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## Conditions for Subcontractors (SCC)

### 1. Basis for Contract

Components of the contract are in the following order:

- 1.1 The subcontract for works and services or the subframework agreement-for works together with the individual order or the order letter together with the minutes of negotiation.
- 1.2 The bill of quantities together with supplements, drawings, samples, etc.
- 1.3 These Conditions for Subcontractors ("SCC") along with Code of Conduct for Suppliers ("SCoC").
- 1.4 The terms and conditions agreed between the Main-Contractor (hereinafter referred to as "MC") and its Employer, insofar as they concern the contract between the MC and the Subcontractor (hereinafter also referred to as "SC").
- 1.5 The Contracting Rules for the Award of Public Works Contracts (VOB - Verdingungsordnung für Bauleistungen) Part B and Part C in the version valid at the time of submission of the bid.
- 1.6 All relevant technical codes and regulations in the latest version (e.g. DIN, VDI, VDE standards, etc.)
- 1.7 Unless Subcontractor's terms and conditions on delivery, installation, assembly, sales, payment, etc. are specifically agreed upon, they shall not form part of the contract. The same shall apply to reservations, assumptions and exclusions, etc. declared by the Subcontractor prior to the negotiations.
- 1.8 Reservations, assumptions and exclusions, etc. declared by the Subcontractor prior to the negotiations shall only become part of the contract if the parties have expressly agreed on them in written.
- 1.9 If any provisions of the contract are found invalid, the remaining provisions shall remain in full force and effect.

### 2. Scope of Service

- 2.1 The unit or lump-sum prices shall cover all services, including ancillary services, of the Subcontractor which, according to the contractual basis, are necessary to fully achieve the purpose of the contract. This applies in particular to all wages, salaries, surcharges, costs, licenses, fees, charges and relevant taxes. The prices shall also cover the costs of the Subcontractor for instructing the personnel of the MC in the operation and maintenance of the materials and equipment supplied and/or installed by the Subcontractor.
- 2.2 The Subcontractor is obliged to inform himself about the place of performance before submitting an offer. Any lack of knowledge on the part of the Subcontractor about the place of performance shall be at the Subcontractor's expense.
- 2.3 The MC reserves the right to make changes to the design or time schedule and to issue other orders.
- 2.4 Services which are within the scope of work but become necessary for due performance of the contractual services shall be performed by the Subcontractor at the request of the MC, unless the Subcontractor's business is not fit out for such services. Other services may only be assigned to the Subcontractor with its consent.

### 3. Remuneration

- 3.1 The contract prices are fixed prices and are net without value added tax. In the event that value added tax is paid to the Subcontractor, it shall be additionally remunerated in accordance with the statutory provisions applicable at the time it becomes due.
- 3.2 If the basis of the price for a service provided for in the contract is changed due to changes in the agreed service/construction design or other instructions of the MC, a new price shall be agreed by taking into account the additional or reduced costs.
- 3.3 If a service not provided for in the contract is required, the Subcontractor shall be entitled to special remuneration. However, the Subcontractor must notify the MC of the claim before starting to perform the work.

The remuneration shall be determined on the basis of the price calculation for the contractual service and the special costs of the required service.

- 3.4 The Subcontractor shall agree on supplementary prices prior to execution. If he fails to do so, the MC shall determine the prices at its reasonable discretion.
- 3.5 If a lump sum has been agreed as remuneration for the service, the remuneration shall remain unchanged. If, however, the service performed deviates from the contractually agreed service to such an extent that adherence to the lump sum is unreasonable (Section 242 of the German Civil Code), compensation shall be granted upon request, taking into account the additional or reduced costs. For the assessment of the compensation, the bases of the price determination shall be taken as a starting point. Clauses 3.2, 3.3 and 3.4 shall remain unaffected.
- 3.6 Services performed by the Subcontractor without an order or in unauthorized deviation from the contract shall not be remunerated. Upon request, the Subcontractor shall remedy them within a reasonable period of time; otherwise, the MC shall be entitled to carry out the remedial works by itself or a third party at the expense of the Subcontractor. The Subcontractor shall also be liable for any other damage incurred by the MC as a result.

However, the Subcontractor shall be entitled to remuneration if the MC subsequently acknowledges such services. The Subcontractor shall also be entitled to remuneration if the services were necessary for the performance of the Contract, were in accordance with the presumed intention of the MC and were notified to the MC without delay. Insofar as the Subcontractor is entitled to remuneration, the calculation bases for changed or additional services in Sections 3.2 and 3.3 shall apply.

The provisions of the German Civil Code (BGB) concerning management without a contract (§§ 677 et seq. BGB) shall remain unaffected.

- 3.7 Hourly paid work shall only be remunerated if it has been expressly agreed as such prior to its commencement. Time sheets must be submitted



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to the MC no later than two working days after the work has been performed.

- 3.8 If a subsequent audit reveals that timesheets already signed pertain to contractual services (including ancillary services), they will not be compensated.

### 4. Execution Documents

- 4.1 The Subcontractor shall request the documents required for execution from the MC in good time and shall check them for completeness and correctness immediately upon receipt. All dimensions specified in the execution drawings must, insofar as they relate to the services of the Subcontractor, be checked by the Subcontractor or checked or taken on site. Any discrepancies shall be reported by the Subcontractor to the MC without delay. Where production is agreed to take place according to target dimensions, tolerances must be agreed with the MC. In the event of non-fulfillment of these obligations, the Subcontractor shall bear all resulting disadvantages for the MC or himself.

- 4.2 All drawings, calculations, documents and other execution documents handed over to the Subcontractor shall remain the exclusive property of the MC. Their usage is only permitted for means of the subcontract and may not be published or made accessible to third parties without the prior consent of the MC.

Publications about the services of the Subcontractor or parts of the construction project are only permitted with the prior consent of the MC. This also includes the specification of procedures or the disclosure of drawings and illustrations.

The Subcontractor undertakes not to disclose to third parties any trade secrets and confidential information of which it becomes aware in connection with this Subcontract. In the event of a breach, the MC shall be entitled to claim damages and to withdraw from the contract.

- 4.3 The Subcontractor shall prepare all calculations and implementation plans required for its services, insofar as they are not to be supplied by the MC, without special remuneration and submit them to the MC in good time. This also applies in particular to the necessary assembly plans and the necessary calculations as well as to all details and data of his supplies and services that are of significance for other trades. The costs arising from this shall be taken into account by the Subcontractor in its pricing.

After conclusion of the contract, the Subcontractor shall prepare and submit to the MC all design documents for slots, openings, line penetrations and detailed plans of his work components to be installed. All details for recesses, slots, operating equipment, etc. required by the Subcontractor shall be coordinated by the Subcontractor with the MC in good time. Costs incurred due to incorrect, forgotten or untimely information provided by the Subcontractor shall be borne by the Subcontractor.

- 4.4 Even after submission to the MC, the Subcontractor shall remain responsible and liable for the completeness and correctness of the execution documents to be procured or prepared by him. This shall also apply if the MC expressly releases or approves such documents for execution.
- 4.5 The MC may use any documents to be prepared by the Subcontractor for the relevant construction project without additional remuneration.
- 4.6 Insofar as special official permits, approvals or acceptances are required for the tendered scope of services, these must be obtained or arranged by the Subcontractor in a timely manner without special remuneration. A sufficient number of written documents or acceptance reports must be submitted to the MC without being requested to do so.
- 4.7 All surveying work for services provided by the Subcontractor shall be carried out by the Subcontractor on its own responsibility. Surveying points must be adequately secured, even if they were not created by the Subcontractor.
- 4.8 The Subcontractor is obliged to inform himself in a timely and sufficiently manner about the location of the construction site, its accessibility and about the facts necessary for the performance of his services. In particular, the Subcontractor shall independently inquire at its own responsibility about the existence and location of any supply and disposal lines, cables, etc. in its working area with the respective competent authorities.

### 5. Execution

- 5.1 The MC has the right to monitor SC's performance of the service and its compliance with the contract requirements. For this purpose, SC shall grant access to the workplaces, workshops and storage rooms in which the contractual works or parts thereof are manufactured or where materials or components for purpose of the works are stored. Upon request, MC shall be provided with the work drawings or other execution documents as well as the results of quality tests for inspection and necessary information.

- 5.2 The MC is authorized to issue instructions that are necessary for the contractual execution of the service, while maintaining the management to which SC is entitled.

If the Subcontractor considers the instructions of the MC to be unjustified or inappropriate, it shall raise its concerns in writing, but shall carry out the instructions on request, unless legal or official provisions prevent this.

- 5.3 The Subcontractor shall perform the service under its own responsibility and in compliance with all relevant regulations and laws under the Contract.

- 5.4 If the Subcontractor has concerns about the intended type of execution, about the quality of the materials or components supplied by the MC or about the services of other subcontractors, he must inform the MC of these in writing without delay - if possible before the start of the work. If he fails to do so, he shall bear full responsibility for all damage and costs arising from this breach of duty.

- 5.5 The Subcontractor shall protect the services it has performed and the items handed over to it by the MC for performance against damage and theft until acceptance and insure them if necessary.

- 5.6 SC shall at his own expense, rectify and/or replace the services that are already identified as defective or not in conformity with the Contract during the execution with services that are free of defects. If the Subcontractor is responsible for the defect or the lack of conformity, it shall also compensate for the resulting damage.

- 5.7 At the request of the MC, the Subcontractor shall keep a formal construction diary in accordance with the MC's regulations and submit it to the



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MC on a daily basis. The Subcontractor shall report to the MC on a monthly basis the hours worked in connection with the assigned order.

- 5.8 The Subcontractor is obligated to ensure that its waste and packaging residues caused by it are disposed of on each working day. If it fails to comply with this obligation despite being granted a reasonable grace period, the MC may have the waste disposal carried out at the expense of the Subcontractor.
- 5.9 The Subcontractor shall be obliged to provide suitable evidence of the fulfillment of its current obligations to its social insurance institutions and tax authorities. The same applies to membership in chambers, insofar as such membership is required by law.
- 5.10 The Subcontractor shall appoint the responsible site manager/specialist site manager prior to commencement of work. This person must be able to speak the official language in which the project is being carried out.
- This person or his deputy, who must also be named before the commencement of work, must be present at the construction site at all times. The Subcontractor expressly declares that its site manager or deputy is the authorized recipient for any correspondence or notices towards the Subcontractor.
- 5.11 The Subcontractor shall name the construction manager/specialist construction manager responsible in accordance with the State Building Code (Landesbauordnung) prior to commencement of work and shall provide this person at the start of work. In addition, a responsible representative of the Subcontractor shall be appointed who is authorized to make or receive all declarations for and against the Subcontractor required for the entire execution of the contract and any amendments to the contract, and - if necessary - to have the relevant work carried out immediately.
- 5.12 The Subcontractor shall have a quality management system and shall provide evidence of this to the MC without being requested to do so. He shall also provide the MC, without being requested to do so, with the permits, certifications, evidence and approvals required by law or in the contract for quality assurance. In particular, he shall submit the relevant EU/EC Declaration of Conformity.
- 5.13 In particular cases, the MC may require the Subcontractor to attend meetings with the Employer on matters relating to the scope of the Subcontractor. Direct negotiations and agreements between the Employer and the Subcontractor regarding the scope of works under this Contract are not permitted.
- 5.14 The space for the construction site equipment and material storage shall be allocated by the MC according to the available possibilities.
- Necessary rearrangements and relocations are not remunerated separately. If electricity and water are provided by the MC, this shall be done against payment from the main collection point. The installation to the points of use including workplace lighting and the accident-proof illumination of all access routes necessary for the Subcontractor shall be carried out by the Subcontractor without special remuneration.
- 5.15 The Subcontractor is responsible for the safekeeping and storage of its materials and equipment in accordance with the regulations. The MC assumes no liability in this regard. The Subcontractor shall, protect them from winter damage, groundwater, snow and ice, as well as the drainage of day and surface water affecting its services, without additional remuneration (as specified in Section 4.5 of VOB/B - Procurement and Contract Regulations for Construction Work Part B).
- 5.16 The Subcontractor shall be responsible for the accommodation and transportation of workers and building materials. There is no entitlement to the use of existing buildings and facilities within the construction site. When transporting materials, the Subcontractor shall comply with the Hazardous Substances Ordinance (GefStoffV – Gefahrstoffverordnung in Germany).
- 5.17 For services provided by MC (e.g. water, electricity, etc.), the Subcontractor shall pay a share of the costs in accordance with a separate agreement. If the Subcontractor demands billing according to actual consumption, it shall install consumption meters at its own expense.
- 5.18 The Subcontractor shall provide proof of compliance with the required quality of the materials and products used without being requested to do so. At the request of the MC, the Subcontractor shall supply and install samples and specimens of the materials and parts intended for use by the SC. The costs for this and for test certificates and proof of manufacture requested by the MC shall be borne by the Subcontractor.
- The Subcontractor shall provide the MC with measurement reports, mass determinations, test reports and documentation unsolicited and without delay, at the latest by the time of acceptance of its performance.
- 5.19 The Hazardous Substances Ordinance must be observed for all construction materials and auxiliary construction materials. Proof of the manufacturer and composition of the substances used as well as the safety data sheets of hazardous substances must be submitted to the MC within 2 weeks upon request.
- 5.20 The MC may require the Subcontractor to remove from the construction site and replace with others any workers who are professionally or personally unsuitable or who do not comply with their obligation to wear protective equipment or who cannot present a valid work permit.
- 5.21 In order to prevent occupational accidents in connection with its performance, the Subcontractor shall comply with all statutory, trade association and project-specific provisions on occupational safety and health protection, in particular the Construction Site Ordinance and any existing safety and health protection plan. The Subcontractor shall provide, without being requested to do so, the permits, certifications, evidence, qualifications and training required by law or in the contract and shall provide evidence of these to the MC upon request.
- To the extent required by law, the Subcontractor shall ensure supervision by a safety specialist and shall provide evidence of this to the MC without being requested to do so. The Subcontractor shall oblige its workers deployed on the construction site to wear the personal protective equipment (e.g. safety helmets, safety shoes) prescribed by the competent professional associations. Workers of the Subcontractor who do not comply with their obligation to wear the protective equipment may be expelled from the construction site. Before using third-party scaffolding or equipment, the Subcontractor must inspect it on his own responsibility.
- Accidents at work must be reported immediately and without being asked. The Subcontractor shall report any days lost due to accidents to the MC without being asked to do so.
- 5.22 Insofar as the MC provides protection and safety equipment, these shall be jointly accepted upon handover to the Subcontractor. They are to be



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maintained and, if necessary, supplemented by the Subcontractor on its own responsibility. The Subcontractor shall return them to the MC in due form after completion of the work. Existing protective covers, railings or similar that must be temporarily removed to perform the work shall be properly restored. For the duration of the removal, all danger points must be cordoned off and signposted in an accident-proof manner using other suitable measures.

- 5.23 The Subcontractor may only subcontract contractual services with the written consent of the MC. This shall also apply to any subcontracting of services by the Subcontractor to further subcontractors and/or lenders, even if this occurs in the context of successive subcontracting by way of a so-called subcontractor chain. The Subcontractor undertakes to use workers from countries outside the European Union in the performance of the services assigned to it only if they are in possession of a valid residence permit entitling them to work. Reference is made to Clause 17.4.
- 5.24 If the Subcontractor passes on contractual services to further subcontractors and/or temporary employment agencies, even if this is done by means of successive subcontracts (so-called "subcontractor chain"), the Subcontractor shall ensure that all subcontractors and/or temporary employment agencies- even if they perform parts of the Subcontractor's contractual services within the framework of successive subcontracts - assume and comply with the obligations described in Section 5.23. Reference is made to Clause 17.4.

### 6. Waste Disposal & Cleaning

- 6.1 The Subcontractor shall provide the MC immediately and without being requested to do so with proof of the environmental and waste law permits, certifications, verifications and approvals required by law or in the contract. The Subcontractor shall maintain order on the construction site without special request and remuneration and shall constantly dispose of the debris and dirt resulting from its services from the construction site in compliance with the applicable statutory regulations. (Closed Substance Cycle and Waste Management Act - KrWG Kreislaufwirtschafts- und Abfallgesetzes in Germany). After completion of the contractual services, both the storage areas and workplaces and the construction site itself shall be cleared and restored to a proper condition. The Subcontractor shall prepare a waste disposal certificate in accordance with the Regulation EC No. 1013/2006.

If the Subcontractor fails to comply with these obligations within a reasonable period of time set by the MC, the MC shall be entitled to carry out the necessary measures itself or to have them carried out by a third party and to charge the Subcontractor for them. Damage or additional costs resulting from unauthorized use of the containers set up by the MC (e.g. sorting effort, higher landfill fees) will be charged to the SC.

- 6.2 The Subcontractor shall avoid or immediately remove any damage or soiling on the public and private roads, including sidewalks used by the construction site traffic. This shall also apply to the Subcontractor's supplier vehicles; in this respect, the Subcontractor shall be liable as for its own fault. If the Subcontractor fails to comply with a removal request within a reasonable period set by the MC, the MC may carry out the removal itself or have it carried out by a third party; in both cases, the Subcontractor shall bear the costs.

### 7. Obstruction and Interruption of Execution

- 7.1 If the Subcontractor believes that it is hindered in the proper execution of its performance, it shall immediately notify the MC in writing. This shall also apply to obvious hindrances.
- 7.2 The Subcontractor shall do everything that can reasonably be expected of him to enable the continuation of the work. As soon as the impeding circumstances cease, he shall resume the work without delay and notify the MC thereof.
- 7.3 If the Subcontractor was able to continue the work at least partially despite the hindrance, the MC and the Subcontractor shall jointly attempt to settle the consequences of the hindrance by mutual agreement, if necessary, taking due account of the limitation of the work caused by the hindrance. If this is not possible, the MC shall decide on a regulation of the consequences of the hindrance at its reasonable discretion (Section 315 of German Civil Code BGB).
- 7.4 If one party to the contract is responsible for the impeding circumstances, the other party shall be entitled to compensation for the demonstrable damage incurred, but only for loss of profit in the event of intentional misconduct and gross negligence.
- 7.5 Disruptions customary in construction shall not entitle either party to claim compensation.
- 7.6 If the Subcontractor is hindered in the performance of its services by other subcontractors or third parties without the MC being at fault, any claims for compensation by the Subcontractor against the MC shall be limited to the amount which the MC can enforce against the party responsible.

### 8. Termination and Withdrawal by the MC

- 8.1 The MC may terminate the contract at any time for good cause or in accordance with Section 649 of German Civil Code (BGB). The statutory provisions on withdrawal shall remain unaffected. If the MC terminates the contract in whole or in part, the Subcontractor cannot claim damages for loss of profit if it is offered an equivalent replacement order.
- 8.2 The MC may terminate the contract if the Subcontractor suspends its payments or if insolvency proceedings or comparable statutory proceedings are applied for or such proceedings are opened or their opening is refused for lack of assets.
- 8.3 The services performed shall be invoiced in accordance with the contract prices. The MC may demand compensation for non-performance of the remainder.
- 8.4 Notice of termination must be given in writing.
- 8.5 If the Subcontractor is unable to carry out the work/service in accordance with the contract and on time, and if this threatens to result in the completion deadlines being exceeded, the MC shall be entitled, after issuing a reminder and setting a deadline with a warning of substitute performance, to carry out the partial performance at the expense of the Subcontractor or to subcontract it, even without partial termination.

### 9. Liability / Insurance

- 9.1 The liability of the Subcontractor shall be governed by the statutory provisions.



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- 9.2 If claims are asserted against MC by third parties due to damage for which the Subcontractor is responsible, the Subcontractor shall immediately upon such assertion indemnify MC against any claims resulting therefrom.
- 9.3 The Subcontractor shall prove to the MC that it has sufficient liability insurance in terms of scope and amount of cover and shall provide evidence that it has maintained such insurance during the period of performance. The liability insurance to be proven must include an extended product liability insurance, unless the service of the Subcontractor exclusively comprises the installation, assembly, repair or maintenance of products manufactured and supplied by third parties or the provision of instructions concerning such products. Unless otherwise agreed, the minimum coverage amounts for personal injury, property damage, financial loss and processing damage shall be € 2,500,000.00.
- 9.4 Failure to provide proof of insurance shall entitle the MC, after unsuccessful reminder and setting of a deadline, to terminate the contract or to take out liability insurance for the benefit of the SC and at the SC's expense in the amount of the coverage sums not proven. The Subcontractor shall assign to the MC its claims against the insurers for indemnification arising from the insurance relationship. The MC accepts the assignment. If the assignment is not permissible according to the insurance conditions, the Subcontractor authorizes the MC to collect the claim against the Insurer.
- 9.5 Instead of Section 7 of the Contracting Rules for the Award of Public Works Contracts (VOB - Verdingungsordnung für Bauleistungen), Section 644 of the German Civil Code (BGB) shall apply to the transfer of risk.

### 10. Acceptance

- 10.1 The Subcontractor shall notify the MC in writing of the completion of its services.
- 10.2 Prior to acceptance, the Subcontractor shall check its services for completeness and against defects and, if necessary, carry out remaining work and rework without delay. Furthermore, a complete construction file must be handed over to the MC before acceptance. It must contain the approvals, acceptances, permits, test certificates, calculation documents, operating instructions and as-built drawings to be obtained by the Subcontractor, the proof of disposal in accordance with the Regulation EC No. 1013/2006 and a list of the manufacturers of the materials used by the Subcontractor. Unless otherwise agreed, as-built and revision drawings shall be handed over in the form of data carriers and triple-color photocopies (including any circuit diagrams).
- 10.3 The Parties agree on formal acceptance procedure.
- 10.4 Acceptance prior to expiry of the agreed execution period (Section 12.1 of VOB/B Procurement and Contract Regulations for Construction Work Part B), partial acceptance pursuant to Section 12.2 of VOB/B (Procurement and Contract Regulations for Construction Work Part B) and the fictitious acceptance pursuant to Section 12.5 of VOB/B (Procurement and Contract Regulations for Construction Work Part B) are excluded.

Section 640 (1) sentence 3 of the German Civil Code (BGB) shall likewise be excluded.

### 11. Claims for Defects

- 11.1 The limitation period for claims for defects with respect to the entire work performance to be rendered by the Subcontractor shall be 61 months, unless otherwise expressly agreed. The limitation period shall commence with the complete and defect-free handover of the goods or complete and defect-free acceptance of the service.
- 11.2 If defects are already detected during execution, the MC may, notwithstanding Section 4 No. 7 of VOB/B B (Procurement and Contract Regulations for Construction Work Part B) in conjunction with Section 8 No. 3 of VOB/B (Procurement and Contract Regulations for Construction Work Part B), remedy the defect at the expense of the Subcontractor if the reasonable deadline set by the MC for remedying the defect has expired to no avail.
- 11.3 The Subcontractor shall be obliged to remedy at its own expense all defects which become apparent during the limitation period and which are attributable to performance not in compliance with the contract, if the MC requests this in writing before the expiry of the period. The claim to rectification of the notified defects shall become time-barred upon expiry of 2 years, calculated from receipt of the written request, but not before expiry of the period pursuant to Section 11.1. After acceptance of the defect rectification service, a new limitation period of 2 years shall begin for this service, which, however, shall not end before expiry of the period pursuant to Section 11.1.

If the Subcontractor does not comply with the request to remedy the defects within a reasonable period set by the MC, the MC may have the defects remedied at the expense of the Subcontractor.

If the removal of the defect is unreasonable for the Subcontractor or is impossible or would require a disproportionately high effort, and is therefore refused by the Subcontractor, the MC may reduce the remuneration by declaration to the Subcontractor in the ratio in which the value of the work in a defect-free condition would have been to the actual value at the time of conclusion of the contract.

- 11.4 In the event that the order is placed, the Subcontractor hereby assigns to the MC all claims for defects, warranty claims and claims for damages arising from the enforcement of this contract against its subcontractors and suppliers. The MC accepts the assignment. Until revoked, the MC authorizes the Subcontractor to assert the assigned claims in its own name and for its own account. In its contracts with its subcontractors and suppliers, the Subcontractor shall procure the assignment of claims to the MC. The liability for defects of the Subcontractor shall remain unaffected by such assignment. However, in the event of a claim against the Subcontractor, the Subcontractor may demand that the assigned claims against the subcontractors and suppliers be reassigned.

### 12. Payment

- 12.1 Unless a lump sum price has been agreed, invoicing shall be based on mutually recognized measurements. Auditable invoices in duplicate must be submitted, showing the project designation, the project number, the services performed and all payments received so far. In addition, the purchase order number, cost center and service recipient must be indicated. A signed delivery bill or proof of performance must be attached. Incomplete information or invoices that cannot be checked for other reasons will be returned unprocessed at the expense of the Subcontractor. If invoices are rejected, payment deadlines shall be suspended and they shall not start to run again until the invoice in question is resubmitted.



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The notice of the transfer order to the bank shall be decisive for the timeliness of payment.

- 12.2 The final payment shall be made after deduction of the retention amount to be agreed for defect claims. Insofar as a retention for defect claims has not been agreed separately, a retention in the amount of 5% of the invoiced sum shall be deemed to have been agreed. The payment of the retention amount into a blocked account is excluded by mutual agreement. If the amount agreed as security is not or not fully covered by the amount of the residual claim, the Subcontractor undertakes to make a corresponding repayment.
- 12.3 All payments shall be made by bank transfer to a bank account held in the name of SC in the country in which the contractually owed services are to be rendered or in which SC has its principal place of business.
- 12.4 The acceptance as well as the payment of the final invoice shall not exclude claims for reimbursement due to incorrectly calculated services and claims. The loss of enrichment cannot be claimed. In the event of overpayment, the Subcontractor undertakes to reimburse the excess amount paid plus 5% interest since payment, unless higher or lower benefits derived are proven.
- 12.5 The MC shall withhold 15% of the gross invoice amount due from all payments and pay it to the tax office responsible for the Subcontractor (tax deduction pursuant to Section 48 of Income Tax Act EStG). The tax will not be withheld if the Subcontractor submits to the MC a valid exemption certificate (Section 48b of Income Tax Act EStG) from the domestic tax office responsible for it.
- 12.6 The final payment is due two months after receipt of the final invoice.

### 13. Hourly Wage Work

- 13.1 Hourly wage work may only be performed upon special written instruction of the MC, must be verified on a daily basis and the verification must be countersigned by the MC. The signing-off of the daily wage hours can only be done by the site manager of the MC. The amount of remuneration for a wage hour shall be agreed separately between the MC and the Subcontractor.
- 13.2 Should later examination reveal that the signed timesheets relate to contractual services (including ancillary services), these hours shall not be remunerated. In the event of any double payment, Clause 12.4 shall apply.

### 14. Guarantees

- 14.1 To secure all claims of MC arising from or in connection with this Contract, in particular for performance including performance of addenda, amendment, damages, contractual penalties, indemnification and reimbursement of overpayments, the SC shall immediately after conclusion of the Contract provide a directly enforceable performance bond from a reputable credit institution or credit insurer acceptable to MC. The guarantee declaration must be unlimited in time, contain a waiver of the defenses of set-off and contestability (Section 770 of German Civil Code BGB), unless the counterclaim that can be set-off is undisputed or has been legally established, and a waiver of the right to deposit the guarantee amount. The guarantee declaration of the performance bond must contain a note that the claim arising from the guarantee does not expire before the secured claim; Section 202 of German Civil Code II BGB remains unaffected. The guarantee amount shall be 10 % of the order amount, unless otherwise agreed.

- 14.2 The Subcontractor shall be entitled to redeem the retention amount for defect claims pursuant to Clause 12.2 only by means of a guarantee (retention bond) from a reputable credit institution or credit insurer acceptable to MC. The guarantee shall serve to secure all claims for defects of the MC arising from or in connection with the subcontract. It also secures the claims of the MC for defects identified during acceptance, if and to the extent that the SC has received the performance bond back. Clause 14.1 shall apply accordingly to the content of the guarantee.

MC shall return any unutilized security (guarantee bond) for claims for defects after the expiry of the agreed limitation period for claims for defects. However, insofar as his asserted claims have not yet been fulfilled at this time, he may retain a corresponding part of the security.

- 14.3 If MC and the Subcontractor have agreed on an advance payment, the Subcontractor shall be obliged to provide a guarantee (advance payment bond) on first demand in the amount of the advance payment to secure any repayment claims of MC. Clause 14.1 shall apply accordingly to the content of the guarantee. The guarantee must be issued by a reputable credit institution or credit insurer acceptable to MC and must be handed over to MC before the advance payment is made.

### 15. Termination of the Contract

- 15.1 The MC shall be entitled to an extraordinary right of termination if the Subcontractor fails to comply with the relevant legal provisions for the performance of its services (e.g. concerning work permits, payment of taxes and social security contributions, temporary manpower hiring) or fails to submit evidence which the MC is entitled to demand under the contractual agreements, or fails to submit such evidence in due time, and the MC or the execution of the work is thereby threatened with a significant disadvantage. In this case, the legal consequences of Section 8.3 of VOB/B (Procurement and Contract Regulations for Construction Work Part B) shall apply.

### 16. Occupational Safety

- 16.1 The Subcontractor is advised that it is legally obligated to have a safety-related supervision carried out by an internal or external specialist for occupational safety.
- 16.2 It must prove this to the MC by submitting proof of training of the internal specialist or by submitting confirmation of external safety supervision within 14 days of conclusion of the contract.
- 16.3 In case of non-submission of the training certificate or confirmation, the MC reserves the right to terminate the contract after unsuccessful reminder and setting a reasonable deadline.
- 16.4 The occupational safety regulations of the Employer (End Client) have been handed over to the Subcontractor and are also binding for the Subcontractor in the contractual relationship with the MC.
- 16.5 The Subcontractor shall be obliged to report on the accident history of its employees and its subcontractors performing works under this Contract.
- 16.6 To determine the accident rate, the Subcontractor shall report the average number and hours worked by its employees and the employees of its



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subcontractors per year who are working for services under this contract, as well as the number of work accidents occurring in connection with these services with a lost time  $\geq 1$  day, including the lost hours due to these work accidents, in each case no later than 10 days after the end of the quarter for the previous quarter. In the case of serious accidents and accidents resulting in death, the reporting deadline is one day after the respective accident event.

### 17. Use of Foreign Assembly Personnel / Subcontractors

- 17.1 The Subcontractor undertakes not to deploy any workers without a corresponding valid work permit and residence permit, if required, for its scope of services or to have services performed by subcontractors who employ workers without a corresponding valid work permit and residence permit, if required.
- 17.2 The Subcontractor undertakes to comply with the provisions of the Minimum Wage Act (MiLoG Mindestlohngesetz), the Posting of Workers Act (AEntG Arbeitnehmerentsendegesetz) and Social Security Code (SGB) Parts IV and VII. In particular, it assures, to the extent applicable, that its employees receive at least the applicable minimum wages and that no further deductions are made in addition to the statutory deductions in the home country. If the Subcontractor is obliged to pay contributions to a vacation and wage compensation fund, it further assures that it has fully complied with this obligation and will continue to do so. Furthermore, the Subcontractor undertakes to provide the MC at any time and without delay upon request with all necessary clearance certificates or evidence required by the MC in order to comply with its monitoring obligations or to be able to exculpate itself. Upon request, the Subcontractor shall also provide the MC with evidence of the payment of the statutory minimum wage of the employees deployed on the construction site in a manner permissible under data protection law, e.g. confirmation by a tax advisor/auditor.
- 17.3 In the event of subcontracting of services by the Subcontractor to a subcontractor or in the event of commissioning of temporary employment agencies, the Subcontractor undertakes to provide its subcontractors or temporary employment agencies in accordance with the provisions of the agreements between the Subcontractor and the MC with regard to the obligations pursuant to Section 17.2. In particular, the Subcontractor undertakes also for its subcontractors or temporary employment agencies commissioned by it to provide corresponding documents pursuant to Section 17.2 immediately upon request at any time.
- 17.4 In the event of non-compliance with the obligations listed under Sections 5.23, 5.24, 17.1, 17.2 and 17.3, the MC shall be entitled to terminate the contract for good cause irrespective of any agreed contractual penalty and to have the part of the performance not yet completed carried out by a third party at the expense of the Subcontractor. The claims of the MC for compensation of further damages shall remain unaffected. In this case, forfeited contractual penalties shall be credited as minimum damages.
- 17.5 The Subcontractor shall indemnify the MC against all claims asserted against the MC under the guarantor's liability, in particular pursuant to Posting of Workers Act (AEntG Arbeitnehmerentsendegesetz), Social Security Code (SGB) Parts IV and VII. This shall also apply to claims asserted on the basis of further subcontracting. In the event that the MC has to make payments due to the aforementioned guarantor liability, the Subcontractor undertakes to reimburse these or agrees to a set-off against claims arising from this contractual relationship or from other contractual relationships with the MC.
- 17.6 The Subcontractor shall also obtain the aforementioned declarations of commitment from its subcontractors and submit them to the MC.
- 17.7 If a retention is agreed as security for the fulfillment of the contractually regulated indemnification obligation of the Subcontractor for claims against the MC arising from the guarantor liability pursuant to Minimum Wage Act (MiLoG Mindestlohngesetz), the Posting of Workers Act (AEntG Arbeitnehmerentsendegesetz) and Social Security Code (SGB) Parts IV and VII, the security shall be reduced if and to the extent that the Subcontractor proves that it and also all other companies engaged for the fulfillment of the contract for which the MC is liable as guarantor have fulfilled their obligation to pay the minimum wage as well as the vacation fund, overall social insurance and accident insurance contributions. In the event of a cash retention, the MC undertakes to pay out the released amount without delay.

If the indemnification obligation of the Subcontractor is secured by a performance bond to be provided by the Subcontractor, the performance bond shall be released by the MC with regard to the amount exceeding the percentage contractually agreed in the negotiation protocol as soon as - with the exception of the contractually regulated indemnification obligation of the Subcontractor - all other contractual requirements for this have been met. Any further release of the guarantee shall only take place to the extent that the Subcontractor proves that it and all other companies used for the performance of the contract, for which the MC is liable as guarantor, have fulfilled their obligation to pay the minimum wage as well as the vacation fund, total social insurance and accident insurance contributions.

- 17.8 The SC authorizes the MC to obtain information on the payment of the vacation fund, total social insurance and accident insurance contributions from the respective competent agencies, offices and authorities and alike. a

### 18. Confidential Information and Data Protection

- 18.1 In the performance of this Agreement, the Parties will have access to each other's Confidential Information. The use of confidential information is only permitted within the scope and for the purpose of the agreed activities. The parties undertake to treat the confidential information received as confidential.
- 18.2 "Confidential information" is economically, legally, fiscally or technically sensitive or advantageous information that becomes known to the parties. Confidential information also includes information that is identifiable in any way as "confidential" or "legally protected" or whose confidential content is obvious. "Personal data" within the meaning of Art. 4 No. 1 GDPR shall be understood as confidential information.
- 18.3 Exempt from the confidentiality obligation is (i) information that is publicly known or becomes generally known without any conduct in breach of duty on the part of the recipient, its bodies, employees, advisors or other representatives and (ii) information that is already known to the recipient at the time of disclosure without any obligation of confidentiality on the part of the recipient.
- 18.4 The Parties undertake to comply with the statutory and contractual provisions on data protection when processing the confidential information. This includes (i) the obligations of a data controller under data protection law (Art. 24 GDPR), (ii) the data protection principles (Art. 5 GDPR), (iii) the adoption of state-of-the-art technical security measures (Art. 32 GDPR) and (iv) the obligation of employees to maintain data secrecy (Art. 5 (1) lit. f GDPR). If a party is or becomes a processor within the meaning of Art. 4 No. 8, 28 GDPR, it shall separately conclude a



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commissioned processing agreement with the MC for the respective service provision.

- 18.5 The duty of confidentiality does not apply to information that the recipient is required to disclose in fulfilment of legal, judicial or other mandatory official obligations. In this case, the recipient shall, to the extent permitted by law, immediately inform the other party in writing prior to disclosure and, within the scope of existing possibilities, take measures in consultation with them to prevent or minimize disclosure.
- 18.6 The disclosure of information provided to third parties shall only be permissible in compliance with the provisions of data protection law and provided that (i) such third parties are external consultants who are obliged by law or by professional ethics to maintain confidentiality, (ii) the third party is required by the SC for the relevant performance of the contract and is subject to comparable confidentiality obligations, (iii) the party providing the information consents in writing to such disclosure or (iv) to companies affiliated with the recipient within the meaning of §§ 15ff of the German Aktiengesetz (AktG), provided that such companies are subject to comparable confidentiality obligations.
- 18.7 After termination of the Agreement, at the latest within fourteen (14) days after written request by the party providing the information, the Recipient shall return to the party providing the information all available Confidential Information and further documents produced on the basis of this information or confirm in writing the destruction of the information and documents. This shall not apply if and to the extent that there is an obligation to retain the information by law or on the basis of an official or court order and in the case of automated back-ups.
- 18.8 The MC shall be entitled to monitor compliance with this confidentiality agreement to the necessary extent or to have it monitored by a third party obliged to maintain confidentiality. The SC shall cooperate to the best of its ability in this respect and grant corresponding access.
- 18.9 The obligations in this paragraph "Confidential Information" shall continue to apply after termination of this Agreement for a period of 5 years or, in the case of personal data, indefinitely.

### 19. Other

- 19.1 Claims of the Subcontractor against the MC arising from this contractual relationship may only be assigned or pledged to third parties with the consent of the MC.
- 19.2 Offsetting against counterclaims of the Subcontractor is excluded, unless these are undisputed or have been legally established.

### 20. Place of Jurisdiction / Applicable Law

- 20.1 In commercial business transactions, the place of jurisdiction shall be the registered office of MC.  
German law shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

### 21. Severability Clause

- 21.1 Should any provision of these contractual terms and conditions or of the contractual bases referred to in Section 1 be invalid, this shall not affect the validity of the remaining provisions.

### 22. Code of Conduct for Suppliers (SCoC) and Business Conduct

#### 22.1 Code of Conduct for Suppliers

The SC is obliged to comply with the SCoC. The current version of the SCoC is enclosed to these Conditions for Subcontractors and can be viewed on the website of the MC.

The SCoC sets forth the minimum standards. If and to the extent compliance with the SCoC would violate applicable law, applicable law shall prevail.

The MC shall have the right to amend the SCoC in the event of any changes in legal, administrative or institutional requirements, jurisprudence or ethical business principles. The MC shall inform the Subcontractor of any amendments to the SCoC.

#### 22.2 Right of Termination

The Subcontractor acknowledges and agrees that any breach of the provisions under this Clause (SCoC and Business Conduct) shall be deemed a material breach of the Contract, entitling the MC to termination of Contract at any time and with immediate effect, without any obligation to pay any outstanding compensation or make any other payments to the SC. Furthermore, the MC shall not be obliged to compensate for any damage or loss suffered by the Subcontractor as a result of a termination under this Clause.