potential dimension deviations compared to the dimensions used for the quotation must be placed in writing to the coordinator in the form of a follow-up quotation that is justified in detail.
- (6) In order to ensure orderly processing, it is necessary for the C to report to the P that it is going to send the parts, whether this is directly from the C itself or from one of its sub-suppliers, in addition to the assembly or construction commencement by the contractor or by a commissioned assembly/construction company at least five days in advance of this by FAX or email to the coordinator.
- (7) Delay notices require the written form even if the obstruction is obvious.

**17. Information and provisions for executing assembly, construction, and repair work**

- (1) Prior to taking on work at the P's, the C's personnel must first report to the P's gatekeeper (plant security) with a copy of the first page of this order.
- (2) Water and electricity for the assembly work are provided by the P free of charge, insofar as they are necessary. Costs for potential repairs to the connections arising due to incorrect handling by the C are borne by the C. The P hereby states that it does not provide any material or auxiliary material.
- (3) The C appoints a "responsible" coordinator for all assumed services at its own cost. For the duration of execution of this contract, the C must equip its coordinator with a mobile telephone. The telephone number must be communicated to the P before work commencement.
- (4) The P assumes no liability for tools and devices brought onto the factory site of the P by the C. The C must ensure that these tools and devices are stored carefully. A copy of a comprehensive list of all devices and tools must be handed in to the gatekeeper at the entrance to the premises, in order to ensure proper surveillance of devices brought onto and removed from the site. These devices are checked off when they are removed from the site.
- (5) Equipping of the building site on the part of the C includes provision and sufficient stock holding of all tools, devices, formwork, means of transport, and scaffolding, constructing the shed for storing the material and accommodating the members of staff, and all work and ancillary work that arises and is not particularly stated in the aforementioned provisions. This also particularly includes securing the building pit against the risk of collapse and leakage, lighting and sealing off the building pit or building site, and connecting the water and electricity supply.
- (6) In order to avoid damage to high-voltage electricity, telephone, sewage, and fresh-water lines, the C must enquire as to the state of all supply lines before it commences work. The contractor is liable in the case of any types of damage.
- (7) The construction or assembly work must be surveyed by the C on an ongoing basis (coordinator). The C and its representatives and vicarious agents who enter the premises of the P are subject to the work rules of the P that can be accessed from the Internet at [www.fritzwinter.de/en/downloads](http://www.fritzwinter.de/en/downloads). The C is liable vis-à-vis the P for adherence to the work rules by its representatives and vicarious agents.
- (8) The relevant regulations with regard to safety and health protection must be observed before and during execution of the work.

- (9) If employees of multiple employers are working at the same work station/place of work, the C is duty bound to co-operate with the other Cs in executing the health and safety regulations. Insofar as it is necessary for the safety and health protection of the employees at work, the C and the other Cs must mutually inform one another and their employees, depending on the type of work, about the risks to health and safety involved in the work and mutually co-ordinate measures to prevent these risks.
- (10) Furthermore, the instructions of the safety experts of the P must be observed. Before work is commenced on the premises of the P, the guidelines determined in the work rules of the P must be observed and heeded when work is carried out.
- (11) Helmets must be worn on the entire premises of the P.
- (12) In the case of gross contraventions, the P has the right to expel the employees of the respective company from the premises; the associated consequences (deadline adherence, etc.) are borne by the C.
- (13) The C is liable for adherence to legal, police, and operational provisions, accident prevention regulations, and protective measures for ensuring the safety of its own members of staff and third parties. The C is liable for compensation claims made against it by third parties. The C must take out insurance for this work for its own or third-party staff. Insofar as there is no case of gross negligence or intent, the P assumes no liability for damages incurred by a representative of one of the suppliers of the C.
- (14) In the case of welding work in the vicinity of components with flammable tower packing, etc., the C must take appropriate fire-prevention precautions compliant with the work rules of the P / other rules before it commences work.
- (15) Walking, driving and parking on the factory site of the P is done so at one's own risk. Liability for damages – particularly in relation to material damages due to the influence of emissions from production operations of the P – is excluded.
- (16) Fuelling vehicles on the factory site is prohibited.
- (17) Bringing alcoholic drinks of all types and other intoxicants onto the entire factory site of the P, and their consumption, is strictly prohibited. It is also prohibited for one to enter the factory site in an inebriated state or otherwise under the influence of drugs.
- (18) It is incumbent upon the C to seek the requisite approvals for its activities with respect to the scope of supply. This also applies to all documents, testing reports, inspection certificates, etc., including requisite fees required according to the provisions of DIN, VDE, VOB (German Construction Contract Procedures), local bodies, TÜA, and TÜV.
- (19) The C must coordinate its work with all companies involved in at the location of service provision in such a way as to ensure that seamless fulfilment of the contractual object is ensured. The C must contact the coordinator or the companies in question in a timely manner if the requirements for executing its work are absent, either wholly or in part, or if obstacles arise or are to be expected.
- (20) The C itself must also check to see if it is possible to store materials at the location. The contractor must create lockable rooms itself.
- (21) It is prohibited to store flammable materials such as packaging, etc., on the storeys of the building. Such materials must be removed from the building on a daily basis. The C assumes costs arising from clearance work in this regard on the building site.
- (22) After work completion, the C must clear the building site at its own cost. The contractor must particularly remove the all building site equipment, all temporary equipment and plants, and all types of waste; the contractor must leave the building site and plant in a clean and functional state. However, should it fail to meet this obligation despite being given adequate time to do so, the P can have the construction rubble and all other waste disposed of at the C's cost.
- 18. Installing a container**
- (1) There is the possibility to install a container on the building site for the duration of building execution in consultation with the co-ordinator authorised to give instructions. Fine details are governed in the work rules for external contractors, which can be accessed from the Internet under the link: [www.fritzwinter.de/en/downloads](http://www.fritzwinter.de/en/downloads).
- (2) The C is duty bound to take out its own property insurance with which it insures its property in the container particularly against fire and burglary. The C is exclusively liable for damages sustained by the container and objects stored within.
- (3) The C is liable for all personal and material damages resulting from the container or its contents. Damage to the useful area caused by the C or its vicarious agents must be rectified.
- 19. Contractual transfer, assignments, sub-contracts and offsetting**
- (1) The C must not transfer this contract to third parties, neither in its entirety nor in part, without the written agreement of the P. Assignments of individual rights and obligations and/or claims from the contract require the (prior) agreement of the P.
- (2) The P is entitled to offset any claims of the C with counterclaims to which it itself is entitled.



**20. Code of conduct / compliance**

- (1) The FW Code of Conduct (accessible from [www.fritzwinter.de/en/downloads](http://www.fritzwinter.de/en/downloads)) is agreed to be a component of this agreement. The C shall observe the principles of the FW Code of Conduct and communicate these accordingly in its supply chain.
- (2) In the event of a violation of an obligation of the FW code of conduct, a contractual party may extraordinarily terminate the contract.

**21. Concluding provisions**

- (1) The law of the Federal Republic of Germany applies to this contract and the entire legal relationship between the C and the P, as well as their respective legal successors. The United Nations Convention on Contracts for the International Sale of Goods does not apply
- (2) There are no ancillary agreements to this contract. Modifications and additions to this contract, particularly follow-on contracts, require the written form and only take effect with the legally binding signature of both contractual partners. A waiver to this requirement for written form requires written agreement.
- (3) Should one of the provisions of this contract be or become ineffective, the validity of all other provisions shall remain unaffected. The parties obligate themselves to agree to replace an ineffective provision with one which most closely matches the commercial intentions of the former.
- (4) The place of performance for deliveries is always the receiving plant / the point of use specified by the P.
- (5) The place of jurisdiction is where the P is based. However, the principal reserves the right to initiate legal actions in all other permitted courts of jurisdiction.
- (6) The attachments listed in this contract are an essential component of this contract.

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