

Standard Terms and Conditions of Purchase – Construction

1. Scope of Application

- 1.1 To the extent not otherwise agreed, these Standard Terms and Conditions of Purchase – Construction ("Terms and Conditions (Construction)") shall govern the legal relationships between the Contractor and the Customer.
- 1.2 These Terms and Conditions (Construction) shall apply exclusively. Conflicting or additional terms and conditions of the Contractor shall not be incorporated into the agreement except to the extent expressly agreed in writing. The Contractor's terms and conditions shall not be binding even if they are not expressly objected to. These Terms and Conditions (Construction) shall also apply in those cases where the Customer accepts the Contractor's performance in full knowledge of the latter's conflicting or differing terms and conditions.
- 1.3 These Terms and Conditions (Construction) shall furthermore apply to all future transactions with the Contractor, unless the Customer and the Contractor enter into a separate written agreement (e.g., a master agreement). They shall apply irrespective of whether they are specifically referred to in the individual case.

2. Nature and Scope of Performance (clause 1 of Part B of the German Construction Contract Procedures (*Vergabe- und Vertragsordnungen für Bauleistungen – VOB/B*))

- 2.1 In the case of conflicting contractual provisions, the following shall apply in order of priority:
 - 2.1.1 the order as primary document,
 - 2.1.2 then the contractual annexes specified in the order, in the order of priority stated therein, in particular:
 - a) the record of negotiations
 - b) the performance specification, acceptance parameters, list of interfaces
 - c) the Customer's call for the Contractor to submit an offer with performance specification and the Customer's other tender documents,
 - d) the Customer's standard templates,
 - e) all technical regulations, standards and accident prevention rules such as DIN, EN and ISO standards, VDI/VDE regulations including published drafts, to the extent they correspond to the recognised engineering principles,
 - f) the manufacturer's and processor's instructions,
 - 2.1.3 these Terms and Conditions (Construction),
 - 2.1.4 the code of conduct under clause 15.4 of these Terms and Conditions (Construction), accessible at the following link: <https://schwarzproduktion.com/wp-content/uploads/2023/09/Code-of-Conduct-Deutsch.pdf>
 - 2.1.5 the VOB/B in the version valid as at the date of entering into the agreement, together with the General Technical Terms for Construction Contracts (*Allgemeine Technische Vertragsbedingungen für Bauleistungen – VOB/C*), however excluding their rules on invoicing and on determining quantity/mass, and
 - 2.1.6 the Contractor's offer.
- 2.2 Before submitting an offer, the Contractor shall acquaint itself with the local conditions at the construction site (such as the condition of existing structures and the terrain, existing storage and working areas, vehicle access routes, water and power connections) and all other issues relevant to the execution of its work. It must plan its work accordingly and must ensure that these are included in its contract price.
- 2.3 The Contractor shall be responsible for issuing, in good time and without undue delay, all official notifications required of it in connection with its scope of deliverables and services, obtaining official permits, compliance with conditions, and obtaining all necessary approvals (e.g., from TÜV, VdS, VGB, the employers' liability insurance associations, the building inspectorate, the fire service/the preventative fire protection agency, the local water authorities, public utility companies, the environmental agency, the federal-state agency for occupational health and safety, the federal-state environmental agency, any manufacturers, etc.). The Customer's responsibilities and obligations as the future operator of the installation shall remain unaffected by the aforementioned obligation.
- 2.4 The Contractor shall include in its contract price all actions caused by weather effects occurring during the work execution period that would normally be expected at the time of submitting the offer (such as snow clearance, pre-heating of building materials, enclosure/heating of the

structure), with no entitlement to additional remuneration. Clause 6 (6) VOB/B and section 642 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*) shall apply if the work execution period is postponed until a less favourable season of the year.

- 2.5 The Contractor shall at its own expense and without any separate request safeguard the work performed by it and the items of property entrusted to it for work execution against damage, theft, winter damage, groundwater and precipitation in the period until acceptance. It shall furthermore remove snow and ice, ensure that its work area is cleaned on an ongoing basis and hand it over in a clean and tidy condition.

3. Order, Changes in Performance (clauses 1 and 2 VOB/B)

- 3.1 For evidence purposes, orders are placed in text form (fax, e-mail, etc.). The foregoing shall apply to requesting, ordering and commissioning additional or changed work (change).
- 3.2 If the Contractor requests additional remuneration for a change, it shall notify the Customer thereof in text form before beginning to execute the change. The foregoing shall also apply to a change in the construction plan or other matters ordered within the meaning of clause 2 (5) VOB/B.
- 3.3 The Contractor shall determine the additional or reduced remuneration for a change in accordance with section 650c (1) BGB from the costs actually required for the change in performance (additional and saved costs) plus a reasonable mark-up for the Contractor's general business costs, risk and profit.
- 3.4 The Contractor shall submit its offer for additional or reduced remuneration without undue delay after receiving a change request. The Contractor shall furnish evidence of the costs actually required for the change (additional and saved costs) by means of suitable documents from third parties involved (suppliers, subcontractors) and by disclosing the costs for its own equipment and labour. If the execution deadlines are extended due to a change that has been requested, the Contractor shall indicate that fact in its offer and propose new deadlines to the Customer. The Contractor should submit its offer to the Customer within three working days at the latest. If the Contractor is unable to calculate the costs of individual items, it shall specify a cost budget.
- 3.5 If the parties fail to reach agreement on the remuneration for a change within six working days from receipt of the change request by the Contractor, the Customer may order the change in text form. If the Customer can prove that it cannot reasonably be expected to wait, it may also order a change at an earlier date, where applicable also immediately. The foregoing usually applies if the order is for work that is on the critical path, there is a risk of missing the deadline for completion or other contractors are hindered in their work.

4. Work Execution Documents (clause 3 VOB/B)

The Contractor has received all execution documents to be provided by the Customer for the Contractor's work together with the Customer's invitation to submit an offer. Unless the agreement expressly stipulates otherwise, the Customer will generally not provide any other execution documents. The preparation of further execution documents is part of the Contractor's work and is covered by the contract prices.

5. Work Execution (clause 4 VOB/B)

- 5.1 The Contractor shall use only construction and building materials, substances, technical equipment and implementation methods that are not hazardous or detrimental to health and, in particular, do not have any adverse effects on the subject matter's special forms of use. The Contractor shall, at the Customer's request, provide the Customer with proof of the origin and quality of the construction and building materials and components it is using, as well as the associated quality control measures and their eligibility for use in structural engineering projects.
- 5.2 The Contractor shall prepare weekly reports and also, at the request of the Customer and its site management, construction logs detailing the performance of its work and incidents on the site, and hand these over to the Customer each week without being requested to do so.
- 5.3 The Customer's construction supervision unit will hold weekly site consultation meetings on a regular date (regular meeting date) to be agreed with the Contractor; if necessary, these meetings may also be held more frequently. The Contractor shall attend these meetings when requested to do so by the Customer's construction supervision unit.
- 5.4 The Contractor shall appoint a German-speaking contact person (e.g., site manager, assembly manager, supervisor) during work execution who is authorised to represent the Contractor.
- 5.5 All persons entering one of the Customer's facilities/construction sites must comply with the applicable local rules and regulations (e.g., policy

Standard Terms and Conditions of Purchase – Construction

for external contractors, site regulations). The Customer disclaims liability for damage caused by being on such property, to the extent it is not liable under applicable law for grossly negligent or wilful conduct.

5.6 The health and safety regulations must be complied with when inspecting and using containers, pits and channels, for grinding, cutting, welding and soldering, and for work with increased risk.

5.7 The risk analysis to be prepared by the Contractor must be handed over to the Customer on first demand.

6. Work Execution Deadlines (clause 5 VOB/B)

The deadlines stated in the order are binding contract deadlines.

7. Allocation of Risk (clause 7 VOB/B)

Risk of loss is governed by section 644 BGB. Clause 7 VOB/B is waived and shall not apply.

8. Termination (clauses 8 and 9 VOB/B)

The Customer may give notice of termination at its sole discretion or for good cause to a definable part of the work (such as individual items, individual work or individual defects).

9. Contractual Penalties and Default (clause 11 VOB/B)

9.1 In the case of default in completing the work as a whole, the Contractor shall pay the Customer a contractual penalty amounting to 0.2% of the total net remuneration for each working day of delay, however up to a maximum of 5% of the total net remuneration.

9.2 The Customer may claim the contractual penalty until the due date for the final payment. There is no need to reserve the right to do so at the time of acceptance.

9.3 As well as the obligation to pay a contractual penalty, the Contractor shall pay compensation for all further loss or damage caused by default, in exclusion of clause 6 (6) VOB/B. Any contractual penalty incurred shall be taken into account.

9.4 The contractual penalty provision shall also apply to newly agreed deadlines for completion and/or those continued in accordance with clause 6 VOB/B.

10. Acceptance (clause 12 VOB/B)

10.1 Acceptance shall be performed upon completion of all work. The Contractor is not entitled to insist upon the acceptance of parts of the work.

10.2 A formal acceptance procedure in accordance with clause 12 (4) VOB/B shall be performed. Constructive or implied acceptance in accordance with clause 12 (5) nos. 1 to 2 shall be excluded.

10.3 Upon completion of all work, the Contractor shall within 12 working days request formal acceptance from the Customer. For evidence purposes, the request must be made in text form.

10.4 The legal consequences of section 640 (2) sentence 1 BGB shall only apply if the Contractor has notified the Customer, together with the request for acceptance, of the consequences of failing to declare acceptance or refusing acceptance without stating defects. Such notification must be given in text form.

10.5 The Contractor shall provide the following documents to the Customer together with the request for acceptance:

10.5.1 All documents to be handed over by the Contractor in accordance with the Customer's performance specification.

10.5.2 Proof of manufacture, technical instructions and data sheets, product descriptions and user manuals for all materials and parts used.

10.5.3 All documents and evidence that the Customer needs to prove to public authorities that the Contractor's work was executed in compliance with the applicable public law regulations.

10.5.4 The complete inspection documents and all other documents that the Customer needs to properly operate, maintain and where applicable modify and expand the product of the Contractor's work.

11. Claims for Defects (clauses 4 and 13 VOB/B)

11.1 Even prior to acceptance, the Customer may, in the case of a defect in the work performed, fix the defect itself and demand reimbursement of the expenses necessary to do so following the expiry without success of a reasonable period for curing the defect, as set by the Customer, unless the Contractor's refusal to fix the defect was based on legitimate grounds. The foregoing shall not require a (partial) cancellation of the order.

11.2 Claims for defects shall become time-barred, beginning from acceptance,

11.2.1 after ten years for all work relating to the sealing of the building shell (roof, façade, walls, flooring),

11.2.2 after five years for all other work, to the extent no shorter period is stipulated by law.

11.3 The limitation periods agreed under 11.2 shall also apply if the Customer has not delegated maintenance to the Contractor for the duration of the limitation period. Clause 13 (4) nos. 1–3 VOB/B shall not apply.

11.4 The Contractor shall be liable for all damages in the event of defects caused culpably and all other culpable breaches of duty. Clause 13 (7) nos. 1–5 VOB/B shall not apply.

11.5 The Contractor shall assign to the Customer as security all claims based on defects against subcontractors, suppliers and other third parties engaged by it to perform this agreement. The Customer accepts this assignment. The foregoing shall not affect the Contractor's own obligations in the case of defects. The Contractor shall retain the right and obligation to assert and enforce claims against its suppliers and/or subcontractors in its own name and for its own account until such right is revoked by the Customer.

12. Billing (clause 14 VOB/B)

12.1 If unit prices are agreed, the partial and final invoices shall be issued based on the work actually performed. Each measurement shall be taken and signed jointly. The Contractor shall give the Customer at least six working days' notice of a meeting for the measurement to be taken. If the Customer does not respond or fails to attend the meeting without sending apologies, the obligation to take the measurement jointly shall lapse.

12.2 If a lump-sum price is agreed, the Contractor shall issue partial invoices presenting the work performed and the relationship between the value of the work performed and the value of the work as a whole in a verifiable manner.

12.3 All invoices must, on a cumulative basis, show the respective progress in performing the work as a whole and the payments already made. The documents required for review purposes (measurement documents, quantity calculations, drawings for billing purposes, delivery notes, etc.) must be attached. Subsequent claims must specifically be highlighted as such. Unless specified otherwise in the order, all invoices must be paid within 30 days. The period for payment commences upon receipt of a correct and proper invoice in accordance with clause 12.5. If the Customer receives invoices before acceptance of the work, the payment term shall commence upon acceptance of the work.

12.4 Invoices must be itemised by assets subject to mandatory accounting recognition.

12.5 The Contractor shall prepare a correct and proper invoice containing the following information: Customer's order number, name of the Customer, item numbers of the Customer and of the Contractor, quantity, delivery address, delivery date. Invoices shall not be enclosed with deliveries. The original invoice shall be sent under separate cover. All of the Contractor's invoices must be issued in the Customer's name. Invoices shall be sent by post to Schwarz Produktion Stiftung & Co. KG, Langendorfer Straße 23, 06667 Weißenfels. Invoices may also be sent by e-mail (invoice@sp.invoice.schwarz) if the Contractor has entered into an agreement on the electronic transfer of invoices.

13. Insurance

13.1 The Contractor is responsible for insuring its own equipment and materials. No insurance cover is provided by the Customer.

13.2 The Contractor shall maintain general business liability insurance including environmental damage as well as (consequential) damage relating to its work, with minimum coverage of EUR 3 million per claim for personal injury, property damage and economic loss. Proof of cover must be handed over to the Customer without being requested to do so, at the latest with the first partial invoice.

14. Confidentiality

14.1 The parties shall treat confidential information disclosed by the other party as confidential for an indefinite term; specifically, they shall not disclose such information to third parties, shall protect it against unauthorised access and shall use it solely within the scope of the cooperation. The right of termination subject to a notice period with respect to this non-disclosure obligation shall be excluded. Confidential information shall include: the existence and terms of the agreement as well as any and all information or documents disclosed by one party to another or to

Standard Terms and Conditions of Purchase – Construction

any company within the Customer's group, or through another party or any company within the Customer's group in the context of the cooperation.

14.2 This non-disclosure obligation shall not apply if and to the extent that:

- the confidential information was already known to the other party prior to execution of the Agreement or is subsequently disclosed to it by a third party lawfully, i.e., without breach of any non-disclosure agreement, statutory provision or official order;
- the confidential information was in the public domain prior to execution of the Agreement or subsequently enters the public domain without any culpable breach of the above obligation;
- the confidential information was independently developed or obtained by the other party;
- the disclosing party has released the receiving party from the non-disclosure obligation;
- disclosure is required in the context of the cooperation or to protect the legal interests of the party and such disclosure is made to agents who are bound in writing to the same non-disclosure obligation stipulated above or to advisors who are subject to a professional duty of confidentiality;
- disclosure is made by one company within the Customer's group to another company within the Customer's group that is bound in writing to the same non-disclosure obligation stipulated above; or
- disclosure is mandated by law or other applicable legal provisions or by court or official order; in such case, the party subject to disclosure shall notify the other party of the disclosure without undue delay in writing or in text form and together the parties will determine the extent to which they may limit disclosure within the bounds of the law.

15. Compliance

15.1 The Contractor warrants that all relevant legal provisions are being complied with within its area of responsibility and in particular also by third parties involved in the provision of services. The foregoing applies in particular in respect of compliance with anti-corruption, antitrust and data protection laws. Specifically, the Contractor undertakes to ensure that its employees entrusted with the contractually agreed tasks and activities are familiarised with applicable laws.

15.2 Insofar as the Customer, in a given case using a risk-based approach so requires, the Contractor shall ensure that its employees entrusted with the contractually agreed tasks and activities are familiarised with their obligations relating to human rights and environmental protection under the German Supply Chain Due Diligence Act (*Lieferkettensorgfaltspflichtengesetz* – LkSG) and provide the necessary training. The Contractor may access the training documentation provided for this purpose at <https://www.markant.com/de/lksg>. Upon request by the Customer, the Contractor must demonstrate by means of appropriate documentation in anonymised form that it has conducted the training for the relevant employees. The Contractor may instead use an equivalent training course for this purpose; the Contractor must document the equivalence of the training course used to the Customer upon request.

15.3 The Contractor states that it is compliant with all obligations and prohibitions on funds being made available arising in connection with European and, barring any conflicting national regulations, US commercial, trade and financial sanctions and embargoes, in particular the provisions of Regulation (EC) 2580/2001, Regulation (EC) 881/2002 and Regulation (EU) 2023/1115.

15.4 The Contractor shall comply with minimum social standards in its business activities. It shall make all social security contributions and pay its workers the minimum wage. The Contractor shall observe the Business Partner Code of Conduct (accessible at the following link: <https://schwarz-produktion.com/wp-content/uploads/2023/09/Code-of-Conduct-Deutsch.pdf>) and the minimum standards laid out therein, and accepts them as the basis of contract. The Contractor furthermore undertakes to appropriately address the key substantive aspects of the principles set out in section 1 and 2 of the Customer's Business Partner Code of Conduct in respect of its suppliers.

15.5 Actual or potential violations of the human rights or environmental protection obligations may be reported via a dedicated portal of the Customer. The reporting portal can be accessed at <https://www.bkms-system.net/bkwebanon/report/clientInfo?cin=13meg7&c=-1&language=ger>; information about the grievance mechanism can be found in the rules of procedure, which can be accessed at https://schwarz-produktion.com/wp-content/uploads/2024/05/Verfahrensordnung-Online-Meldesystem-BKMS_DE-120-kB.pdf. The Contractor can make the grievance mechanism known to its employees as well as its business partners who may be affected by potential breaches of duty by the Customer. If

the Contractor learns that any of its employees has made a report in good faith via the Customer's reporting portal regarding human rights or environmental risks or violations, it agrees not to take any corrective or unjustified disciplinary action against such employees based on such report.

15.6 The Contractor shall not give inducements or gifts to employees, members of the governing bodies or vicarious agents of the Customer or any of their related parties.

15.7 The Customer shall be entitled to implement risk-based controls to audit the Contractor's compliance with human rights and environmental protection obligations. The Customer may also request specific information showing that the Contractor is complying with human rights and environmental protection obligations. If there is legitimate reason to suspect a serious violation of human rights or environmental protection obligations, the Contractor shall, at the Customer's request, allow the Contractor to conduct on-site inspections of its premises subject to reasonable advance notice. A third party (e.g. auditor, lawyer) may also be engaged to perform such audit at the Contractor's request. In both cases, the Customer shall bear the costs of the audit. In particular, the Contractor shall be limited to the human rights and environmental expectations set out in the Business Partner Code of Conduct. The Contractor's data protection policy as well as business and trade secrets shall be respected in the exercise of such information and audit rights. In particular, the Contractor shall have the right to withhold information which constitutes its trade secrets. The fact that the information involves trade secrets must be demonstrated. Audit rights arising from other provisions shall remain unaffected.

15.8 In the event that any violation of the above-mentioned rules and regulations is identified, the Contractor undertakes, together with the Customer, to develop and implement appropriate remedial action to eliminate or minimise the impacts of any such violation. In the exceptional case, the Customer may temporarily suspend the business relationship during this time. If the remedial taken by the Contractor is not completed within a reasonable period of time or if the violation involves a serious breach of duty, the Customer shall be entitled to terminate the contractual relationship.

16. Antitrust Law Violations

If the Contractor or a person engaged by or working for it is shown to have entered into an arrangement that is likely to affect the respective contractual relationship with the Customer and which constitutes an unlawful anti-competitive practice, the Contractor shall pay liquidated damages to the Customer amounting to 10% of the order volume affected. This provision applies even if the respective agreement is terminated or has already been performed. The foregoing has no bearing on the Customer's other contractual or statutory claims.

17. No Reference

The Contractor may not, without the Customer's prior written consent, publish names, trademarks or other protected designations owned by the Customer or the fact that this cooperative relationship exists, or other information concerning the Customer for advertising purposes. The Contractor is required to keep secret from the media all knowledge, documents and information concerning business affairs which it acquires in the course of the mutual cooperation or which it was sent or will be sent in connection with delivering/providing the agreed goods/services.

18. No Set-off or Assignment

18.1 The Contractor shall have a right to set off if the Customer does not dispute the Contractor's claims or the Contractor's claims have been declared final and binding by a court of law or the Contractor exercises its right to set off with claims under the same contractual relationship.

18.2 The Contractor may only assign claims against the Customer with the Customer's consent. Section 354a of the German Commercial Code (*Handelsgesetzbuch* – HGB) shall remain unaffected, i.e., the assignment of a monetary claim shall also be valid without the Customer's consent, but the Customer may still discharge its obligations by effecting payment to the Contractor.

19. Jurisdiction, Miscellaneous

19.1 German law shall apply subject to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

19.2 In transactions between merchants, the exclusive place of jurisdiction is Leipzig, Germany. However, the Customer may also elect to bring suit at the location of the Contractor's registered office.