



General Terms & Conditions of Purchasing

applicable to **Ganter Interior GmbH**

(T&C Purchasing)

Sec. 1 – General/Scope

- All deliveries and services from our suppliers or subcontractors (hereinafter referred to collectively as "Contractors") are based on these General Terms & Conditions of Purchasing.
- Our General Terms & Conditions of Purchasing apply exclusively in all cases; terms and conditions of the Contractor that conflict with or deviate from or amend our General Terms & Conditions of Purchasing do not become part of our contractual relationship, unless we have expressly agreed to their validity in text form. Our General Terms & Conditions of Purchasing also apply if we accept the delivery made by the Contractor without reservation in the knowledge that the Contractor's terms conflict or deviate from our General Terms & Conditions of Purchasing. A reference or link to the Contractor's own General Terms & Conditions does not validate them. Our silence to respective indications does not constitute an approval. Our General Terms & Conditions of Purchasing also apply to all future business transactions with the Contractor as well as for additional services according to Sec. 1 (4) (2) VOB/B.
- All agreements made between us and the Contractor for the purpose of executing the Agreement must be recorded in writing or in text form in the Agreement. Any additions and changes to the agreements made, including these General Terms & Conditions of Purchasing, also need to be made in writing or text form to take effect. Our employees are not authorised to enter into verbal, written or agreements in text form that differ from this with the exception of our managing directors or authorised officers, except for cases in which the relative person is indicated as authorized in the contract.
- The provisions in Part A and the joint provisions in Part C apply to sales contracts and supply contracts. The provisions in Part B and the joint provisions in Part C apply to work contracts.

Part A - Purchase contracts/work supply contracts

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Sec. 2 – Bidding Documents

We reserve the right of ownership and copyright to illustrations, drawings, calculations and other miscellaneous documents. Such documents are not allowed to be made accessible to third parties without our express written consent. They are only allowed to be used for production purposes based on our order. They must be returned to us without request after the order has been processed. They are to be kept confidential from third parties.

Sec. 3 – Contract, Prices and payment

- A contract shall only be concluded with our express consent in writing or text form (our order constitutes the acceptance of the Contractor's offer).
- The price stated on the order is binding. This price includes free delivery, including packaging.
- Unless otherwise agreed in writing, we pay the purchase price within 14 days (calculated from the date of delivery and receipt of the invoice) with a 3% cash discount (also for partial payments within the discount period) or net 45 days following receipt of the invoice.
- An agreed discount is deducted from the Contractor's remuneration for changed services (see Sec.4) as well as from the remuneration for hourly wages.

Sec. 4 – Delivery, delivery time and change requests

- The delivery time agreed in the order is binding.
- The Contractor is fully responsible for procuring the deliveries and services required for rendering their services – even through no fault of their own. The Contractor is regardless of negligence or fault responsible in all cases for the supplies and services they procure free from defects, as well as for their own deliveries or services. Already by offer and order Contractor has to ensure a timely supply / handover of the ordered delivery / service. The Contractor is obliged to notify us immediately in text form if circumstances arise or become apparent to them, from which it follows that the agreed delivery time cannot be met.
- We are entitled to make statutory claims in the event of a delay in delivery. In particular, we are entitled to claim damages instead of performance once a reasonable grace period has expired and also withdraw from the contract.
- We can entitled to request that changes be made to the commissioned services (also with regard to execution deadlines) and additional services (hereinafter referred to collectively as "Change Services") if the request is not unreasonable considering our mutual interests.
- Instructions from the Contracting Party are to be provided in text form for reasons of

proof. They are only allowed to be issued by persons who are authorised to do so in accordance with the provisions of this Contract.

- The contractor is entitled to the usual remuneration for the change services, taking into account additional and reduced costs. The usual price is the price which is to be paid for services of the same type, quality and extent at the location where the work is carried out, according to the generally recognised opinion of the parties involved, and which is granted in a number of comparable cases. The same rule applies to determining reduced costs.
- The Contractor is obliged to submit a supplementary quotation to us immediately, which must comply with the terms of this Contract. If possible, this should take place prior to execution. The supplementary quotation must also specify the prospective effects on the construction process if the Contractor is involved in a construction process with his delivery. If the Contractor does not inform the Contracting Party of any impact on the execution deadlines caused by changed services by the date when their supplementary offer is submitted at the latest, any extension to the agreed execution deadlines caused by the changed service is excluded, unless the need for the extension is obvious.
- If the parties fail to agree on the remuneration amount prior to execution of the change services, we can still request that the change services be executed. The Contractor is not entitled to refuse performance.
- Changes to the construction design made by the Contractor require our approval. We are entitled to request the documents or drawings prepared by the Contractor pertaining to the approved changes at any time.

Sec. 5 – Risk transfer/documents

- Unless otherwise agreed in writing or text form, delivery must be made 'free house'.
- The Contractor is obliged to state our order number on all shipping documents and delivery notes. If they fail to do so, processing delays will be inevitable, for which we are not responsible.

Sec. 6 – Liability for defects

- The statutory provisions (Sec, 377, 381 GCC) apply to the commercial obligation to examine and give notice of defects with the following stipulations:
 - Our obligation to inspect is limited to defects that become apparent during inspection by our Incoming Goods department during external examination including the delivery documents (e.g. transport damage, incorrect and short delivery) or which can be identified during quality control as a part of the random sampling process.
 - Insofar as acceptance in text form (email suffices) has been agreed, no obligation to examine exists.
 - This also depends on the extent to which an examination is feasible during the normal course of business, taking into account the circumstances of the individual case.
 - Our obligation to give notice of defects discovered later is not prejudiced by this.
 - Without prejudice to our duty to examine, our complaint (notification of defects) is deemed to be prompt and timely if it is sent within 10 calendar days of discovery or, in the case of obvious defects, from the delivery date.
- We are entitled to make statutory claims in full for defects. The following applies without prejudice to the legal guarantee:
 - According to the statutory provisions, the Contractor is especially responsible for ensuring that the goods are of the agreed quality when the risk is transferred to us. The product descriptions – in particular those named or referenced in our order – that form the subject of the respective contract are deemed to be represent an agreement on quality in any case. It makes no difference whether the product description comes from us, from the Contractor or from the manufacturer.
 - The place of performance and fulfilment of supplementary performance by the Contractor is the place where the defective goods are located (location). This also applies if we collect the goods from the Contractor or have them picked up, provided that we inform the Contractor of the location of the goods within the scope of the order.
 - Supplementary performance also includes the removal of the defective goods and their re-installation, provided that the goods were installed or attached to another object in accordance with their type and intended use. Our legal right to reimbursement of the costs corresponding to this in accordance with Sec. 439 (3) BGB remains unaffected by this. We are entitled to choose whether the Contractor should remove the defective goods and reinstall them themselves following successful supplementary performance or whether we will claim reimbursement of the cost incurred for removing and reinstalling the defective goods. In the latter case, we are entitled to claim a reasonable advance from the Contractor equal to the amount of the expected removal and installation costs.

If the Contractor fails to meet their obligation to remedy the defect – according to our choice of them eliminating the defect (rectification) or delivering a defect-free item (replacement delivery) – within a reasonable deadline we set, we can remedy the defect ourselves and demand that the Contractor reimburse the requisite costs or make a corresponding advance payment.

- If supplementary performance by the Contractor fails or we consider it unreasonable (e.g. due to particular urgency, risk to operational safety or impending disproportionate damage), no deadline is required; We will inform the contractor of such circumstances immediately, and, if possible in advance.
- The seller bears the costs incurred for inspection and supplementary performance even if it turns out that no defect actually existed. Our liability for damages in the event of unjustified requests to remedy defects remains unaffected by his; to this extent, however, we shall only be liable if our failure to recognise that no defect existed was grossly negligent.
- In deviation from Sec. 442 (1) (2) GCC, we are entitled to claims for defects without restriction even if we were unaware of the defect when the contract was concluded owing to our gross negligence.
- In deviation from Sec, 438 (1) (2) (b) GCC, claims for defects become statute-barred in 5 years and 6 months in relation to an item that has been used for a building in accordance with its normal use, which has caused the building to

become defective.

- In deviation from Section 438 (1) (3) GCC, the general limitation period for claims for defects is 3 years from the transfer of risk. The 3-year limitation period also applies accordingly to claims arising from defects of title, whereby the statutory limitation period for third-party claims in rem (Sec. 438 (1) (1) GCC) remains unaffected.
- The right to compensation is expressly reserved, in particular the right to compensation in place of performance in accordance with the statutory provisions.

Sec. 7 – Product liability/exemption/liability insurance protection

1. Insofar as the Contractor is responsible for product damage, They are obliged to indemnify us from third-party claims for damages so far as the cause is within their sphere of control and organisation and they are personally liable within the external relationship.
2. In this context, the Contractor is also obliged to reimburse any costs according to Sec. 683, 670 GCC, which result from or in connection with a recall campaign we perform, insofar as the claim does not arise from Sec. 830, 840 GCC in connection with Sec. 426, 254 GCC. We will inform the Contractor about the content and scope of the recall measures to be undertaken – as far as is possible and reasonable – and provide them with the opportunity to make comment.
3. The Contractor releases us from all claims asserted by our customers based on advertising statements made by the Contractor, a pre-supplier (as a manufacturer within the meaning of Sec. 4 (1) or (2) ProdHaftG) or an accessory of one of the named parties which would not exist or not exist in this form or in this amount were it not for the advertising statement. This provision applies regardless of whether the advertising statement is made before or after conclusion of this Agreement.
4. The Contractor undertakes to take out product liability insurance with coverage of €5,000,000.00 per person/property damage event as a lump sum.

Sec 8 – Retention of title/provisions

1. Insofar as we provide parts to the Contractor, we reserve the right to their ownership. Processing or transformation by the Contractor is carried out on our behalf. If goods subject to retention of title are combined with other objects that are not our property, we acquire co-ownership of the new object in the ratio of the value of this object to the other processed objects at the time of the agreement.
2. If the item provided by us is combined inseparably with other items which are not our property, we acquire co-ownership of the new item in the ratio of the value of the reserved item to the other combined items at the time of combination. If combination takes place in such a way that the Contractor's item is to be regarded as the main item, the Parties agree that the Contractor transfers proportional co-ownership to us. The Contractor retains sole or joint ownership on our behalf.
3. Transfer to us of the goods must take place without regard to the payment of the price. However, if we accept an offer of transfer of title from the Contractor in individual cases, which is conditional upon payment of the purchase price, the Contractor's reservation of title expires at the latest on payment of the purchase price for the goods delivered. In the ordinary course of business, and even before the purchase price has been paid, we remain authorised to resell the goods and assign the resulting claim in advance (in the alternative, simple retention of title is extended to the resale). In any case, all other forms of retention of title are excluded, in particular extended, forwarded and renewed retention of title for further processing.

Sec. 9 – Contractual Penalty

1. The milestone and overall completion dates agreed are subject to contractual penalties.
 2. If the Contractor is responsible for exceeding the completion date, a contractual penalty is agreed which amounts to 0.25% of the net invoice amount per working day, max. 5% in total of the net invoice amount.
 3. If the Contractor is responsible for exceeding the agreed milestone dates, they shall pay a contractual penalty in the amount of 0.1% of the net invoice amount for the partial service to be completed on the respective milestone date which is exceeded for each working day of the delay. A forfeited contractual penalty for a milestone deadline will be deducted from subsequent contractual penalties for further milestone deadlines or the completion date.
 4. The foregoing contractual penalties are limited to 5% of the net invoice amount.
 5. If new milestone dates and completion periods are agreed, these become a component part of the Agreement, and the agreed contractual penalty applies accordingly to the newly agreed periods. The originally stipulated dates no longer apply then. However, the Contracting party is entitled to continue to enforce contractual penalty claims that have already been forfeited.
- The Contracting Party is entitled to assert reservation of the enforcement of the forfeited contractual penalty until the due date of invoice payment, unless the reservation was already declared on handover or – if agreed – acceptance.

Part B – Work Contracts

Sec. 10 Contract Components

Sec. 11 Scope of services

Sec. 12 Execution

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Sec. 10 – Contract Components

In addition to our order and General Terms & Conditions of Purchasing, the components of the contract are formed by the provisions of the VOB Part C and Part B in the current version at the time the Contract is concluded in case of a building contract. In the event of contradictions, the components of the Agreement apply in the foregoing order.

Sec. 11 – Scope of services

1. The services to be provided by the Contractor are determined according to the components of the Agreement listed under Sec. 10.
2. With the exception of the building permit, the Contractor is responsible for procuring all permits and permissions, etc. required for performing their work in good time.

Sec 12 – Execution

1. The Contractor is obliged to provide expert technical supervision (site manager, installation manager, foreman) for the entire duration of the work they perform on the construction site that corresponds to the type and scope of their range of services.
2. The site manager responsible or their representative must be present at the construction site at all times during normal working hours. They must be available by telephone outside of normal working hours. We are entitled to request the replacement of individual members of the technical supervision team if there is an important reason to do so.
3. For the provision of their services, the Contractor is obliged to make all necessary arrangements with us, with the construction and project management, with their subcontractors, specialist planners, authorities, structural engineers, utilities companies, residents and all other parties involved.
4. Based on the execution deadlines agreed, the Contractor is to prepare a detailed schedule no later than 2 weeks after the order is issued. The detailed schedule becomes binding on our approval. The Contractor is obliged to update the detailed schedule in accordance with the actual construction process.
5. No later than on the date of acceptance, the Contractor is obliged to hand over to us in triplicate and complete the inventory and revision plans that relate to their services as well as the operating and maintenance documents for all technical systems, machines and building parts that require maintenance.
6. The Contractor is obliged to prepare typewritten construction reports and to submit them to us every working day. These daily construction reports should contain all the information relevant to executing the contract and billing, such as construction progress, weather, number and type of workers employed on the construction site, quantity and scope of the equipment used, the start and end of large-scale works, acceptance, interruptions in working hours with an indication of the reasons, accidents, official orders and other special events.
7. Construction meetings (Journ fixe) are to be held weekly and also more frequently if required on a regular date to be agreed with the Contractor. The Contractor is obliged to take part in these construction meetings by sending sufficiently authorised members of their technical supervision team.
8. The Parties agree that samples will be taken of the components, materials and substances to be installed by the contractor. Unless a sampling list is attached to the Contract, sampling will be carried out on the basis of a sampling list to be agreed between the Parties, in which, in addition to the components to be sampled, etc., the timing of the sampling also needs to be specified. The Contractor will provide the Contracting Party with a draft of the sample list within two weeks of placing the order. All samples need to be submitted in good time so that there is no delay in construction work for the Contractor, taking into account a sampling time of usually 3 working days. Sampling is always to be carried out with several cost-neutral variants (at least 3 variants). Only coherent areas should be sampled for better evaluation.
9. The Contractor must properly and professionally pack goods for delivery to us. If goods are piled and packed on pallets, special attention needs to be paid to them being properly and professionally fastened on the pallet (e.g. fastening the goods with lashing straps to prevent them from slipping).
10. The following applies to provisions the Contracting Party supplies: The goods provided
 - 10.1. are to be used by the contractor for installation purposes,
 - 10.2. are to be packed properly and professionally with the goods from the contractor and delivered with the goods from the contractor.
11. The Contractor must check any material delivered carefully prior to any assembly/installation work being carried out. Any damage during transport, deviation in quality or shortages are to be reported to us the Contracting Party without undue delay, recorded in the form of photographs and noted on the way bill., § 4 sec. 3 VOB/B remains unaffected. Fitters are to wear the vests or T-shirts the Contracting Party provides.
12. In hourly wages are paid, the Contractor is to provide the Contracting Party with hourly wage slips in triplicate for each day worked for signing off. In addition to the information according to Sec. 15 (3) VOB/B, this must contain the following information:
 - 12.1. The date,
 - 12.2. The name of the construction site,
 - 12.3. The exact name of the place of performance on the construction site and the type of service,

- 12.4. The names of the workers and their occupational, wage or salary group, the number of hours worked by each worker, broken down, if required, by supplementary work, night work, Sunday work and holiday work, as well as difficulties encountered not included in the rate,
- 12.5. The parameters of the equipment used.
13. The signing of hourly wage slips by a person duly authorized by us only represents acknowledgement of the type and scope of the service provided. We reserve the right to check whether the work is performed on an hourly basis or as contract work.
14. Changes made to the construction design by the Contractor require the approval of the Contracting Party. We are entitled to request the documents or drawings prepared by the Contractor pertaining to the approved changes at any time.
15. The Contractor is only allowed to transfer services to subcontractors who are competent, efficient and reliable. This also means that these comply with their legal obligations to pay taxes and social security contributions and that they meet the requirements of trade law. The contractor is to inform us in writing of the type and scope of the service to be subcontracted, including the name and address of intended subcontractor and the professional association to which they belong (including membership number). We are also entitled to request proof of the specialist knowledge, performance and reliability of the intended subcontractor and to reject him for justified reasons or according to § 4 sec. 8 VOB/B.
16. The Contractor is obliged to provide us with information about the subcontractors they use and the contracts concluded with them, insofar as this is necessary to exercise our rights and does not contradict the legitimate interests of the Contractor or the subcontractor or is subject to confidentiality.
17. If the Contractor uses subcontractors for services which their company is not set up for, we can set the Contractor an appropriate deadline for remedial action and declare that we will cancel the order after the deadline has expired to no avail (Sec. 8 (3) VOB/B), if the subcontractors used are not competent, efficient or reliable or if the Contractor does not prove this requirement at our request within the period set.

Sec. 13 – Changes to services

- We can be entitled to request that changes be made to the commissioned services (also with regard to execution deadlines) and additional services (hereinafter referred to collectively as "Change Services") in deviation from Sec. 650b GCC if the request is not unreasonable considering our mutual interests, § 1 sec. 3 VOB/B.
- Instructions from the Contracting Party are to be provided in text form (email suffices) for reasons of proof. They are only allowed to be issued by persons who are authorised to do so in accordance with the provisions of this Contract.
- Notwithstanding Sec. 650c (1) and (2) GCC, the Contractor is entitled to the usual remuneration for the change services, taking into account additional and reduced costs. Prices and their calculation base from the contract are to be updated also for change orders.
- The Contractor is obliged to submit a supplementary quotation to us immediately, which must comply with the terms of this Contract. If possible, this should take place prior to execution. The supplementary quotation must also specify the prospective effects on the construction process. Sec. 650b (1) (4) GCC does not apply. If the Contractor does not inform the Contracting Party of any impact on the execution deadlines caused by changed services by the date when their supplementary offer is submitted at the latest, any extension to the agreed execution deadlines caused by the changed service is excluded, unless the need for the extension is obvious.

If the Parties fail to agree on the remuneration amount prior to execution of the change services, we can still request that the change services be executed. The Contractor is not entitled to refuse performance.

Sec. 14 – Execution Deadlines

The binding execution deadlines (contract deadlines) and any other deadlines result from our order.

Sec. 15 – Contractual Penalty

- The milestone and overall completion dates agreed are subject to contractual penalties.
- If the Contractor is responsible for exceeding the completion date, a contractual penalty is agreed which amounts to 0.25% of the net invoice amount per working day, max. 5% in total of the net invoice amount.
- If the Contractor is responsible for exceeding the agreed milestone dates, they shall pay a contractual penalty in the amount of 0.1% of the net invoice amount for the partial service to be completed on the respective milestone date which is exceeded for each working day of the delay. A forfeited contractual penalty for a milestone deadline will be deducted from subsequent contractual penalties for further milestone deadlines or the completion date, as long as all delay days are thereby considered.
- The foregoing contractual penalties are limited to 5% of the net invoice amount.
- If new milestone dates and completion periods are agreed, these become a component part of the Agreement, and the agreed contractual penalty applies accordingly to the newly agreed periods. The originally stipulated dates no longer apply then. However, the Contracting party is entitled to continue to enforce claims for contractual penalty claims that have already been forfeited as well as possible claims for damages, whereby the contractual penalty is taken into account when claiming damages for delay.
- The Contracting Party is entitled to assert reservation of the enforcement of the forfeited contractual penalty until the due date of invoice payment, unless the reservation was already declared on handover or – if agreed – acceptance.

Sec. 16 – Remuneration

- Payment takes place including the applicable VAT on the day of invoicing. If the Contracting Party is a tax debtor according to Sec. 13b Value Added Tax Act (UStG), the payment is made net.
- The unit and lump-sum prices agreed are fixed prices and include remuneration for additional services. A sliding scale for wage, material, equipment and fabric costs etc. is not agreed, neither for change orders.

Sec 17 - Billing and payment

- Instalment payments take place according to the payment schedule or at the request of the contractor in the amount of the value of the proven contractual services.
- Final invoicing presupposes the completion and acceptance of the construction project.
- An agreed discount is deducted from the Contractor's remuneration also for changed services (see Sec. 13) and / or necessary additional services (ordered changes) a, regardless whether they are remunerated with agreed unit prices, lump sum or as hourly wages.

Sec 18 - Acceptance

- After completion of the works, the Contractor has to ask for acceptance, formal acceptance shall take place. Partial acceptance also take place formally. Acceptance of remedial work in accordance with Sec. 13 (5) VOB/B also takes place formally. As acceptance is asked for, fictional acceptance according to § 12 sec. 5 VOB/B is not applicable
- The partial performance of services which are no longer visible or accessible until acceptance take place are to be jointly inspected (technical interim determination according to § 4 sec. 10 VOB/B) following completion which is to be reported to us in text form. The joint inspection and determination does not constitute partial acceptance, but does lead to the burden of proof being reversed, provided that we do not object to the performance. A written record is to be drawn up for the joint review and determination.
- We can also have defects rectified prior to acceptance at the expense of the Contractor if the contractor does not comply with the request to remedy the defect within a reasonable period of time that we set. This does not require termination of the Contract.

Sec. 19 – Claims for defects

In deviation from Sec 13 (4) (1 and 2) VOB/B, the initial limitation period for claims for defects is five years and six months from acceptance of the contractual services.

Sec. 20 – Termination

- The Contract can be terminated if the conditions of Sec. 8 and 9 VOB/B apply.
- Sec. 5 (4) VOB/B applies with the following proviso: If the Contractor is in default with commencing execution of the works, is in default with their completion, or culpably fails to comply with the obligation to perform stated in Sec. 5 (3) VOB/B), we can demand compensation in accordance with Sec. 6 (6) VOB/B, if the agreement is maintained, or set the Contractor a reasonable deadline for contractual performance and declare that the Agreement be terminated if the deadline expires without result.
- In addition, we have the right to terminate the Contract for good cause if a culpable act or omission by one of the Parties in the course of executing the Contract places the purpose of the Contract at risk and makes continuing the Contract unreasonable for the other Party. An important reason for termination on our part is, in particular, if the Contractor
 - fails to comply with any binding instructions we have issued, and/or violates a principal contractual obligation
 - and we send then a written warning stating the circumstances to which we object and the Contractor fails to remedy the objectionable circumstances within a reasonable time limit set to him.
- In the event of termination or any other termination of the Contract, the Parties undertake to determine the level of performance achieved to a joint extent.
- In the event of termination or any other termination of the Contract, the Contractor is to complete the performance in such a way that we can take over the performance without difficulty and arrange for a third party to continue the performance.

Sec. 21 – Liability/Insurance

- Proof that a business liability insurance policy has been concluded needs to be provided without being asked prior to commencing provision of the service by sending confirmation of insurance cover. Payments to the Contractor will only be made after confirmation of insurance coverage has been presented.
- The Contractor is obliged to provide for the safety of traffic in all areas used for construction work until the final and complete evacuation of the construction site. Advance re-transfer of the traffic safety obligation for individual areas on which the work has already been completed is possible. Condition for this is that the areas have been completely cleared and that express written agreement between the contracting parties has been reached stating that the traffic safety obligation has been transferred to us or third parties.

Sec. 22 - Exemption according to Sec 48 b Income Tax Act (EStG)

- If this has not already taken place on submission of the bid, the Contractor is to submit an exemption certificate from the tax office responsible immediately following conclusion of the Contract in accordance with Sec. 48b Income Tax Act (EStG) and is to submit a new certificate on their own volition when the validity period for the certificate expires. The Contractor undertakes to notify us immediately of any change made by the tax office responsible in relation to the exemption certificate submitted.
- If a valid exemption certificate has not been submitted to us, the Contractor is obliged to immediately inform the use of their tax number, the tax office responsible and their bank details. If an exemption certificate is not available or a certificate which has been submitted is revoked or withdrawn, we are entitled to withhold one of the taxes to be paid according to the amount.

Part C - Joint Provisions

Sec. 23	Property rights/legal obligations/REACH clause
Sec. 24	Safety at work
Sec. 25	Guarantees/sureties/retentions
Sec. 26	Averting rights of retention and refusal of performance
Sec. 27	Assignment of claims/offsetting
Sec. 28	Confidentiality
Sec.29	Final provisions/jurisdiction/choice of law

Sec. 23 – Property rights/legal obligations/REACH clause

- The Contractor guarantees that no rights of third parties within the countries of the European Union, UK, North America or Asia are breached in connection with their delivery, unless they can prove that they are not responsible for the breach of duty. If a third party asserts claims against us, the Contractor is obliged to indemnify us against such claims at the first written request. We are not entitled to make any agreements with the third party - in particular to conclude a settlement - without the consent of the contractor. The contractor's obligation to indemnify relates to all expenses that we necessarily incur as a result of or in connection with claims by a third party.
- The Contractor undertakes to comply with the statutory provisions to combat undeclared work, the Posted Workers Act (AEntG), the Temporary Employment Act (AÜG), the Minimum Wages Act (MiLoG) and the provisions of social security law, in particular those regarding the payment of contributions.
- We are entitled to request at any time from the Contractor up-to-date proof of the fulfilment of the obligations stated in Sec. 23.2 (esp. proof of the payment of social security contributions, hourly work records, anonymised pay slips and employee lists). If requested, the proof needs to extend to the subcontractors employed by the Contractor. If proof is not provided, we are entitled to withhold payments due to the Contractor until the Contractor has fulfilled their obligations.
- The Contractor is to ensure that all employees working on the construction site on their behalf and on behalf of their subcontractors always carry an ID card with them.
- The Contractor is obliged to indemnify us against all claims against us made by their employees, the employees of their subcontractors and all employees of all subordinate subcontractors and any leasing companies and social security schemes that result from this Contract in accordance with Sec. 13 MiLoG, Sec. 14 AEntG, Sec. 28e (3a to 4) SGB IV or Sec. 150 (3) SGB VII or other legal provisions ordering a corresponding liability. This obligation to indemnify also extends to all other asset losses that we suffer as a result of a breach of the statutory provisions specified in Sec. 23.2 (e.g. Fines, legal costs) by the Contractor or their subcontractors.
- If the Contractor breaches the statutory provisions specified in Sec. 23.2 or breaches their obligation from Sec. 23.3, we are entitled to terminate the Contract for good cause without the need to give notice of termination.
- The Contractor undertakes to oblige his subcontractors to a corresponding extent.
- The Contractor warrants to comply with the requirements of Regulation (EC) No. 1907/2006 of December 18, 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH Regulation) in the version applicable at the time of the delivery made to us.
- Insofar as the Contractor supplies us with products which contain one or more substances in a concentration of more than 0.1 mass fraction (g/g) which fulfil the criteria of Art. 57 REACH Regulation (i.e. can be included in the list of substances subject to licensing) and have been determined in accordance with Art. 59 (1) REACH Regulation (i.e. have been included on the 'Candidate List'), the Contractor undertakes to provide adequate information to ensure safe use of the products. The delivery of these products requires separate approval by us.
- The Contractor is obliged to (pre-)register themselves all substances delivered to us in accordance with the requirements of the REACH Regulation or to have them (pre-)registered by upstream suppliers.
- The Contractor is obliged to send us all the information and documentation that the REACH Regulation requires within the deadlines set out in the REACH Regulation.
- The fulfilment of the foregoing obligations from Sec. 23.8-Sec. 23.11 represent main obligations of the Contractor.
- If the Contractor breaches his obligations under Sec. 23.8 or Sec. 23.9, we are entitled to withdraw from the contract provided that the delivered goods do not or no longer comply with the requirements of the REACH Regulation. In the event of a breach of the obligations from Sec. 23.10 or Sec. 23.11, we are entitled to withdraw from the Contract if the Contractor fails to resolve the breach within a reasonable period set by us. Any further claims for damages remain unaffected by this.
- If claims are made against us by a third party because the services the contractor provides do not comply with the requirements of the REACH Regulation, the Contractor is obliged to indemnify us against these claims provided that the claim is based on a breach of the obligations under Sec. 23.8-Sec. 23.11. The Contractor's obligation to indemnify relates to all expenses that we necessarily incur as a result of or in connection with claims by the third party, in particular, legal defence and administrative costs and all costs incurred for a necessary replacement.

Sec. 24 - Safety at work

- The Contracting Party draws the Contractor's attention expressly to the obligations of the Occupational Health and Safety Act (ArbSchG). The Contractor undertakes to prepare a risk assessment for the services they provide – also with regard to third parties – and submit it to the Contracting Party. By performing an assessment according to Sec. 5 Occupational Safety and Health Act (ArbSchG) or the national law in place in the respective country where the work is carried out, the Contractor is obliged to determine the risk for the employees associated with the work and undertake occupational safety measures. The Contractor is to independently find out about the dangers posed by other businesses working on site, coordinate their work accordingly and inform their employees accordingly as well. If the owner or Contracting Party has appointed a health and safety coordinator, they need to be provided with all the requisite documents and their instructions complied with.

- In order to prevent industrial accidents in connection with its services, the Contractor is to provide all necessary equipment and undertake all necessary arrangements and measures that comply with the provisions, the accident prevention regulations that apply to them and the generally recognised rules of safety and occupational medicine. Insofar as the Contracting Party provides protection and safety equipment, these are to be maintained and supplemented by the Contractor if necessary under their own responsibility. The Contractor is to return this equipment to the Contracting Party in due form after the work is completed. Existing protective covers, railings or similar that need to be temporarily removed to perform the work must be properly reinstated. All danger zones are to be cordoned off and signposted using other suitable measures for the duration of their removal.
- The Contractor is to oblige workers employed on the construction site to use the personal protective equipment prescribed (e.g. safety helmets, safety shoes) to be worn on site. The Contractor is obliged to supply protective equipment in a sufficient number. Workers employed by of the Contractor who do not comply with their obligation to wear protective equipment can be expelled from the construction site.

Sec. 25 - Guarantees/sureties/retentions

1. Guarantee for contract performance/fulfilment of legal obligations

- Insofar as the provisional net order amount or net lump sum exceeds €20,000, the Contractor shall provide the Contracting Party with an unconditional, unlimited and directly enforceable contract performance guarantee from a credit institution or credit insurer corresponding to the requirements of Sec. 17 (2) VOB/B within 18 working days of this Contract being concluded as a guarantee for the performance of the Contract and the fulfilment of legal obligations (hereinafter referred to collectively as contract performance guarantee).
- The guarantee amount equates to **10%** of the provisional net order amount (for billing based on unit prices) or the net lump sum agreed.
- The Contracting Party is entitled to pay only 90% and retain 10% as security until a guarantee certificate corresponding to the requirements of the Contract is handed over. The Contractor is not allowed to demand payment of the withheld amount to a blocked account within the terms of Sec. 17 (5) VOB/B.
- The guarantee for the performance of the Contract extends to
 - The fulfilment of all Contractor's commitments from this Contract, as well as agreed supplementary and/or changed services arranged following the conclusion of the Contract,
 - In particular to the contractual performance of the service, the timely completion, the fulfilment of contractual penalty claims, the settlement and fulfilment of non-defect related claims for damages of any kind, in particular due to damages in place of performance, breach of duty, negligence in contract negotiations and from settlement relationships that may arise after the Contracting Party has terminated the Contract,
 - The fulfilment of claims by the Contracting Party (regardless of the legal reason) in the event of instalments being overpaid including interest,
 - Concerning the fulfilment of claims for defects of the Contracting Party as well as payment and damage claims of the Contracting Party based on defects, insofar as these were asserted before or during acceptance (what are referred to "defects in record"). To clarify: Claims by the Contracting Party for defects first asserted after acceptance are not subject to the fulfilment of the Contract, but to the defects.
 - All claims against the Contracting Party which result from this Contract and the work activity undertaken by the Contractor up to the day of acceptance (inclusive) acc. to Sec. 13 MiLoG, Sec. 14 AEntG, Sec. 28e (3a to 4) SGB IV, Sec. 150 (3) SGB VII or other legal provisions ordering a corresponding liability.

The Contracting Party shall return any unused guarantee relating to performance of the Contract if acceptance has taken place or acceptance specific to the due date of the claim for remuneration for works performed no longer applies. If outstanding claims by the Contracting Party, which are secured by the contract fulfilment guarantee, still apply, the Contracting Party is entitled to refuse to return the contract fulfilment guarantee until these claims are fulfilled. If the contract performance guarantee exceeds the still outstanding claims of the Contracting Party at the time of acceptance and secured by the contract performance guarantee, the Contracting Party is obliged, at the request of the Contractor, to immediately submit a declaration of partial liability in the corresponding amount.

2. Guarantee for claims for defects

- After acceptance, or after acceptance has become superfluous, the Contractor is obliged to provide the Client with an unconditional, unlimited and directly enforceable guarantee from a bank or credit insurer that meets the requirements of Sec. 17 (2) VOB/B to secure the Contracting Party's claims for defects.
- The guarantee amounts to **5%** of the final net invoice amount.
- The Contracting Party is entitled to retain an existing performance security in the same amount or to deduct a corresponding amount from any security still due, or to withhold payments in such amount until a guarantee certificate corresponding to the requirements of the Contract for claims for defects is handed over. The Contractor is not allowed to demand payment of the withheld amount to a blocked account within the terms of Sec. 17 (5) VOB/B.
- In the case of an agreed contract performance guarantee, the guarantee for claims for defects extends
 - to the fulfilment of claims for defects by the Contracting Party along with, in connection with defects, justified claims for payment and damages by the Contracting Party, which are initially asserted following acceptance. To clarify: Claims due to defects that are asserted prior to acceptance or during acceptance (referred to as defects in record) are subject to the contract performance guarantee and not the defect guarantee (also in the case of Sec. 4 (7) VOB/B),
 - The fulfilment of claims by the Contracting Party (regardless of the legal reason) in the event of overpayment after or on the payment of the final payment including interest,
 - All claims against the Contracting Party which result from this Contract and the

work activity undertaken by the Contractor after the day of acceptance acc. to Sec. 13 MiLoG, Sec. 14 AEntG, Sec. 28e (3a to 4) SGB IV, Sec. 150 (3) SGB VII or other legal provisions ordering a corresponding liability.

2.5. The guarantee for claims for defects extends

2.5.1. to the fulfilment of claims for defects by the Contracting Party along with justified claims for payment and damages by the Contracting Party in connection with defects, irrespective of whether the claims for defects are initially asserted before, during or after acceptance.

2.5.2. The fulfilment of claims by the Contracting Party (regardless of the legal reason) in the event of overpayment including interest,

2.5.3. All claims against the Contracting Party which result from this Contract and the work activity undertaken by the Contractor acc. to Sec. 13 MiLoG, Sec. 14 AEntG, Sec. 28e (3a to 4) SGB IV, Sec. 150 (3) SGB VII or other legal provisions ordering a corresponding liability.

2.6. In deviation from Sec. 17 (8) (2) VOB/B, for building contracts, the guarantee for the claims for defects is returned after the warranty period has expired. If the client still has outstanding enforceable claims, it may withhold the security even after the warranty period has expired. This applies all the more if he has already offset his own claim against a repayment claim due to a security provided by the contractor during the warranty period.

3. **Guarantee declaration requirements**

The guarantee declarations under Sec. 1 and 2 must meet the following requirements:

- 3.1. The guarantee waives the objections under Sec. 770 to 771 GCC. Contestability, but only to the extent however that the counterclaim or the Contractor's right to contest is not uncontested or has not been legally established.
- 3.2. The guarantee can be issued under the condition that only claims for the payment of money can be asserted against the guarantor, but that the guarantee cannot contain a deposit clause.
- 3.3. The scope of the guarantee has to correspond to this Agreement.
- 3.4. The guarantee is to ensure that claims from the guarantee do not become time-barred before the secured claims, but no later than 30 years after the statutory limitation period begins.
- 3.5. The guarantee is to ensure that only the law of the Federal Republic of Germany applies to disputes arising from and in connection with the guarantee.
- 3.6. The competent court in D-79183 Waldkirch is to be agreed as the exclusive place of jurisdiction for disputes arising from the guarantee.

4. **Reference Values**

If the Contracting Party is entitled to deduct input tax and Sec. 13b Value Added Tax Act (UStG) applies, the respective net amount (without value added tax) in all of the above paragraphs is decisive instead of the gross amount (including value added tax).

5. **Acceptance**

Insofar as the Parties do not perform acceptance of the Contractor's performance, acceptance will be replaced by the relevant point in time in accordance with Sec. 446 and 448 GCC.

Sec. 26 – Averting rights of retention and refusal of performance

1. If one of the Contracting Parties makes use of a right to refuse performance or a right of retention, they are obliged to quantify the amount which they want to assert the right for. If the other Contracting Party disputes the right to assert the right to refuse performance or the right of retention, they are entitled to avert the assertion by providing a guarantee in the amount of the amount paid
2. A guarantee to avert a right to refuse performance or a right of retention in accordance with Sec. 25 of this Contract can be provided by depositing or providing a joint and several unlimited guarantee from a credit institution or credit insurer that meets the requirements of Sec. 17 (2) VOB/B.
3. The costs for this are to be borne by the Parties in the ratio in which the assertion of the refusal to perform or the right of retention was justified or unjustified.
4. The foregoing provisions shall apply mutatis mutandis in the event that the Contractor threatens to cease work in accordance with Sec. 16 (5) (5) VOB/B owing to a disputed default in payment by the Contracting Party or wishes to declare termination of the contract.

Sec. 27 – Assignment of claims, offsetting

1. The assignment of a claim with whatever content requires our approval. Assignments made without the necessary consent remain invalid, unless legal regulations oppose. We shall only refuse consent if, following an examination of the individual case, the interests in maintaining the claim relationship outweigh the interests of the contractual partner in the intended assignment.
2. Offsetting against counterclaims is only permitted if we do not contest these claims or they have been legally established. This does not apply to offsetting due to justified counterclaims based on the main contractual obligations.

Sec. 28 – Confidentiality

1. The provision of information to third parties or the examination of this Contract or of plans and tender documents relating to this Contract by third parties is prohibited, unless such information or examination is necessary for the performance of the contract. The same applies to any trade secrets and any other confidential information that may become known in connection with the implementation of this Contract.
2. Publications concerning the services provided by the Contractor or parts of the project are only permitted with our prior written consent.

Sec. 29 – Final provisions/jurisdiction/choice of law

1. The Law of the Federal Republic of Germany applies to the performance of this Contract without the referral norms of international private law. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
2. Exclusive jurisdiction for all disputes arising or in connection with this Contract – if the customer is a businessperson – is D-79183 Waldkirch.