# GENERAL TERMS AND CONDITIONS FOR BIDS AND CONTRACTS FOR CONSTRUCTION SERVICES AND ANCILLIARY SERVICES AS WELL AS FACILITY MANAGEMENT SERVICES

**Last updated in 01/2025**

These Terms and Conditions of Contracts shall form the basis for all agreements on services in connection with construction measures or services in connection with technical facility management or equipping (e.g. shopfitting) in the broadest sense of the term. Even if individual terms may not be directly applicable to certain legal relationships, the parties' rights and obligations shall be governed by the commercial and/or analogous content of these individual terms.

## Definitions

Principal: Principal (owner or person authorized to dispose of the relevant location or representative of the owner and/or person authorized to dispose of the relevant location)
Contractor: Contractor (bidder)
Awarding Authority: The planning agency which the Principal has instructed to prepare the tender or the construction department which the Principal has instructed to execute the tender or the employee which the Principal has instructed to execute the tender.
Local Construction Supervision Services: Local Construction Supervision Services are persons which the Principal has instructed with the supervision of Contractor's work. Should no Local Construction Supervision Services exist, these services will be provided by Principal.
Project Management: The person or department which the Contractor has instructed with the management and execution of Contractor's work.
Specifications: Specifications
Construction Services: Besides traditional construction services, these include, among others, also delivery, installation etc of technical facilities, machinery, other services or parts along with related work.
Net Final Invoice Amount: means the final invoice amount, less taxes and rebates prior to cash discounts.

## 1. Terms and conditions of bids

1.1. Authorized signatures shall be subscribed at the appropriate places of the tender documents; if authorized signatures are not subscribed or if certain tender documents contain no or no authorized signatures, the bidder shall be bound by its bid as long as the project offer letter is signed by an employee authorized by the bidder for that purpose. The text of the Specifications may not be changed and any such change shall be deemed not made. If the bidder desires to offer a service other than the tendered service, it shall do so by virtue of a separate alternative bid. In case of any variation between the original Specifications and the computer print-out, the original Specifications shall prevail. Bids shall be prepared in the German language only. Prices shall be stated in euros and shall include additional expenses, if any (e.g. customs, import duties, work permit expenses etc). The bidder shall procure any import or export licenses, if any, at its own cost and expense. Unless the call for tender provides otherwise, the offered prices shall be firm prices and shall not be subject to escalation.

Any documents attached to or information to be derived from the call for tender, whether such concerning soil conditions, groundwater levels, technical or structural-physical properties of the materials intended to be used, or existing previous work, the location of fixtures or other circumstances relating to construction are provided for information only; Principal and the Awarding Authority shall not be liable for the accuracy of those documents. The bidder shall scrutinize that documentation and information. Should it prove during construction that these documents or information were incorrect or incomplete, the bidder shall procure a technically correct construction. Similarly, the bidder shall object to any structures or measures proposed in the tender dossier or plans by giving written notice upon submission of its bid at the latest. Unless those complaints are made in accordance with the relevant form requirements and time limits, the bidder accepts the above tender dossier or plans as suitable and sufficient for the professional provision of its services and thereby waives any subsequent objection and accepts unlimited warranty as an expert.

The bidder may propose equivalent options and offer those separately in an attachment within the meaning of these regulations. The bidder guarantees that these options are technically correct. Should any change in plans result from proposed options, the relevant costs shall be borne by the bidder in case of a contract award.

1.2. The persons which the bidder nominates to participate in the award negotiations shall thus have unlimited authority to change and amend the bid during the award negotiations and to enter into the contract for work and services.

The bid shall be submitted and prepared on the basis of the tender dossier, and original copies of the documents stated in the tender dossier shall be submitted. In agreement with the Awarding Authority, bid prices of the Specifications may also be submitted

on data carriers. In this event, a flawless computer print-out, which contains the items of the Specifications with completed vacant positions in the Specifications and the designations of the selected makes, the volumes, the prices per unit, and the total prices of items shall be submitted. The bidder guarantees that the products it proposes are equivalent and shall be required to prove their equivalency upon request, otherwise the product proposed in the Specifications shall be constructed without extra cost. In case of non-completed vacant positions in the Specifications, the product proposed in the Specifications shall be constructed. Failing any information in the Specifications, the Principal shall have authority to define the product or the type of execution. With regard to all freely-selectable products or alternatives, the energy efficiency must be assessed and the most energy-efficient appliances must be given preference.

1.3. Before submitting the bid, the bidder shall inform itself on site about the type and scope of the services to be provided. With the submission of the bid, bidder confirms that it has obtained sufficient information about the localities, the location of the job site and/or the place of performance, about access roads and other special features, including but not limited to all public or private pipeline easements (water, sewer, electricity, gas, district heating, telecommunications, etc) as well as ways of right, if any, or other obstacles, in order to precisely determine its services. Subsequent claims can hence not be asserted on the grounds that local, subject-matter specific or legal circumstances were unknown.

1.4. The bidder shall not be entitled to any compensation for the preparation or change of the bid even if the Principal does not execute the construction project. The Principal will decide at its own free discretion to which bidder it will award the contract. The bidders shall have no right to a contract award.

1.5. Should the bid be submitted by a consortium (*Arbeitsgemeinschaft – ARGE)*, the members of that consortium shall be jointly and severally liable toward the Principal for any obligations resulting from the bid and, in case of a contract award, for those arising from the concluded contract for works and services. It is expressly agreed that any securities provided shall also cover claims against other members or the consortium as a whole. The bid shall be signed by all members of the consortium and it is expressly agreed that every member of the consortium shall have authority to represent the other members. Upon submission of the bid at the latest, the consortium shall nominate to the Principal an authorized agent for technical and commercial matters. Upon request, the consortium shall provide documentary evidence on the purchase of business liability insurance with adequate cover (in an amount of at least EUR 5 million). Such insurance shall be maintained over the entire contract period.

1.6. The award period shall be 6 months and commences with the end of the tender floating period. During that time, the bidder shall be bound to its bid. Should the bidder make changes or modifications to the bid on the request of the Principal or the Awarding Authority which shall not be subject to compensation without a separate agreement, the originally submitted bid (original bid) shall not be deemed rejected. Such changes or modifications made on the request of the Principal or the Awarding Authority shall constitute alternative bids to which the bidder shall be bound until the end of the award period. The Principal may instruct the original bid or the alternative bids during the award period. The Principal may also combine various items from the various alternatives bids and/or with the original bid and thereby determine a new, binding bid price, if the bidder has not ruled out that option through a clear reference on the cover sheet of the alternative bid.

The bid is accepted by the Principal or the Awarding Authority sending an engagement letter. The posting of the engagement letter or electronic transmission by the Principal shall be deemed relevant for the timely acceptance of the bid. The bidder shall subscribe its authorized signature to the engagement letter and return it within one week from receipt thereof. The bidder shall be deemed to acknowledge the terms and conditions of the engagement letter and the contract for works and services shall be deemed concluded at the terms and conditions of the engagement letter if the bidder commences with or continues to execute the services.

The bidder shall waive its right to claim any error in connection with the preparation of the bid and to withdraw the bid for this reason or to avoid the contract for works and services on the grounds of error in case of a contract award. On request, the bidder shall submit within 5 working days from such a request all necessary sheets and any other documents which indicate the pricing (including but to limited to K-sheets pursuant to ÖNORM B2061 as well as calculation bases such as total surcharge, business overhead, interest during construction, hazard, profit, total material /third-party services surcharge and price of gross average wages).

1.7. With effect from a net contract value of EUR 750,000.00, Contractor must within 10 days following receipt of the engagement letter furnish a bank guarantee securing fulfilment of the contract from a 1st-class Austrian or central-European banking institution (contractual performance guarantee) in the sum of at least 15% of the gross contract amount, the wording of which shall correspond to the attached text (Schedule 1), with a term lasting until formal delivery within the meaning of clause 8.2 plus 3 months.

## 2. Contract terms

2.1 The contract terms shall be applicable to all services to be executed by the Contractor in the course of the construction project. Contractor's general terms and conditions shall not be applicable. The contract terms shall be applicable for an unlimited period of time also to subsequent contracts or further contracts awarded on the basis of bids submitted within 3 months after the final invoice. Contractor acknowledges that changes and modifications in the proposed services may occur in the course of the execution of the construction project and the related detailed planning. Principal may make such changes and modifications, and Contractor shall be required to provide the services changed by Principal.

2.2 Contractor shall be required to execute any work properly and professionally pursuant to the plans and Principal's information reviewed by Contractor, the planners appointed by Principal and pursuant to the requirements defined by the Local Construction Supervision Service and/or Principal and according to the terms of the technical Austrian standards (*"Ö-Normen"*). Contractor shall accept full liability toward Principal, the latter's representative, the appointed planner and the authorities for the work executed by Contractor; this liability covers aspects of constructional engineering, function, fire control, construction physics etc. Structural construction work (including but not limited to casing and concreting) shall be carried out in accordance with the architect's design plans. In case of any inconsistency with other plans, Contractor shall be required to timely notify Principal to ensure that no delay in execution occurs.

2.3. Contractor shall be required to review the design plans delivered to him for execution as well as any information and execution instructions, the materials provided by Principal, preliminary work of other undertakings as well as the condition of the construction and similar and, notwithstanding Sections 1.1 and 1.3 hereof, shall promptly, and no later than 14 days prior to commencement of execution, notify Principal in writing of any concerns, thereby making proposals for a technically correct / appropriate execution. If Contractor fails to give such written notice, it shall be responsible for any extra cost or drawback arising and shall have to accept sole liability for any defect or resulting damage. Contractor shall therefore be fully required to review these circumstances and warn Principal, and Principal shall not be required to accept any liability.

Every Contractor shall take field measurements timely before the execution of the works and shall timely request and review the plans that are necessary for its services. Deviations from plan and field measurements shall be communicated by written notice to Principal or its representative already before the commencement of the work. Contractor shall review in due time and at its own responsibility any preliminary work of other professionals and/or existing structures. Should it fail to do so, the preceding paragraph shall apply by analogy.

2.4. Unless the Contractor has expressed reservations upon submission of its bid in connection with documents / plans / execution instructions or other information that form part of the tender dossier, objections made later on shall not entitle him to assert subsequent claims. Contractor shall procure a technically correct construction at its own cost and expense and may not claim extra costs even in case a flat-rate price should have been agreed; if invoicing by unit prices has been agreed, the Contractor may charge only those volumes which would have arisen had it issued its invoice according to the execution documents underlying the tender dossier and/or may charge only those items stated in the Specifications even if any change in or additional services are required for a technically correct execution. Any additional work whatsoever will be acknowledged and compensated without exception only if the Principal has awarded a contract in writing. Any contract awarded orally shall be invalid.

2.5. The professionals instructed to procure the shell construction shall procure, secure during the construction period, relocate, if necessary, and maintain the access roads from the public road to the construction project and shall construct and maintain routes of transport necessary for all professionals working on the job site; the shell construction professionals shall procure all traffic control facilities on the public road. The shell construction company shall also be required to fulfil all public-law obligations to maintain, secure, clear snow from and salt the public road, which obligations arise for the Principal and/or the property owner, and it shall hold harmless and indemnify the real estate developer and the property owner in this respect. The construction traffic routing shall be changed and the job site relocated, even repeatedly, should the Principal so request to maintain its business or should this be necessary due to the execution of construction or government requirements; the preceding provisions shall apply by analogy. If no shell construction company has been appointed or if that company is not required to provide the above services, the Contractor shall procure the necessary technical facilities, if any, (e.g. access roads from the public road to the job site) at its own cost and expense. The preceding provisions shall apply by analogy.

If the Contractor is required to provide the services during current operations, those operations may be impaired only to the extent this is absolutely necessary. Accordingly, the Contractor will promptly implement any measures requested by the Principal in order to avoid any disturbance. The job site shall be reasonably and appropriately secured also against any unpleasant odour, noise and dust. Any work which significantly disturbs operations shall hence regularly be carried out outside business hours.

All measures referred to in Section 2.5 will not be compensated separately.

Upon commencement of work, every Contractor shall procure the permits at its own cost and expense which may be necessary for the use of public or private land. The shell construction company shall mark the meter line as required by the Local Construction Supervision Services without separate compensation using a V2A bolt. This meter line shall be observed during the entire construction work by the shell construction company. Contractor shall adopt from the shell construction company, review and transfer to the necessary places those spot heights. After completion of the work, the Contractor shall be required to restore the original condition of the job site and/or its rooms and facilities.

2.6. Contractor will prepare at no cost all final plans, documents and related statistical calculations necessary for its services, unless those shall be provided by Principal by virtue of a written agreement. The final plans shall be submitted to Principal for release 14 days prior to execution. Release by the Principal shall not release the Contractor from its liability for the correctness of the technical aspects. A release by the Principal of the final plans means only that the Principal approves the architectural design. Documents provided by Principal shall be reviewed prior to execution pursuant to Section 2.3.

2.7. Contractor shall timely prepare and communicate to the Local Construction Supervision Services in writing the information necessary for its services relating to preliminary work of other professionals such as notches, openings or special precautions for plumbing or HVACR facilities. If Contractor does not so give notice, it will have to reimburse the Principal for the resulting extra cost.

2.8. Contractor shall have sole responsibility for the correctness of the final planning documents and calculations. During the execution of construction work and before commencing its work, the Contractor shall convince himself that the preliminary work defined by him which is necessary for its services have been executed, and it shall communicate any inconsistency by written notice in due time.

2.9. On Principal's request, the Contractor shall provide free samples of materials and devices used for construction. These include all components, materials, plating options, form, quality, finish and colour of assembly parts, all devices, fittings, metal fittings and visible connections.

The product stated by way of example in the relevant position shall be created, unless another product /another type with type indication has been entered in the vacant position in the Specifications**.** If no information was provided in real vacant position in the Specifications, the Principal may choose the design.

2.10. Contractor shall be required to procure the test certificates, quality tests and documentary evidence necessary for the place where the services are provided to ensure that the utilization permits will be granted. Principal may demand that additional quality tests required on substances, construction materials or devices /products used be provided. Costs arising for such documentary evidence / quality tests shall be borne by Contractor. The same is true for documents requested by public agencies or utility companies. Contractor shall procure for Principal at Contractor's cost and expense those government permits and certificates which concern its trade on an isolated basis (such as permits for elevators, escalators etc.).

Contractor guarantees to fulfil all legal and actual requirements to provide the services (e.g. commercial law requirements etc) and shall be required to provide documentary evidence to Principal on the latter's request. Contractor shall keep and submit to the Local Construction Supervisory services or Principal at any time construction diaries and/or a construction journal that is updated on a daily basis.

The shell construction company will assume without separate compensation the responsibilities of a project manager and a job site coordinator pursuant to the Austrian Construction Work Coordination Act and will hold harmless and indemnify the Principal in this respect. Should a general contractor be appointed, it will assume these responsibilities. If no shell construction company has been appointed or if any such company is not required to provide these services, the Contractor will assume these responsibilities without separate compensation on the Principal's request.

2.11.. Contractor shall provide its services using only the best, most recent and sound material and shall have the work carried out professionally only by trained and reliable skilled staff according to the acknowledged rules and the state of the art. The supplies and services must at least correspond to the technical standards of the ÖNORM standards valid upon construction.

Contractor shall coordinate its services, the form, circumstances and timing of the service provision with the other professionals working on the job site (also in view of Principal's current operations, if any) and shall ensure that these professionals do not obstruct each other; any obstruction customary in connection with the execution of construction project shall not entitle the Contractor to assert additional claims or extend target dates.

Contractor shall participate in or nominate an informed representative to attend without separate compensation coordination meetings scheduled by the Local Construction Supervision Services even after the completion of its services. Contractor shall follow the instructions of the appointed project manager and job site coordinator within the meaning of the Austrian Construction Work Coordination Act. The appointment by Principal of a construction coordinator shall not release the Contractor from its obligation to comply with applicable protective regulations. Principal may check the progress of work and/or of the production at the Contractor's factory.

Contractor shall take adequate precautions at its own cost and expense to protect its services against damage by other professionals. Contractor shall be responsible for any risk to its services pending formal acceptance by Principal. During the entire service provision period, Contractor shall procure the valid existence of business liability insurance in an amount of 10% of the gross contract value, but at least EUR 1 million covering personal injury and property damage and shall prove that by submitting a policy as well as the premium payment confirmation.

2.12. Contractor shall draw up a job site facilities plan in coordination with the Local Construction Supervision Services and the other contractors working on the job site, based on which the job site facilities are used in the most economical manner in terms of timing and location. If this should prove necessary, Contractor shall be required to implement job site facilities on the request of the Local Construction Supervision Services. The creation and maintenance of the connections necessary for maintaining operations on the job site (including but not limited to electricity, water, telephone etc.) and the common facilities (construction fence, construction sign, minimum lighting etc) shall be carried out by the shell construction company. Prior to the commencement of work, any other Contractor working on the job site shall agree with the shell construction company on electricity and water consumption as well as the use of telephones and construction signs and the invoicing thereof, whereby transfer of charges at cost price shall be undertaken; it shall coordinate with the shell construction company the use of the access

road to the job site. Claims, if any, within the meaning of the preceding paragraph may not be asserted toward the Principal. If no shell construction company has been appointed or if any such company is not required to provide these services, the Contractor will assume these responsibilities without separate compensation. Contractor shall procure, maintain and include in its prices per unit and/or the flat-rate price the relevant working lighting.

Contractor shall, in so far as its services may be causative thereof – also repeatedly and without separate compensation – protect the structure from penetrating rain water during the construction period for the purpose of the execution of finishing work and shall remove any rain water that may have penetrated the building. Every Contractor shall be required without separate compensation to take any measures which enable him to provide its services also during bad weather (including but not limited to construction during the winter time) and to take any precaution which is necessary to protect its services from effects of the weather (water, snow, frost, storm etc) and third party interference (vandalism, theft etc).

Immediately after the contract award, Contractor shall nominate to Principal and the Local Construction Supervision Services a technical and commercial representative who is represented by the local site manager (foreman). Sending a person to coordination meetings, other meetings etc. shall mean that this person has been appointed and instructed as that representative. Contractor shall promptly nominate a new representative should the latter be permanently incapacitated because it has deceased or left the Contractor's company. Until then, the parties agree that only the site manager or foreman etc. working at the job site shall be entitled to issue binding declarations on behalf and for the account of Contractor. Contractor shall nominate to the authorities a person who shall act as construction foreman with responsibility for the construction work and who shall have unlimited authority in security issues. That person shall be required to issue all necessary declarations to the authorities. Site managers and/or company representatives of all Contractors shall be provided with cell phones at the Contractors' cost and expense and it shall be necessary to ensure that they can be contacted accordingly.

## 3. Prices and billing

3.1. Contract providing for unit prices and unit-price based scope of work

3.1.1. The unit prices shall be firm prices up to 2 months after the defect-free provision of all contractual services and shall be itemized by wage-related and other components. The unit prices shall be valid for the entire construction project without distinction as to components, floors, ground plan form, depths, room dimensions and the timing of execution, even in case of unpredicted delays, unless the Specifications specifically provide otherwise. The unit prices shall cover also necessary ancillary and supplementary services (regardless of their scope) so that the sum total of itemized services provided in the Specifications shall create a work consistent with the state of the art and the conditions of decrees.

In case of technical plants, the offered unit prices shall mean that the items of the Specifications shall facilitate the commissioning of a built-in, adjusted, operational and accepted plant along with all necessary accessories, even those not specifically mentioned in the Specifications, including documentation, instruction manual, operating manual, as-built drawings, test runs, government permits and, if necessary, repeated training/s.

In case of deliveries only, unit prices include delivery free place of installation at the job site and the place within the building which the Local Construction Supervision Services designate for interim storage. If the Contractor has not taken any precaution for the transport within the job site /the building, Principal may have the transport carried out at Contractor's cost and expense. Principal may call the volumes to be delivered in partial volumes, whereby this shall not in any event constitute a fundamental change to the project within the meaning of clause 3.2.2.

3.1.2. The unit prices shall also cover all services to be provided by virtue of these Terms and Conditions or which, according to customary commercial practices, are part of the complete, defect-free creation of the work, including but not limited to the as-built drawings, documentation etc. referred to in Section 3.1.1.

3.1.3. Any excess or shortfall in individual items of supplies and services will not increase the unit prices and do not entitle the Contractor to claim any compensation in whatever form. Principal may cancel or procure a different execution of individual partial services in whole or in part even after the execution of the contract and during construction. Principal may also eliminate from or reduce individual items in the Specifications / delivery list and this will not result in a change of unit prices. Contractor will check the building ground and/or the structural conditions during construction and shall be required to carry out the measures and work which are necessary for the success of the work. Should it prove that, as opposed to the quantities stated in the Specifications, excess quantities or additional or changed services must be provided which are necessary for the success of the work, Section 3.1.5 shall apply by analogy. Should the Contractor not give any such notice and fail to prepare a subsequent bid, its right to a surcharge shall forfeit.

3.1.4. Should it prove during construction that the volumes of individual items are exceeded by more than 5%, Contractor shall report that to Principal immediately after that becomes obvious, such report containing a detailed itemization. The billing of excess quantities in the form of – generally impermissible - partial invoices shall not constitute written notice. Excess quantities may be executed only if the Principal has confirmed that excess by written notice. Should the Contractor not give so notice, its right to a compensation for excess quantities shall be forfeited.

3.1.5. If any change in plans requires additional services which were not foreseeable from the Specifications in connection with the plans and government decrees underlying the tender dossier (or if foreseeable, these shall be included as ancillary services in the unit prices), the Contractor shall determine the price for those additional services on the basis of the pricing of unit prices contained in its bid, shall prove those prices and disclose these to the Principal prior to execution in the form of a supplementary bid. In this context, the calculation bases (including but not limited to total surcharge, interest during construction, hazard, total materials /third party-services surcharge, price of gross average wages etc.) shall be disclosed to the Principal without request. The Principal shall examine the

supplementary bid and determine the price for the supplementary bid on the basis of the above criteria and awards the additional service. If the Contractor prepares no bid prior to execution or executes the additional services prior to the Principal having awarded a contract, the Contractor shall loose its right to an additional compensation. The Contractor may challenge the compensations for additional services determined by the Principal according to the preceding paragraph only if the compensation determined by the Principal is obviously inappropriate. The same is true for extensions of the project. In such a case, the Contractor shall also be required to provide the additional services which are necessary as a result of the project extension, and the prices for these additional services will be determined as above.

3.2. Contract providing for flat-rate price and supplies and services covered by that flat-rate price

3.2.1. The agreed flat-rate price shall be a guaranteed flat-rate price within the meaning of Section 1170a of the Austrian Civil Code and is payable for the defect-free, completed work created according to good engineering practice and the terms and conditions of the bid and the contract and the tender dossier. The flat-rate price covers all services to be provided by virtue of the contract terms that are part of the complete, defect-free creation of the work according to commercial practices, including but not limited to as-built drawings, documentation, operating and maintenance manuals, test runs and training, if requested. Unless the engagement letter provides otherwise, the flat-rate price covers also extra efforts and any effort for additional and changed services which arises from a worse than expected condition of the other performance bases. The flat-rate price covers also any change, amendment and specification of the project underlying the tender dossier and the resulting additional efforts during construction. There will not be any change in the agreed flat-rate price as a result of extra or additional services due to changes in plans, provided that a change in plans is not deemed a fundamental project change.

3.2.2. Should any fundamental change in the project result in additional expenses of more than 3% of the net contract value for the Contractor, Section 3.1.5 shall apply by analogy.

If, as a result of any change in the project, services underlying the flat-rate price need no longer be provided, the flat-rate price will change and take into account that service shortfall; in case of doubt, the service shortfall will be determined on the basis of the otherwise irrelevant unit prices of the original bid's Specifications. In case of deliveries only, the flat-rate price includes delivery free place of installation at the job site and the place within the building which the Local Construction Supervision Services designate for interim storage. If the Contractor has not taken any precaution for the transport within the job site /the building, Principal may have the transport carried out at Contractor's cost and expense. Principal may call the volumes to be delivered in partial volumes.

3.3. Force account work (*Regieleistungen)*: Force account work means work which is necessary to create services not included in the price referred to in Sections 3.1 and/or 3.2. Contractor is required to keep separate and clearly marked force account work records, any relating entries in the daily construction reports are invalid. Force account work shall be carried out only upon written instructions of the Principal and/or its authorized representatives. Force account work will be ordered by written notice by the Local Construction Supervision Services by way of separate force account work reports. Should the Local Construction Supervision Services hot have signed off force account work reports, the relevant work shall be deemed not executed and cannot be compensated, regardless of being justified otherwise. The Contractor shall record the actual hours of force account work and shall submit the original records to be checked and confirmed by the Local Construction Supervision Services on a daily basis. Force account work shall be charged to the respective next partial invoice and final invoice. Payment shall be governed by Section 5 by analogy. The sum total of partial invoices on force account work shall be included in the final invoice.

Hours of force account work shall be settled according to the following principles: Foreman hours and/or hours of employees with higher technical qualifications will be paid only if that work was necessary; only hours actually worked will be acknowledged; rest periods, times of bad weather, efforts for procuring equipment, travel times or times needed to prepare the job site will not be compensated. Hourly wages include the necessary supervision and the use and maintenance of the necessary equipment and tools. Only construction machinery, jackhammers and pumps shall be charged separately. Principal reserves the right to make deductions in case of insufficient work. The invoicing of force account work shall state the number of force account work hours and the work carried out. Principal reserves the right to scrutinize subsequently whether the documented and provided service was not covered by the flat-rate price or services itemized in the Specifications. The above provisions of Section 3.3. shall apply by analogy also to additional and supplementary items.

## 4. Target dates

4.1. The performance commencement date, interim dates on which certain targets shall be achieved, and completion dates are derived from the engagement letter and/or the construction time schedule and must be observed by Contractor. If the engagement letter provides for time limits for completion or achievement of certain targets, rather than specific dates, these time limits shall commence upon commencement of the work as ordered by the Principal. The first day of work shall be the date agreed or the date determined by the Local Construction Supervision Services as the construction commencement date or, in the absence thereof, the date of the first daily construction report. Days of bad weather or other standstill days shall not affect the above time limits or target dates.

4.2. The Contractor undertakes to prepare, update and demonstrably notify to the Principal a time schedule in agreement with the Principal. If no agreement is reached in this respect, the Contractor shall be required to accept a construction time schedule prepared by the Principal, which shall fit in the overall time schedule underlying the invitation to tender, which facilitates the concerted execution of all other third-party works within the overall time schedule.

4.3. Upon the Principal's request, the Contractor shall be required to prepare and repeatedly adjust during the progress of construction a complete detailed time schedule; if the Contractor refuses to timely cooperate in preparing the detailed time schedule, the Principal may set the detailed dates with

binding effect for the Contractor regarding the consequences of default as well. The Principal may request without additional costs changes to the course of construction as well as premature performance of work, if this is necessary with regard to the overall work progress.

4.4. The Contractor shall bear the risk of handicaps due to exceptional events and work under difficult conditions (e.g. provision of services during continued operation). Such handicaps as well as work under difficult conditions, such as bad weather, frost, cold and the like, shall not extend the performance time or postpone interim or final dates. Notwithstanding the foregoing, the Contractor shall be required to notify the Principal in writing of any delay stating the reason for such delay. In the event that postponements to the construction schedule should become necessary, Contractor shall be under a duty to adhere to such new interim deadlines; however, the deadlines indicated in the original overall time schedule, in particular the overall completion date, cannot be changed.

4.5. The Contractor shall be required to pay a penalty in case of non-compliance with interim dates or the completion date or time limits for completion or for achieving certain performance targets, as agreed or set by the Principal. Unless otherwise agreed in the engagement letter, such penalty shall be as follows:

a) in case of non-compliance with agreed target dates, per calendar day of default, in percent of the order sum (known at the time of default), including VAT, for order sums of

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| - | up to | € 10.000 | 1 %, however, at least EUR 100.00 |
| - | up to | € 100.000 | 0.5 % |
| - | up to | € 1.000.000 | 0.10 % |
| - | exceeding | € 1.000.000 | 0.05 % |

However, with the following contract amounts, the total may not exceed the percentage stated below:

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| - | Up to EUR 100,000.00 | 18% |
| - | Up to EUR 1,000,000.00 | 12% |
| - | Over EUR 1,000,000.00 | 8% |

of the gross contract value.

b) in case of non-compliance with the agreed final completion date, 2.5 % of the amount of the final invoice amount, however, at least EUR 2,500.00 plus the percentage pursuant to Section a), above, per calendar day of default.

In the event that, despite a non-recurring written reminder, the Contractor fails to timely provide planning documents or samples pursuant to Section 2.9., the Principal may have these prepared by a third party at the Contractor's cost; a penalty in the amount of 1.0 % of the net cost of preparation, however, at least EUR 1,500.00, shall be agreed in this case.

This penalty shall be payable whether or not the Principal incurred any loss due to such default or whether or not such non-compliance with time limits/target dates was due to the Contractor's fault. The Principal reserves the right to assert damages in the amount exceeding the penalty amount. The work shall be deemed completed when the work is free of defects and the Principal has been notified in writing of the completion of the work free of defects. Penalties may be deducted from partial invoices or shall be payable to the Principal upon the Principal's request without setting off counter claims.

## 5. Accounting

All invoices must be issued cumulatively, i.e., previous partial payments must be explicitly taken into account. The order ID must be stated on all invoices.

The Contractor must first submit partial and final invoices, together with the documents required for verification, to the Local Construction Supervision Services for verification. If no Local Construction Supervision Services has been commissioned, partial and final invoices must be submitted to the Principal for verification. Only after the review has been completed and a corresponding review document or invoice approval has been issued shall the Contractor submit the final invoice to the Principal, together with all review reports and documentation (unless these were handed over at the time of acceptance) and the aforementioned review document or invoice approval confirmation.

The invoices received by the Principal from the Contractor and the enclosed review copy from the Local Construction Supervision Services must not contain any corrections.

All reviewed invoices must be sent exclusively in digital form to the email address specified in the order letter. The payment period begins upon receipt of the invoice by the Principal, together with all the documents mentioned.

## 6. Partial payments

6.1. The prerequisite for partial payments being made is that the Contractor duly and unconditionally countersigned the engagement letter prepared by the Principal and provided the performance guarantee to the Principal, and the services charged have been rendered in full on the construction site. Irrespective of the (extended, as the case may be) service period, partial invoices may be issued only according to an express written agreement and only the maximum number of partial invoices stated in the engagement letter may be issued.

Partial payments shall be made only up to 90 % of the total net contract value and provided that the partial invoice is in compliance with the provisions of the applicable VAT Act and the necessary documentation to verify the partial invoice (jointly checked quantity survey sheets, drawings, documentary evidence of delivery and service etc. signed by the Local Construction Supervision Services) have been provided to the Principal along with the partial invoice. Checking, payment and discount periods shall not commence prior to all required partial invoice documents being available. Partial invoices including documentation shall be directly transmitted to the Principal in one copy until the 10$^{th}$ day of a calendar month, while two copies of the partial invoices including documentation shall be presented within the same time limit to the Local Construction Supervision Services. If the Principal and/or the Local Construction Supervision Services receive a partial invoice after the 10$^{th}$ day of a calendar month, the time limits stated in Section 6.2. shall commence on the 10$^{th}$ day of the following month. In any case, the prerequisite for the commencement of any time limit shall be the transmission of a proper invoice according to this terms and conditions and pertinent statutory provisions.

6.2. Unless otherwise agreed in the engagement letter,

- a 10 % retention to secure against excess payment shall be deducted from the issued partial invoice;

- partial invoices including complete documentation shall be checked within 14 days of the reference date of receipt of invoices (10th day of each calendar month);
partial invoices shall be paid net within 45 days after the checking period has expired, or with a 4 % cash discount within 30 days after the checking period has expired.

6.3. If partial payments of flat-rate prices have been agreed subject to the performance progress, the above shall apply by analogy and partial invoices shall be issued for the agreed payments. Instead of quantity survey sheets, documentary evidence must be provided that, at the end of the month preceding receipt of the invoice, the performance progress determined for that month in the time schedule has been achieved. If the performance progress according to the time schedule has not been achieved, the partial invoice shall be deemed received only on the 10th day of the month following the month in which the relevant performance progress has been achieved. The retention to secure against excess payment shall be deducted even from partial invoices based on agreed partial payments or payment schedules.

6.4. Payments shall be made by bank transfer to a bank account of the Contractor. The date relevant for timely payment shall be the date on which the Principal instructed its bank to carry out the bank transfer. The fact that a partial invoice has been paid by the Principal does not mean that the Principal has approved or accepted in terms of quality or quantity the service provided by the Contractor. Claims arising from the repair of construction damage shall be invoiced by the Contractor within the framework of the next invoice (partial or final invoice); otherwise the Contractor shall no longer be entitled to payment.

6.5. Cash discounts may be deducted from all payments actually made within the cash-discount period, irrespective of whether parts of the invoice amounts rightly or wrongly were not paid in full. The agreed discounts and cash discounts shall apply to alternative, additional and supplementary items, force account work and partial invoices, as well.

## 7. Final invoices

7.1. The final invoice shall be issued within 120 days after completion and presentation of a prior inspection report pursuant to clause 8.1, which may not show any defects. The final invoice shall be accompanied by all necessary documents and documentary evidence (e.g. Sections 2.10., 10.11.) for checking. Unless otherwise stated in the engagement letter, the checking period shall be 60 days; payment shall be made net within 45 days after the checking period has expired, or with a 4 % cash discount within 30 days after the checking period has expired. In addition, Sections 5, 6.1. through 6.5. shall apply by analogy; instead of the retention to secure against excess payment, a 5 % retention to secure warranty claims shall be deducted with effect from a total gross amount of EUR 150,000.00 for the period of the warranty plus 3 months. If defects exist, the payment and cash discount periods shall commence no sooner than when the work is free and clear of any defects. If the Contractor does not issue the final invoice despite a reminder and granting of a grace period, the Principal is entitled but not required to have the final invoice prepared at the Contractor's cost. In any case, the prerequisite for the commencement of any time limit shall be the transmission of a proper invoice according to this terms and conditions and pertinent statutory provisions.

7.2. The Principal and companies affiliated with the Principal may withhold without interest being accrued claims and demands of the Contractor and companies affiliated with the Contractor against the Principal or companies affiliated with the Principal until the Contractor and/or the company affiliated with the Contractor has fulfilled those claims or demands (including obligations in kind or warranty claims, if the warranty period has expired but the warranty claims have been asserted within the warranty period). The Contractor warrants that the companies affiliated with the Contractor shall acknowledge this retention right of the Principal and companies affiliated with the Principal. In case the companies affiliated with the Contractor should not acknowledge this retention right, the Contractor undertakes to hold harmless and indemnify the Principal and/or the company affiliated with the Principal; this includes, but is not limited to the fact that, in case the Principal does not prevail in a legal dispute, the Contractor shall reimburse the Principal and/or the company affiliated with the Principal for all costs incurred and disadvantages suffered by the Principal and/or the company affiliated with the Principal as a result of the company affiliated with the Contractor failing to acknowledge the Principal's right to withhold claims. Moreover, the Contractor declares that it jointly and severally accedes as co-debtor to all claims of companies affiliated with the Contractor against the Principal. (A company affiliated with the Contractor or Principal shall be a company which was affiliated by virtue of direct or indirect shareholdings, at the time the order was placed or when the retention right was exercised or when the claim was created.)

7.3. Subject to forfeiture of any further claims, Contractor must by way of the final invoice assert all claims under the construction project. By delivering the final invoice, Contractor declares that it holds no further claims arising from the overall construction project, and any other reservation from Contractor shall be deemed without effect. Contractor may object to any correction of the final invoice by giving written notice within 14 days from receipt of the reviewed final invoice and/or, if payment has been made before, within 14 days after receipt of payment at the latest; these objections must be accompanied by a statement of reasons. If an objection is not timely or in accordance with the due and proper form or lacks a clear indication of reasons, the corrected final invoice shall be deemed accepted and any compensations claimed in excess of the amount determined in the corrected final invoice shall be forfeited. If the final invoice is delivered on condition that additional payments may be claimed, it will be returned to Contractor without further review. The checking period shall begin to run upon delivery of the unconditional final invoice. Claims under the final invoice shall become statute barred one year following transmission of the first final invoice.

## 8. Prior inspection, formal acceptance, warranty, final acceptance

8.1. Principal may order a prior inspection before or on the completion date. During that prior inspection, the level of completion is determined and discovered

defects are identified by the Principal. A record will be drawn up on that prior inspection. Prior inspection shall not constitute acceptance but simply serves to determine the level of performance. Target dates set in the prior inspection record for the purpose of rectifying defects or carrying out force account work shall not interpreted as an extension of the agreed completion date or a waiver on the part of Principal of a penalty.

8.2. The formal acceptance of Contractor's services shall take place upon the latter's request with the completion of the entire construction project. A record will be drawn up on formal acceptance which confirms formal acceptance and identifies any defects which may still exist. Formal acceptance may not take place without the Principal's written confirmation. The commencement of use shall certainly not be deemed to operate as acceptance. Contractor shall deliver its work in clean condition; cleaning may have to take place again once the entire project is delivered to Principal. No later than 14 days prior to acceptance, Contractor shall present three sets of all as-built drawings (as hardcopies and on data carriers), operating manuals, certificates, test records, maintenance instructions, decrees, opinions etc. Acceptance cannot take place if these documents are not produced.

8.3. Building engineering systems and building services as well as business-organizational systems, computer-assisted systems and facilities shall be commissioned during the prior inspection. Documentation, maintenance and operating manuals for those systems shall be delivered during the prior inspection and the Principal's and/or user's personnel shall be trained accordingly.

8.4. Contractor shall bear the risk and responsibility for its services and the materials it has stored on the job site pending formal acceptance.

8.5. The warranty period shall commence with the formal acceptance of the entire construction project. Should defects be discovered during formal acceptance, the warranty period for the entire work will start to run not until the point in time when Contractor has communicated in writing the actual elimination of and has actually properly eliminated the defects recorded in the acceptance certificate.

8.6. Contractor shall request final acceptance by written notice to Principal three months prior to the expiry of the warranty period. Principal will set a date for final acceptance. The warranty period ends three months after receipt of the request for final acceptance at the earliest. On the occasion of final acceptance, Contractor's services will again be scrutinized and any defects which may exist or have newly occurred since formal acceptance will be identified. Defects identified during final acceptance shall be rectified as soon as possible. Defects rectified during the warranty period or in the course of final acceptance shall be subject to a new three-year and/or seven-year warranty period.

8.7. Contractor guarantees that its work is completed free and clear of defects and in due time in compliance with all contractual and public-law conditions and that its services are consistent with the acknowledged state of the art rules. The warranty period for roofing, insulation, liquid-proof concrete work and glazing plus construction, in so far as this contributes to impermeability, as well as for above-ground and below-ground impermeability of the building envelope, is 7 years, and for all other works 3 years, unless the engagement letter provides otherwise.

8.8. Defects that occur during the warranty period and any damage caused by those defects shall be rectified by Contractor free of charge and as soon as possible, notwithstanding the Principal's other rights. In cases of urgency, Principal itself may take measures to rectify defects or avoid consequences caused by those defects at the Contractor's cost and expense and without prior notice of the Contractor. If Contractor has not procured the rectification of defects within a reasonable grace period, Principal may instruct third parties to rectify the defects and the damage caused by those defects at the Contractor's cost and expense. Principal may also request a reasonable price deduction in lieu of a rectification of defects.

8.9. Contractor shall be required to pay to Principal the time needed by the Principal's own personnel and the Principal's agents to identify defects, supervise the rectification of defects and check the proper rectification of defects at a rate of 1.5 times the hourly rate charged for civil engineering services.

8.10. The security deposit will be retained during the warranty period. If the engagement letter provides that the security deposit may be replaced by a bank guarantee, the amount of the security deposit will be paid out within 30 days from receipt of that bank guarantee with a term equal to the warranty period, plus 3 months. The period for payment of the security deposit to be released as a consequence of the presentation of the bank guarantee shall commence with the elimination of all defects stated in the acceptance record at the earliest.

8.11. If notice of defects is given or warranty claims asserted prior to the expiry of the warranty period, warranty claims may be judicially asserted also within one year after the end of the warranty period.

## 9. Rescission, cancellation, standstill times

9.1. Principal may rescind this Contract if:

- bankruptcy proceeding were initiated with respect to the Contractor's assets or a petition for bankruptcy was rejected on the grounds of insufficient assets to cover costs;
- Contractor is in default with the provision of its services and has not caught up on the delays despite a warning,
- there exist circumstances which suggest that Contractor will not or will not properly provide its services; these circumstances shall exist especially if the Contractor continues to provide defective or non-contractual services despite a warning, uses building materials which the Local Construction Supervision Services object to or fails to observe repeatedly set interim target dates, thereby obstructing the progress of work of other professionals working on the job site;
- despite a warning, the Contractor has failed to provide the contractual services, documents or documentary evidence (e.g. performance guarantee or counter-signed engagement letter) within a set grace period.
- Contractor gains knowledge of contraventions by the bidder, its employees, agents or the third parties which it has instructed against provisions of sub-section 12. (Corporate Compliance).

Should the Principal rescind the contract, Contractor shall not be entitled to any further payments; Contractor shall be required to reimburse Principal for

the following extra costs: payments previously made to the Contractor plus any costs incurred as a result of completion by third parties, less the compensation which Contractor could have claimed in case of a completion of services in accordance with the terms and conditions of the contract. In addition, Contractor is required to pay a penalty equal to 5% of the gross contract amount stated in the engagement letter. Section 4.5. shall apply by analogy.

9.2. If Contractor does not fulfil an obligation under the contract (including rectification of defects) within a set reasonable grace period or within due time or if immediate action is required to avert damage and/or meet interim or final target dates, Principal may also have the non-provided work or services provided by third parties, while maintaining the remaining terms and conditions of the contract.

9.3. In any event, the Contractor shall pay for any extra cost for substitute performance, including but not limited to any price difference between the Contractor's gross contract amount and the price for which the services are completed. Principal shall not be required to tender a substitute performance. Principal may at its discretion award substitute services at flat-rate prices, unit prices or in the form of force account work. Provided that any extra cost of substitute services does not exceed 50% of the price agreed with Contractor, Contractor may not argue that substitute services have been provided for an unreasonably high price.

9.4. Principal may cancel the services to be provided at any time and without cause prior to or during execution. Services actually provided on the job site pending cancellation will be compensated at unit prices specified for those services in a unit price-based contract; in case of a flat-rate price contract, those services will be compensated at an amount equal to the value of the partial services remaining on the job site; unit prices for services to be provided during the construction time (e.g. job site facilities or maintenance) will be compensated on a pro rata temporis basis in accordance with time efforts. The same applies if Principal has rescinded the contract pursuant to Section 8.1. without justification. Any further claims on the part of Contractor shall be excluded.

Principal may order standstill times with 14 days' notice. Principal will indicate the expected length of standstill times. Contractor shall then discontinue its work, secure any work already provided as well as the job site. Work shall be resumed within 14 days on Principal's request. Any target dates /time limits (see Section 4.) will be extended by the duration of ordered standstill times. Should the Principal have ordered standstill times in excess of 2 months, Contractor may rescind the contract, and Section 8.4 shall apply by analogy.

## 10. Maintenance work

10.1. Should Contractor be instructed to carry out maintenance work, in addition to these Terms and Conditions, which apply by analogy, the following shall be deemed agreed.

10.2. Contractor shall provide its services in the full scope of the performance requested by the Principal, the receipt hereof is hereby confirmed by Contractor. The services shall also be provided outside business hours if this is necessary or requested by Principal.

10.3. Contractor shall immediately report to Principal risks, if any, to the Principal's facilities or property rights as well as any identifiable delay in Contractor's own services/deliveries, notwithstanding any other liability claims. This obligation includes also the reporting of hazards, if any, caused by third parties including government orders, if any. Contractor shall reimburse Principal for any resulting cost, damage, additional expenses etc. The above applies especially to compliance with prescribed maintenance intervals or government inspections. Contractor is therefore required to keep on file and properly execute that regular work.

10.4. Unless otherwise agreed in a particular case, the prices agreed between Contractor and Principal shall be valid for an indefinite time, and at least for a period of 36 months; prices may not be changed even if such price change is proposed by the relevant federal guild or similar. Prices include all ancillary expenses such as travel expenses, freight, transport and insurance costs etc and no subsequent payments may be claimed.

10.5. The agreed price shall be a firm flat-rate price not subject to change. Prices may not be changed either if the service provision is more difficult due to unforeseeable events.

10.6. In case of any delay in the provision of deliveries and/or supplies – even in the absence of fault or if such delay is only insignificant – Principal may terminate the contract by setting a reasonable grace period (of not more than 14 days); in this context, no notice periods or termination dates have to be observed. In case of repeated default, Principal may immediately terminate the contract. Contractor shall be liable to Principal for any damage and drawback resulting from a breach of contract.

10.7. If Contractor is required to provide to Principal recurring services, Principal may cancel the contract without cause with 14 days' notice as of the last day of a month even in case of a fixed-term contract. In case of indefinite contracts, Contractor may terminate those contracts with three months' notice at the end of a quarter.

10.8. Should any business, part of a business or a location of the Principal be closed/shut-down, Contractor may not assert any claims whatsoever against Principal. In this event, Principal may reduce the Contractor's compensation for services the latter provides at several businesses, parts of businesses or shops on a pro rata temporis basis and/or subject to prevailing circumstances.

10.9. As a matter of principle, Contractor is required to provide its supplies or services himself. Obligations assumed hereunder may be transferred to third parties only if written notice is given to Principal; that notice shall contain the name, address and scope of services of the proposed third party. Contracts may be awarded to third parties only with Principal's express written consent. The transfer of contractual obligations to third parties will not create a contractual relationship between Principal and those third parties. Contractor continues to be unrestrictedly liable to Principal for any breach of contract and/or drawback resulting from the service provision.

10.10. Should Contractor have received from Principal keys or other data carriers for the access systems (hereinafter also referred to as "Keys"), it shall be liable for any drawback caused by any loss or transfer thereof. In this event, Principal can fully replace the

locking system, and Contractor shall be liable to pay for all related expenses. The Keys provided may be used only for the provision of the contractual services. Contractor shall be liable for any abusive use of the Keys, including but not limited to granting access to external parties.

10.11. Contractor undertakes to deliver to Principal immediately after the service provision a relevant performance record consistent with government or legal requirements, if any.

10.12. Contractor guarantees toward Principal to observe the house rules, instructions and/or service instructions of the market and center management and the safety regulations (instructions, training) through the assigned personnel.

10.13. If clearance work is contracted, the obligations referred to in Section 93 of the Austrian Traffic Regulations are hereby assigned to the contracting party pursuant to Section 93 (5) of those Regulations. Should Principal be held liable by third parties for a breach of these obligations to implement traffic safety precautions, Contractor undertakes to fully hold harmless and indemnify the Principal. Contractor undertakes to purchase adequate liability insurance and shall be required to provide documentary evidence on Principal's separate request.

10.14. The machinery, tools and vehicles Contractor uses in connection with the performance of the agreed service must be state of the art and be serviced at intervals prescribed by the manufacturer.

## 11. General

11.1. Contractor may assign claims towards the Principal, provided that Contractor has notified the proposed assignment to Principal at least 12 weeks in advance, otherwise Sections 8.1 and 4.5.b) shall apply by analogy. That notice and the assignment notice as such shall be given in writing to the Local Construction Supervision Services and to Principal's management by registered mail to the Company's seat; the date of receipt shall be relevant. Notices may not be given otherwise, particularly not on invoices or the like. Contractor's above notice shall be accompanied by a written statement of the assignee who confirms that the contract along with side agreements, including but not limited to these Terms and Conditions, shall be fully effective for him.

In case of an assignment, a handling fee (for the higher administrative effort) equal to one per mille of the claim assigned and/or to be assigned plus VAT, and in any event an amount of EUR 1,000.00 plus VAT shall be agreed. That handling fee may be set off at the Principal's discretion against any claim of the Contractor from receipt of the notice of the intended assignment and/or receipt of the assignment notice. Notwithstanding and in addition to the above, Contractor expressly acknowledges that the assignment of claims as described above might affect Contractor's and/or the loans outstanding of the members of the SPAR Group. In case of an assignment of claims, Contractor will therefore accept any such drawbacks arising for the Principal and other members of the SPAR group; such drawbacks are sufficiently documented through a written confirmation of the banks concerned. The burden to prove the non-existence of a loss shall be on the Contractor.

11.2. The performance guarantee and the security deposit guarantee, as well as the security deposit retained in cash shall serve to secure all claims of any type whatsoever of Principal arising from the contract, from non-fulfilment of the contract or from claims of the Principal as a result of withdrawal; they shall also serve in particular to secure claims within the meaning of Sections 21 and 22 of the Austrian Insolvency Code ("*Insolvenzordnung*"). Principal may draw on the performance guarantee and the security deposit guarantee also to satisfy other claims of the Principal or claims which Principal's affiliated companies have assigned to Principal, even if these claims should be based on other legal grounds outside this contract. After the conclusion of the contract, Principal may also request another security for outstanding services up to one fifth of the agreed gross compensation, or in case of contracts to be performed within three months, up to two fifths of that compensation. The costs for that security which shall at Principal's discretion be provided either in cash or in the form of a bank guarantee, as well as a flat-rate handling fee in the amount of EUR 300.00 plus VAT, which shall promptly be payable when invoiced by Principal, shall be borne by Contractor. The security shall be provided within 14 days after Principal's request. Should Contractor not provide the above security to a sufficient extent or in due time, Principal may refuse any of its payments and rescind the contract without setting a grace period; Section 8.1 shall apply by analogy.

Should the Contractor exercise its right pursuant to Section 1170b of the Austrian Civil Code, the time limit for performance within the meaning of Section 1170b (2) of the Austrian Civil Code shall be set by Contractor at 8 weeks from documented receipt of the relevant request. Principal may choose the means of security at its election and shall be entitled to a compensation of EUR 300.00 plus VAT, due and payable immediately after invoiced by the Principal.

11.3. Should the Contractor be instructed as general contractor, it will accept the function of a job site coordinator as well the monitoring of the fulfilment of the related obligations. Contractor will nominate an individual who will assume the tasks of coordination and will procure that the written statements and reports required by law be issued. Should it be necessary to use adjacent properties for the execution of the Contractor's services, Contractor shall procure authorizations to use those adjacent properties. Should any damage for any reason whatsoever be caused to adjacent properties in connection with the Contractor's activities, Contractor will hold harmless and indemnify Principal for any claims, including but not limited to claims pursuant to Sections 364, 364a and b of the Civil Code even if the Principal, albeit not the property owner, is liable for compensation to the property owner as a result of contractual obligations. Contractor will procure that relevant proceedings for the preservation of evidence be carried out at its cost and expense should neighbours so request.

11.4. In case of any disagreements and disputes as to whether or not payments to be made by Principal have become due or payable, Contractor may not abandon or interrupt the provision of its services or cancel the contract.

11.5. If Principal is required to provide any plans, Contractor will timely request those from the Principal. Unless otherwise agreed, a notice period of 21 days applies, although that notice period may be abbreviated by 14 days in a particular case.

11.6. Every Contractor shall procure at its own cost and expense the proper disposal of any waste and

packaging created through the construction measures. In this context, Contractor shall observe the laws, as applicable from time to time. Failure by Contractor to do so entitles the Principal to have any waste and packaging disposed of at Contractor's cost and expense.

11.7. Contractor may only use sub-contractors and suppliers which Principal has approved in writing. Principal has the right to reject sub-contractors. Contractor may not claim any extra costs as a result of Principal's rejection of sub-contractors. On Principal's request, the latter shall be allowed to inspect Contractor's contractual agreements with the sub-contractors and receive any information Principal may request in this context. In any event, these Terms and Conditions must have effectively been assigned to the sub-contractor. Should Contractor instruct sub-contractors, it shall be liable for the services of its sub-contractors in the same extent as for its own services. Any liability of third parties, including but not limited to Principal and/or the instructed general planner or the Local Construction Supervision Authorities, shall be excluded in any event.

11.8. Especially if Contractor is relying upon sub-contractors, Contractor itself shall carry out the communication and coordination with the Principal and the instructed general planner. Design documents, plans and the like submitted by sub-contractors shall be reviewed by Contractor prior to being passed on to Principal and/or the instructed general planner. Any derogation from this course of action is possible only by written consent and through a written authorization which Contractor issues to the sub-contractor. That authorization must provide that Contractor shall remain fully liable for the subcontractor's services also in case of a direct communication and/or direct coordination between sub-contractor and Principal and/or the general planner.

In the case of labour leasing or agency labour provision, Contractor must ensure that the workers in question are suitable. Principal is entitled to notify Contractor as to non-suitability of workers and to request their replacement by suitable workers. Contractor declares that it has in the past paid in full all claims to remuneration by its employees within the meaning of Section 9 of the Austrian Act to Combat Wage and Social Dumping and that it will also in future pay the same in full, so that any liability on the part of Principal is excluded. Contractor guarantees that corresponding claims on the part of its employees have to date not yet been taken to BUAK (*insurance office responsible for the holiday and severance payment issues of construction workers*). However, if claims are brought against Principal within the meaning of Section 9 of the Austrian Act to Combat Wage and Social Dumping, Principal shall be entitled, notwithstanding other instructions on the part of Contractor to fully cover such claims without scrutiny and to collect the same from Contractor, even if, subsequently, such claims should prove to be false. Principal is in any event not under a duty to have justification of such claims scrutinised by the courts.

Contractor and any third parties it has assigned to perform the contract shall keep strictly confidential any business information and events they become aware of in connection with their activities. Contractor shall monitor compliance with that provision. Contractor shall be unrestrictedly liable for any breach of this confidentiality obligation. Data which Contractor becomes aware of may be disclosed to third parties only with Principal's written consent. Any publication of whatever nature, including but not limited to promotional statements relating to this contractual relationship shall require Principal's written consent.

The assigned personnel shall take possession of, store in the meantime and promptly hand over to Principal any found items.

11.9. If a criminal offence is committed (including but not limited to – also any attempted - misappropriation, theft, property damage) by an employee of the Contractor, the Contractor undertakes to pay to Principal a penalty equal to EUR 700.00 plus VAT as well as an amount equal to three times the sales value of the stolen, misappropriated or damaged item. In addition, the relevant person may not be assigned for any other project awarded by the Principal.

11.10. In addition, Contractor shall share the costs of a construction sign. Contractor may not set up individual signs on the job site. The contributions referred to in this Section are not payable if Contractor is appointed as general contractor.

11.11. Any amendment of and modification to the contract shall be confirmed in writing by Principal. This shall also apply to any waiver of this written form requirement. No subsidiary oral agreements exist. Contractor declares that it has scrutinised the full content of the present General Terms and Conditions and all other contractual bases and accordingly waives any right of appeal based on error.

11.12. If Principal or the Awarding Authority or any third party instructed by Principal is required to deliver documents to the Contractor, those documents shall be delivered at Principal's discretion either as hard copies or in digital form through an installed internet server which allows the Contractor to access the necessary documents. Contractor shall set up an efficient internet connection at its own cost and expense. Should Contractor wish to receive documents as hard copies despite the possibility to retrieve those via the internet, all related services shall be separately charged to Contractor and/or deducted. Plans will be provided to Contractor exclusively as plot files and/or in specific cases as pdf-files. These files are either delivered on data carriers or per e-mail or made available on an internet server installed on the building site. All documents will be retrieved (downloaded), printed and reproduced by Contractor. All resulting costs shall be included in the unit prices. For this purpose, Contractor shall procure an appropriately powerful internet connection and suitable computer systems. Plans will be delivered as hard copies only upon separate agreement and against payment of a compensation of EUR 15.00 per plan, which shall be payable to the instructed general planner and/or the delivering authority.

11.13. If an internet server (project portal) is installed for the project hereunder, all costs related to installation and maintenance of the internet server will be borne by Principal or its general planner. Similarly, suitable information and/or instructions for the proper use of the internet server will be provided to Contractor on a non-recurring basis free of charge. There will not be any additional support (e.g. training, hotline etc.). Contractor agrees that personal data (address, phone number) be stored in connection with the use of the internet server and be made available to the other parties involved in the project. Plans and other documents shall be deemed delivered once they are made available on the internet platform (upload) or sent by e-mail. Contractor shall be responsible for

the timely collection (downloading) of plans and other documents from the internet server or its mailbox; a separate notice shall not be required. Contractor shall be required to empty its mailbox (download) in due time and on a regular basis.

11.14. Without Principal's written consent, Contractor may not use the plans, specifications, calculations and other technical contract documentation delivered to him for a purpose other than the execution of the contract.

11.15. Contractor's representative responsible for matters pertaining to the job site must be available permanently during normal working hours. The site manager appointed by Contractor or other persons Contractor may assign to attend construction and/or project meetings may issue legal declarations and accept the Principal's instructions. It shall be Contractor's responsibility to procure that no administrative offences are committed in connection with the provision of its services. Contractor shall especially observe all trade laws, labour laws and social laws. Necessary work permits shall be delivered within one week from the contract award and be ensured over the entire contract term. Any default in this context entitles Principal to cancel the contract. Contractor shall also be required to strictly observe the Employment of Foreign Nationals Act and to hold harmless and indemnify Principal for any breach thereof.

11.16. On Principal's request, Contractor will deliver a residents clearance along with the final invoice and/or on the Principal's subsequent request, by which neighbours affected by the construction work, the road maintenance companies or holders of pipeline wayleaves or other beneficiaries of easements confirm that they will not assert any compensation claims against the Principal and/or the property owner in connection with the Contractor's services.

11.17. The job site may be inspected by third parties and video or film recordings or photographs and publications about the construction project may be made only with the Principal's consent. Contractor undertakes to participate actively in the b2b-internet portal for construction services, if any, operated by the Principal especially in order to facilitate and accelerate communication.

11.18. If property rights, patents, licenses etc. exist with respect to the services provided and materials supplied by the Contractor, Contractor shall immediately procure for the Principal free licenses for the use of the supplies or services along with the final invoice and/or on Principal's subsequent request, and Contractor shall hold harmless and indemnify Principal for any claims of these rights holders.

11.19. Should Principal be in delay with payments, it shall pay default interest at a rate of not more than 5% p.a. in derogation of the legal regulations. Principal shall not be required to reimburse Contractor for any other damage caused by default, unless in case of Principal's gross negligence. Contractor may not set off any of the Principal's claims in money's worth against Contractor's own or assigned claims. The period from 20 December of each year until 10 January of the following year shall in the context of calculating all periods and deadlines stated in these General Terms and Conditions not be counted, to the detriment of Principal (suspension of time).

11.20. This Agreement shall exclusively be governed by and construed in accordance with Austrian law without giving effect to Austrian international private law. All disputes arising out of this Agreement shall exclusively be referred at the Principal's election either to the court having subject-matter jurisdiction in the City of Salzburg or to the court having local and subject-matter jurisdiction for the job site or the court having local and subject-matter jurisdiction for the Principal's relevant branch office. Should any decision (judgment, order) of an ordinary Austrian court in the state of residence/at the corporate seat of the relevant contracting party not be enforceable for any reason whatsoever, all disputes arising from this Agreement or related to its violation, termination or nullity shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by one arbitrator appointed in accordance with these rules. The language to be used in the arbitral proceedings shall be German. The place of arbitration shall be Salzburg. The parties agree that any communication in connection with this Agreement shall exclusively be in German. Any notice to the Principal in any other language shall not have any effect.

11.21. Should any term hereof be or become invalid, this shall not affect the validity of the remaining terms hereof. Principal will replace the invalid term by a term that closest reflects its economic, technical and legal purpose. These General Terms and Conditions shall apply to all associated undertakings of the SPAR Group, i.e. undertakings in which the shareholders of SPAR Holding AG or the latter itself shall have a substantial direct or indirect investment.

## 12. Corporate Compliance

12.1. Contractor undertakes that both it and its employees, agents and third parties which it shall instruct shall always comply with all applicable European and national legal rules and standards. Thus, Contractor is in particular under a duty to observe the following.

12.2. Contractor undertakes to take all necessary and reasonable measures in order to avoid corruption and bribery. Contractor may hence not offer, promise or guarantee through its employees or through the management or through third parties any money or benefits in money's worth (expensive gifts, invitations etc.) to the Principal's employees or its management or to Principal's related parties (relatives etc) ("anti-corruption principle"). In case of any violation of the anti-corruption principle, Principal may terminate with prior written warning all existing contracts with immediate effect and without notice. No prior warning is necessary in case of a serious violation.

12.3. The bidder undertakes to take all requisite and reasonable measures in order to avoid conduct in breach of anti-trust legislation on the part of its employees and agents or third parties which it shall have instructed, as well as to comply with European and national anti-trust provisions. In the event of contravention, the bidder undertakes to pay a contractual penalty totalling 10% of the bid amount. Any damages claims on the part of Principal shall not be limited on the basis of the contractual penalty.

12.4. Immediately upon becoming aware thereof, or immediately following such time when, applying due

and proper diligence, it should have been aware, the bidder must inform Principal of any investments or other personal, family or capital links with other bidders or other parties involved in the project (in particular ÖBA, experts, construction coordinators, etc.), failing which the Principal – irrespective of any actual loss – shall hold a right of withdrawal.

12.5. The bidder declares by signing the bid that the bid is based solely on its own price determination and the prices offered were not agreed with competitors, that it has not made with other undertakings any disadvantageous arrangements or arrangements breaching the principles of free competition, and that it has not made with other undertakings either agreements or arrangements, and that neither has it agreed with other undertakings to conduct itself such that thereby operative circumstances prohibited under anti-trust law or the Austrian Criminal Code are realised.

Moreover, the bidder declares that it has not in any manner participated in transmission of tender documents to its competitors or in the exertion of influence for the purpose of submission/non-submission of a bid.

Upon request from Principal, the bidder must provide documentary evidence to the effect that the measures pursuant to clause 12.3 have been taken. In the event of contravention, the bidder undertakes to pay a contractual penalty in the sum of 10% of the bid amount. Any damages claims on the part of Principal shall not be limited on the basis of the contractual penalty.

## 13. Data protection

13.1. Contractor undertakes to treat as confidential personal data and other information to which it shall have access in connection with contractual fulfilment or of which it becomes aware, and to place its employees under a duty to observe confidentiality, provided said employees are not already subject to a reasonable statutory duty of confidentiality. The said obligation shall continue to exist following the end of the contract.

13.2. Contractor further warrants that it shall process personal data only in compliance with the EU General Data Protection Regulation and shall protect the rights of the persons in question. In so far as Contractor processes personal data as processor on behalf of Principal, the following shall apply:

13.2.1. Contractor undertakes to process personal data only within the framework of Principal's instructions. If Contractor is of the opinion that an instruction breaches the General Data Protection Regulation or other legal rules, Contractor shall immediately inform Principal. Following completion of processing, Contractor shall delete all data. Prior thereto, it shall make an offer to Principal to return the data in a format which is legible for Principal.

13.2.2. Contractor shall take all requisite data protection measures.

13.2.3. Notwithstanding any differing agreements, Contractor shall engage additional processors only with the prior consent of Principal. Contractor shall inform Principal in any event as regards the additional processors which it shall have engaged. Contractor shall place any additional processor under a contractual duty to observe all data-protection duties which it shall have assumed in relation to Principal.

13.2.4. Contractor shall support Principal with suitable technical and organisational measures in complying with its data-protection obligations. This shall include in particular the duty to respond to requests for protection of the rights of affected persons and compliance with the duties stated in Articles 32 – 36 of the General Data Protection Regulation in relation to the security of personal data.

13.2.5. Contractor shall provide Principal with all requisite information for the purpose of documenting observance of the above duties.

13.2.6. In so far as the parties have concluded a processor agreement within the meaning of Article 28 of the General Data Protection Regulation, this shall not be affected by the provisions contained herein.

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Contractor (Bidder)