

## **International Terms and Conditions Industrial and Code of Conduct for Sub-Contractors (SCCI - International)**

### **1 Integral parts of the contract**

1.1 In the event of contract award integral parts of the contract shall be the documents listed under Clause 1 of the Tender Negotiation Report.

1.2 If no special agreement is made with regard to the SC's terms and conditions of delivery, installation, sales or payment, etc., these shall not be deemed to be an integral part of the present contract. The same applies to provisos, assumptions, restrictions and such like stated by the SC before the negotiations.

1.3 Should any provisions of the present contract be void, the remaining provisions shall remain in force.

### **2 Performance - Remuneration**

2.1 The unit or lump-sum prices shall cover all work including ancillary work performed by the SC which is required for the full achievement of the object of the present contract. This applies in particular to all wages, salaries, surcharges, costs, licences, fees, duties and relevant taxes. The prices also cover the SC's costs for instructing Employer's personnel in the operation and maintenance of the materials delivered or installed by the SC.

2.2 The entire risk for waste, use, breakage, theft, etc. of the materials shall be borne by the SC and shall be covered by the contract price.

2.3 If, as a result of a variation or a contract addendum regarding to Clause 16 SC has a right of a variation of the contract price, the price of the variation shall be determined or evaluated based on the prices included in this contract or shall be an equitable amount which shall be determined by MC.

2.4 If a lump sum has been agreed as remuneration, it shall remain unchanged. If, however, the work executed differs from the work provided for in the contract to such an extent that SC or MC cannot be reasonably be expected to be bound by the lump sum, then compensation shall be granted on request to allow for the increase or reduction in costs. The amount of compensation shall be determined on the basis of the original price calculation (Clause 16 and Clause 2.3 above remain unaffected).

2.5 No additional compensation shall be recognized, for the following:

a) necessary modifications by SC of Work already executed by SC which do not comply with the technical documentation of the project or which are necessary to correct Sub-contractor's mistakes or omissions, or necessary to correct work which have not been carried out in a workmanlike manner by SC;

b) a modification which SC has commenced work upon without having received a specific written request to do so from MC (Clause 2.6 remain unaffected);

c) necessary modifications to correct mistakes caused by SC's failure to identify errors or inconsistencies in the technical documentation issued by MC.

The costs of such modifications are at full SC's charge because such modification could have been avoided if SC had carried out suitable checks and controls before of proceeding with the prefabrication and/ or assembly work.

2.6 Work executed by SC without instructions to do so, or as an unauthorized variation from the provisions of the contract, will not be remunerated. SC shall undo the work on request within a reasonable period; otherwise, this may be done at his expense. SC shall also be liable for any consequential damages which MC may suffer.

However, SC is entitled to receive remuneration for such work if MC subsequently accepts it. SC is also entitled to remuneration if the work was necessary for the completion of the contract, might be considered to comply with the presumed intention of MC, and if the latter was given immediate notice of it. If SC is entitled to remuneration, Clause 16 and Clause 2.3 above shall apply.

2.8 Should it turn out in the course of a subsequent check that already signed hourly wage slips relate to contractual work (including supplementary payments), these shall not be paid. In the case of double payments, Clause 13.4 2<sup>nd</sup> sentence shall apply.

### **3 Execution documents**

3.1 The SC shall request the Main Contractor (MC) to provide all documents necessary for the execution in good time and shall check them for completeness and correctness immediately upon receipt. All dimensions given in the execution documents, insofar as they relate to the work to be performed by the SC, are to be checked by the SC and/or re-checked or taken at the building. The SC shall inform the MC of any inconsistency without delay. If production is to be performed according to mandatory measures, tolerances are to be laid down in agreement with the MC. Should the SC fail to perform these obligations it shall be liable for all disadvantages suffered therefrom by the MC or itself.

3.2 Publications regarding the work of the SC or parts of the construction project shall only be allowed after prior approval by the MC. This shall also embrace details on procedures or the passing on of drawings and illustrations.

The SC shall undertake not to pass on to third parties any trade secrets or confidential details becoming known to him for instance in connection with this subcontract. In the event of breach the MC shall be entitled to damages and to revocation of the contract.

All drawings, calculations, certificates and other construction documents handed over to the SC shall remain the exclusive property of the MC. They may only be used within the scope of the contract concluded and may neither be published nor made available to third parties without the prior approval of the MC.

- 3.3 Unless they are to be provided by the MC, the SC shall draw up and submit in good time all the calculations and drawings required for work without special remuneration. This applies in particular also to the required installation/shop drawings, the necessary calculations and all information relating to the SC's deliveries and services which are of importance to other trades and to other works. The SC shall include the costs thereby incurred in its price calculation.  
After conclusion of the present contract, the SC shall submit to the MC all planning documents, insofar as these are in its responsibility, for slits, block-outs, service ducts and detail drawings of the works which are its responsibility. All information required by the SC for recesses, slits, operating facilities, etc. are to be laid down in good time in agreement with the MC. Costs incurred because of erroneous, forgotten or late information supplied by the SC shall be borne by the SC.
- 3.4 Even after submission to the MC, the SC shall remain responsible and liable for the completeness and correctness of the aforementioned calculations and drawings to be provided or drawn up by it. This shall apply even if the MC has expressly released or approved such documents for execution.
- 3.5 The MC may use the documents that may have to be drawn up by the SC for the respective construction project without having to pay additional remuneration.
- 3.6 If particular official approvals, permits or acceptances are required for the tendered work these must be obtained or arranged for by the SC in good time and without any extra payment. Written documents and acceptance certificates shall be submitted unsolicited to the MC in sufficient number.
- 3.7 All surveying work required for performing the SC's work is to be done by the SC on its own responsibility. Surveying points are to be adequately secured even if they were not laid down by the SC.
- 3.8 The SC shall inform itself adequately and in good time of the location of the construction site, its accessibility and of all the facts necessary to the performance of its work. In particular, it shall be responsible for obtaining information from the offices/ and/or authorities concerned regarding the presence and the position of all supply and disposal ducts, cables and the like in its area of work.

#### **4 Performance of the work**

- 4.1 The SC shall name its site-manager in charge prior to commencing the work and provide him when work commences. Additionally an authorized representative of the SC is to be named who is authorised to make and receive all declarations on the SC's behalf for the entire handling of the contract, and, where necessary, to have work performed immediately.
- 4.2 If the MC so requires, the SC shall keep a formal construction logbook in accordance with the MC's instructions, and submit it to the MC daily.
- 4.3 In particular cases, the MC may require the SC to attend meetings with the Employer in matters which relate to the scope of the SC. Direct negotiations between Employer and SC relating to the scope of work under the present contract are not permissible.
- 4.4 The place for site installation equipment and storage of material shall be assigned by the MC in accordance with existing facilities. Any necessary moves and transfers shall not be additionally remunerated. If the MC supplies electric power and water, this shall be done from the mains, and unless otherwise agreed in the Tender Negotiation Report against payment. The SC shall provide installations to the points of use including illumination of workplaces and sufficient lighting to prevent accidents along all access routes used by the SC, and this without additional remuneration.
- 4.5 The SC shall itself be responsible for the safekeeping and storage of its materials and equipment in compliance with regulations. The MC accepts no liability whatsoever in this regard. The SC shall drain the daily and surface water which impairs its work without additional remuneration. It is the SC's responsibility to protect its work from damage, loss and soiling and to maintain it up to acceptance.
- 4.6 The SC shall be responsible for the accommodation and transportation of its workers and materials unless otherwise agreed in the Tender Negotiation Report. It has no entitlement to use existing buildings and facilities within the construction site. The SC shall comply with the relevant regulations relating to hazardous substances when it transports materials.
- 4.7 With regard to facilities (e.g. water, electric power, etc.) provided by the MC the SC shall pay a share of the costs as separately agreed. Should the SC require billing on the basis of actual consumption, then it must provide the required meters at its own expense.
- 4.8 Samples and specimens of materials and parts which the SC plans to use are to be delivered and installed by it on request by the MC. The costs thereof and of any test and manufacturing certificates shall be borne by the SC.
- 4.9 With respect to all transport services connected with the present contract, the SC shall be solely responsible for compliance with the official regulations of the countries in which the transportation takes place. The SC shall be responsible for the smooth regulation of all construction site traffic in its care (in particular at entrances and exits) in compliance with statutory road traffic regulations.
- 4.10 With respect to construction materials and consumables, statutory regulations regarding hazardous materials shall be complied with. Certificates relating to the manufacturers and the composition of the materials used, and safety specifications for hazardous substances are to be submitted to the MC within two weeks after being requested.
- 4.11 The MC may require the SC to remove workers who are unqualified or personally unsuitable or who do not comply with the obligation to wear safety clothing or cannot produce a valid work permit from the site and to replace them by others.
- 4.12 To prevent accidents in connection with the performance of its work the SC shall comply with statutory construction site regulations and with all provisions of statutory accident prevention regulations applicable to it and with a safety plan, if such exists. Before using scaffolding or installations belonging to others, the SC must examine them on its own responsibility.



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- 4.13 The SC shall obligate its personnel assigned to the site to wear personal protection equipment (e.g. helmets, safety footwear). Personnel who are not subject to German occupational accident insurance regulations shall be subject to the accident prevention regulations of the country in which the work is performed or the construction site regulations. The stricter of the two shall apply. The SC shall provide an adequate amount of protective clothing. The SC's personnel who fail to wear the required protective clothing may be sent off the construction site.
- 4.14 Insofar as protective and safety facilities are provided by the MC, these shall be jointly inspected for acceptance when they are handed over to the SC. They are to be maintained by the SC on its own responsibility and supplemented where necessary. The SC shall return them to the MC in good condition after completion of the work. Existing protective coverings, banisters and the like which must be removed temporarily to permit performance of the work are to be duly replaced. As long as they are removed, all hazardous places must be closed off by other suitable measures and warning signs put up to prevent accidents.
- 4.15 Four weeks before taking up the work the SC shall submit the names of the assigned workers to the MC's site management. A foreman is also to be named.  
Unless otherwise provided for in the Tender Negotiation Report the employees to be engaged by the SC must be well up in the English language.
- 4.16 The SC is permitted to assign contractual work to third parties only with the MC's written consent. This also applies for each assignment of work by the SC to further subcontractors and manpower hiring agencies, even if this happens in the context of successive further subcontracting under a so-called subcontractor chain.
- 4.17 The planning and performance of the work shall take into account the geographic and climatic conditions of the country or region in which the project is performed.  
The SC is aware that it is to provide performance abroad under the risks that this entails, as for example other climatic conditions, more difficult means of communication with its own company's head office, longer delivery dates for its own material and equipment.
- 4.18 The SC shall inform the MC in writing of replacement deliveries (e.g. on account of theft) prior to their shipment.
- 4.19 Insofar as the GC locally provides facilities such as workshops, medical facilities, canteen/club house, supermarket, telecommunication facilities, copiers or the like, the SC may use them against payment without any obligation on the GC's part to make them available. Before making use of them the SC shall consult with the person who has the local technical or commercial authorisation.
- 4.20 The SC shall name an employee in writing who is authorized for the respective locality to ask for and accept cash payments in the local currency.
- 4.21 The SC shall give written notice of material testing and QC works inspection by the MC or its authorized representative which are required as part of the quality control procedure 14 days in advance of the delivery date. If delivery is delayed the SC shall inform the project management or the named QC inspector of the MC without delay.  
All costs incurred by the SC through material testing and QC works inspections are covered by the other prices. Excepted therefrom are the costs for personnel and travelling expenses of the MC and its authorized representative.  
The so-called QC works inspections are solely quality control measures having no effect on the warranty provisions.

## **5. Waste disposal – Cleaning**

- 5.1 The SC shall keep the construction site in good order, and constantly remove rubble and dirt caused by his work from the construction site without being specially requested to do so and free of charge. After termination of its contractual work, storage and work places are to be cleared as well as the construction site itself, and returned to an orderly condition.  
Should the SC fail to fulfil these obligations within a term set by the MC the MC shall have the right to perform the necessary measures itself or to commission a third party to do so, and to charge the SC for this work. Damage or additional expenses resulting from unauthorised use of waste containers set up by the MC (e.g. expenses for sorting, higher dump fees) shall be charged to the SC.
- 5.2 The SC shall prevent or immediately remove any damage or dirt caused by construction site traffic on the public and private roads including footpaths. This applies also to the vehicles of the SC's suppliers. In such cases the SC shall be held liable as if the fault were its own. Should the SC fail to fulfill a request from the MC to clean up within a reasonable set period, the MC may perform the elimination itself or have it performed by a third party. In either case the SC shall bear the costs.

## **6 Performance Deadlines – Contract Penalty - Substitute Performance**

- 6.1 All agreed deadlines - including intermediate deadlines - are contractually binding (contractual deadlines).
- 6.2 If requested by the MC, the SC shall draw up a detailed construction time schedule which takes the agreed contractual deadlines into account. It shall submit it to the MC and co-ordinate it with the latter.
- 6.3 In the event of delay, the SC shall pay a contract penalty for every day it exceeds a deadline in the separately agreed amount. Unless otherwise agreed, the contract penalty shall apply to all contractual deadlines. The reservation of the right to the contract penalty may be declared up to the date on which final payment is due.
- 6.4 If the MC claims compensation the contract penalty imposed shall be taken into account.
- 6.5 The MC reserves the right to change the time schedule. In this case, new contractual deadlines shall be agreed. The right to contract penalties for contractual deadlines which have been exceeded shall not be forfeited by newly agreed deadlines.
- 6.6 If the SC for reasons within its scope of risk not be in a position to perform the work as required by the contract, thereby giving rise to a risk that contractual deadlines will not be met, then, following written admonition, the MC shall have the right even without partial termination of contract, to perform those parts of the work which are delayed, either itself or to have them



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performed by third parties. The SC shall be entitled neither to remuneration nor to damages for those parts of performance which have been withdrawn.

## **7 Obstruction**

- 7.1 The SC shall perform its work in such a manner that other companies working on the site are neither obstructed nor suffer losses. It must adequately ensure in good time that all the necessary notifications and/or coordination is made regarding the time related work process.  
If other firms engaged in the construction works are hindered by or suffer damage through the SC, the SC shall hold the MC harmless from all claims which these firms lodge against the MC.
- 7.2 If SC considers that he is being obstructed in the proper execution of the work, he shall inform MC without delay. This applies also to obvious obstructions.
- 7.3 SC shall do everything that can reasonably be expected of him to enable work to continue. As soon as the cause of the obstruction has been resolved, he shall resume work without further prompting and notify MC accordingly.
- 7.4 In case that SC was able to continue his work at least in part in spite of the obstruction, then MC and SC will jointly try to settle the consequences of the obstruction, if applicable taking any restrictions into account that resulted from the obstruction. If the parties are unable to agree, MC will decide at his own reasonable discretion on a settlement of the consequences resulting from the obstruction.
- 7.5 In the event SC believes that an obstruction affects the work to the extent that SC has a right of variation of the contract price and/ or the scheduled completion date Clause 16 shall be applicable.
- 7.6 Minor obstructions such as are normal in the construction business do not entitle the SC to any claims against the MC. If it is evident that an obstruction or interruption has more than slight consequences, the SC shall inform the MC in writing thereof without delay. Should it culpably fail to make this notification, it shall indemnify the Customer for all damages and losses resulting therefrom.
- 7.7 If the SC is impeded in performing its works by other subcontractors or third parties without the MC being responsible for this, any claims for compensation of the SC against the MC shall be limited to the amount which the MC can assert against the subcontractors or third parties.

## **8 Acceptance**

- 8.1 The SC shall give notice of completion of its work to the MC in writing.
- 8.2 Prior to acceptance the SC shall inspect its work to ensure completeness and lack of defects and shall perform any residual and refinishing work. Furthermore, a complete document file is to be handed over to the MC prior to acceptance. This must contain all the consents, acceptances, approvals, test certificates, calculation documents, operating instructions and as-built-drawings to be obtained by the SC, and a list of the manufacturers of the materials used by the SC. Unless otherwise agreed, as-built-drawings shall be handed over in the form of transparencies and three-colour prints (including any wiring diagrams).
- 8.3 A formal acceptance shall take place. However, insofar as the SC's work has been agreed to be accepted only when the entire performance of the MC is accepted by the Employer, it will normally suffice for the MC to forward extracts of the overall acceptance certificate to the SC. In this case, the acceptance date and any reservations on the part of the Customer shall apply also in respect of the SC. However, the SC may also insist on a separate formal acceptance of its performance provided it notifies the MC in its written notice of completion.
- 8.4 Acceptance before expiry of the agreed term of performance, partial acceptance and the fictitious acceptance are barred.

## **9 Warranty Claims**

- 9.1 The period for warranty claims is limited to sixty-one (61) months (warranty period), unless a different period has been explicitly agreed by the parties. The period starts with handing over the complete and free of defects goods, respectively with the complete and duly acceptance.
- 9.2 If defects are already detected during the execution of the works MC can rectify the defects at the expense of SC if the adequate deadline fixed by MC for the rectification of the defects has elapsed without effect.
- 9.3 SC is obliged to make good at his own expense all defects occurring during the warranty period attributable to improper performance if MC so requires in writing prior to expiry of the warranty period. Any claim for the making good of such defects shall become invalid by prescription on expiry of a period of two (2) years, calculated from the receipt of the written demand, but not prior to expiry of the period specified in Sub-Clause 9.1 above. After the work carried out to make good the defects has been accepted, the warranty period shall restart.  
If SC fails to comply with a demand to rectify the defects within a reasonable period set by MC, then MC shall be entitled to rectify the defects at the expense of SC.  
If it is unreasonable to expect SC to rectify the defect, or if SC refuses to do so because it would be disproportionately expensive, or if the defect cannot be rectified at all, MC may notify to SC that he will reduce the remuneration due in the proportion which, at the time when the contract was entered into, the value of the work in a state free of defects would have had to the actual value.
- 9.4 The SC shall comply with relevant quality management (QM) rules and regulations. The MC has the right to examine the SC's work in this respect and to document this.
- 9.5 In the event that the SC is awarded the contract it hereby assigns to the MC all warranty, guarantee and damages claims against its sub-contractors and suppliers arising through the performance of the contract. The MC accepts the assignment. The MC authorises the SC to collect the assigned claims in its own name and for its own account until such time as such authorisation is revoked. In the contracts with its sub-contractors and suppliers the SC shall provide for the assignment of claims to the MC and shall commit said sub-contractors and suppliers should they further subcontract contractual works to



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other sub-contractors and suppliers to likewise reach agreement with these on an assignment of the warranty claims to the MC. The SC's defects liability shall not be affected by the above assignment. In the event that warranty claims are made, however, the SC can require that the assigned claims against the sub-contractors and suppliers be reassigned back to it.

## **10. Liability of the MC within the scope of social insurance: Termination, Damages, Provision of Security, etc.**

### **10.1 Liability**

In a number of countries a contractor which awards a construction contract is liable towards the appropriate offices pursuant to the social insurance provisions in force that are relevant for subcontractors and the work performed by them for the payment of all the social insurance and personal accident insurance contributions of the subcontractors engaged by the contractor to perform construction works if subcontractors do not pay their contributions. For example such liability exists in Germany pursuant to §§ 28e para. 3a SGB IV, 150 para. 3 SGB VII. The contractor can bear the same liability for manpower hiring agencies commissioned by the subcontractor.

### **10.2 Warrant: Obligation to inform and present proof**

The SC warrants that it will comply in full with the provisions of the social insurance laws pertinent to the SC and the work performed by it, in particular to duly comply with its obligations to pay the contributions to social security and personal accident insurances.

Pursuant to Item 13 of the Tender Negotiation Report the SC shall hand over to the MC the documents and evidence listed therein at the handing-over date stated therein.

In the event that the works under this contract or parts thereof are further subcontracted and in the event that manpower hiring agencies are commissioned the SC shall expressly commit its subcontractors and manpower hiring agencies to comply with the provisions of the social insurance laws. In the event of successive further subcontracting by way of a sub-contractor chain the SC undertakes to ensure by contractual agreement that all sub-contractors and manpower hiring agencies fulfill this obligation. The requirement of written approval by the MC to each further subcontracting of work shall not be affected thereby.

Both when the SC itself performs the construction works and when they are passed on to other subcontractors or when a hiring firm has been commissioned the SC shall inform the MC of the names and length of employment and also the responsible collecting office of the social security and personal accident insurances for the employees respectively required to execute the works; in the case of the supply of temporary workers it shall supply in addition the names, etc. of the temporary workers and if a foreign subcontractor is engaged the names, etc. of the foreign employees engaged in the sphere of operation of the statutory provisions. The SC shall inform the MC immediately of any alterations.

### **10.3 Termination and Damages**

Should the assurances and obligations to inform and present evidence stated in Sub-clause 10.2 not be fulfilled the MC shall be entitled to terminate the Contract for good cause irrespective of an agreed contractual penalty and to have the uncompleted part of the services executed by a third party at the expense of the SC. The claims of the MC for reimbursement of further damage shall remain unaffected. Imposed contractual penalties shall in this case be taken into account as minimum damage.

### **10.4 Security**

Should a retention be agreed as security for the fulfillment of the contractually stipulated indemnity obligation of the SC for claims of the social insurance systems against the MC, the security shall be reduced if and insofar as the SC provides proof that it and also all other companies engaged in performing the contract for which the MC is liable as guarantor have fulfilled their obligation to pay contributions to the social security and personal accident insurances. In the case of a cash retention the MC undertakes to pay the released amount without delay.

Should the indemnity obligation of the SC be secured by a contract performance guarantee to be provided by the SC, the contract performance guarantee shall be released by the MC with respect to the amount in excess of the percentage contractually agreed upon in item 10.3 of the Tender Negotiation Report as soon as all other contractual prerequisites for this – with the exception of the indemnity obligation of the SC provided for above – are on hand. A further release of the security shall only take place to the extent in which the SC provides proof that it and all other companies engaged in the performance of the contract, for which the MC is liable as guarantor, have fulfilled their obligation to pay contributions to the social security and personal accident insurances.

### **10.5 Authorization to gather information**

The SC shall empower the MC to gather information about the payment of the social security and personal accident insurance contributions from the respective responsible collecting office.

## **11. Sureties**

### **11.1**

In order to cover all claims of the MC arising from or in connection with the subcontract, in particular claims for completion, including the completion of addenda, compensation, contractual penalty, indemnity and reimbursement of excess payments, the SC shall immediately after conclusion of the contract provide a performance bond from a reputable bank or insurer in the EU which shall be liable as a principal. The bond must be without time limit and include a waiver of defence of set-off and contestability (Article 770 BGB) unless the counterclaim to be offset is undisputed or legally binding, and a waiver of the right to deposit the guaranteed amount. The bond must contain the reference that the claim from the bond shall not expire before the secured claim; § 202 II BGB shall remain unaffected. The amount guaranteed by the bond must amount to 10% of the total for the order unless otherwise agreed.

### **11.2**

The SC shall have the right to redeem the amount retained for warranty claims pursuant to Clause 13.2, however only through a bond issued by a reputable bank or credit insurance of the EU. The bond serves to cover all warranty claims of the MC arising from or in connection with the Subcontract. Clause 11.1 shall apply accordingly to the content of its bond.

The MC shall return a security for warranty claims which has not been used upon expiry of the agreed period of limitation for warranty claims. However, in as far as the MC's claims have not yet been fulfilled at this time it may retain a corresponding part of the security.



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- 11.3 In as far as the MC and the SC have agreed on an advance payment the SC is committed in order to cover any possible claims for repayment by the MC to provide an advance payment bond as prescribed by the MC in the amount of the advance payment. Regarding the content of the advance payment bond Item 11.1 shall apply accordingly with the additional requirement that it must be a bond payable on first request. The advance payment bond must be issued by a reputable bank or insurer of the EU and be handed over to the MC before the advance payment is made.

## **12 Liability, Insurance**

- 12.1 With respect to the MC, the SC shall be held responsible and liable for all accidents, damage and disadvantages caused to the MC itself or to third parties in the course of performing the present contract if the SC is responsible for their cause. To this extent it shall also save the MC harmless from third-party claims.
- 12.2 Immediately after the contract is concluded the SC shall submit proof to the MC of third-party liability insurance with adequate coverage and of its maintenance during the construction period. The third-party liability insurance, for which proof has to be submitted, must embrace an extended product liability insurance unless the work of the SC only covers the installation, assembly, repair or maintenance of products manufactured and supplied by third parties or the supply of instructions regarding such products. Unless otherwise agreed, the minimum coverage must be in the following amounts for:

<u>Construction industry proper</u>	<u>Industries allied to the construction industry</u>
€ 2.500.000,- for personal injury	€ 2.500.000,- for personal injury
€ 2.500.000,- for damage to property and processing damage	€ 2.500.000,- for damage to property € 250.000,- for processing damage

The insurance coverage shall also embrace accidents, damage and detriments occurring in the country where the works are performed.

- 12.3 The extent of the SC's liability shall not be limited to the insurance coverage. The lack of an insurance policy entitles the MC, after fruitless admonition and setting a period of grace, to terminate the contract or to take out third party liability insurance in favour of the SC and at SC's expense, to an amount corresponding to the non-substantiated amount of coverage.
- 12.4 If the Customer or the MC takes out third party liability insurance for a specific property including the SC risk, then the SC shall pay its share of the premium and the agreed deductible portion.
- 12.5 The SC shall notify the MC immediately of any damage to the construction work performed. Insofar as the SC does not comply with this obligation it shall bear all damages and disadvantages arising therefrom itself. The SC shall bear the cost of deductibles.
- 12.6 The contractor bears the risk until acceptance of the work.
- 12.7 Equipment, tools and other property of the SC are also not insured by the MC during storage and use on the construction site. The SC is obliged to arrange with its insurer a waiver of the latter's right of recourse against the MC.
- 12.8 If under the contract the MC takes on transport services for the SC, the MC shall at its own cost take out a transport insurance which covers the stretch between the location at which the MC takes over the goods and the location on the construction site at which the goods are handed over as substantiated in writing. The SC shall bear the risk and the costs for all damage and losses which are not covered by the transport insurance.

## **13 Invoicing – Payment**

- 13.1 Unless a lump-sum price has been agreed, invoicing shall take place following mutually accepted measurements of quantities. Verifiable invoices are to be submitted in duplicate and must show the project designation, the project number, the work performed and all payments received.
- The final invoice is to be submitted without delay, but not later than fourteen (14) working days after acceptance of work.
- 13.2 The final payment shall be made deducting the amount to be retained for warranty claims which is to be agreed. The payment of the amount to be retained into a frozen account is herewith ruled out by mutual agreement. Should the amount agreed as security fail to be covered either wholly or in part by the residual claim, the SC shall refund a corresponding amount.
- 13.3 All payments shall be made by remittance.
- 13.4 The acknowledgement and the payment of the final invoice shall not preclude claims to refunds on grounds of erroneously charged work and claims. The objection not to be in the possession of the value of the payment received any more shall be barred. In cases of excess payment, the SC shall refund the excess amount paid plus 5% interest since payment, unless higher or lower benefits therefrom are proved.
- 13.5 All services of the MC of which the SC avails itself in the country where the project is performed shall be offset against contractual payment claims in EURO. This shall also apply to costs incurred in local currency. These shall be converted for settlement at the mean exchange rate applying in the respective month.

## **14 Work on an hourly rate basis**

- 14.1 Work on an hourly rate basis may be performed only on written instruction from the MC, proof thereof must be given daily and the proof countersigned by the MC. The hours of daily work can be signed only by the MC's site management. The amount to be paid as an hourly rate shall be separately agreed by the MC and the SC.
- 14.2 Should it turn out in the course of a subsequent check that already signed hourly wage slips relate to contractual work (including supplementary payments), these shall not be paid. In the case of double payments, Clause 12.5 shall apply.

## **15 Termination of the Contract**

- 15.1 MC may terminate the contract at any time before completion of the work. Upon termination of the contract, SC shall be entitled to be paid the work executed prior to the date of termination, less such sums SC has already received on account and further less any sum which is recoverable at the date of termination by MC from SC. He shall, however, accept that his savings on outgoings as a result of the cancelled contract be set off, as shall the sums which he can earn from the alternative



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deployment of his workforce and business operations, or which he willfully fails to earn. In the event, that MC terminates the contract in whole or in part, SC shall not be entitled to claim for loss of profits, if he has at the same time another contract of the same value.

- 15.2 MC may terminate the contract, if SC suspends payments, declares insolvency or applies for similar legal proceedings to be initiated, or if the initiation of insolvency proceedings is refused because of lack of assets.
- 15.3 The work performed should be settled in agreement with the contract prices. With regard to the outstanding services MC is entitled to claim damages for failure to perform.
- 15.4 Termination has to be notified in writing.
- 15.5 If SC is incapable to execute his work in agreement with the contract and within the terms specified in the contract and if this causes a risk of exceeding the terms of completion, then, after having notified SC of the failure and having set a last period of grace, MC is entitled to execute or to have executed the uncompleted part of the work by a third party at Subcontractor's expense, without giving notice of termination for the respective part of the contractual work.
- 15.6 The right to exceptionally terminate the contract exists on the part of the MC if the SC fails to comply with the statutory regulations relevant to the performance of its work (e.g. relating to work permits, the payment of taxes and social security contributions, leased workers) or if it cannot furnish or cannot furnish in good time the proofs which the MC can require under the provisions of the contract, and the MC or the performance of construction work is thereby under threat of substantial disadvantages.

## **16 Variations/Contract addendum**

- 16.1 3.1 MC is entitled to:
  - a) make changes to the technical documentation;
  - b) require the modification of work elements already completed or in progress or of work to be executed;
  - c) require the execution of any additional work relevant to or in connection with the project in accordance with and subject to the provisions of this Clause 2 and Clause 16.In particular, but without limitation, MC has the right to make, and SC has the obligation to comply with, any request for changes or variations which are additions, deductions or modifications to the work executed or to be executed.
- 16.2 Following a request for a variation, SC must prepare an estimate of the possible effect of the variation on the contract price or the schedule completion date. When the agreement on the effect of the variation on the contract price is reached, SC must immediately start the execution of the variation and MC shall issue a written order in respect of the variation, which shall be used for the relevant contract addendum.
- 16.3 MC may, when he deems it necessary for the good execution of the work, make a re-quest in writing for SC to execute a variation with immediate effect. In which case, Sub-contractor must execute the variation even if the price of the variation has not yet been agreed upon. Clause 2.3 shall be applicable.
- 16.4 Variations to the contract price and the scheduled completion date shall only be valid if a contract addendum is issued in respect thereof. The pricing of the variations of the contract price are subject to Clause 2.

When additional time is negotiated and granted in respect of a request for variation, such additional time includes the cumulative effects of all the variations previously authorized by MC, and there can be no further negotiations for further additional time in respect of that variation.

- 16.5 In the event SC believes that any instructions, interpretations or decisions received from MC and any other act of MC affects the work and should be considered as a variation, and MC does not issue the relevant written order or contract addendum, SC is entitled to make a formal written request for a contract addendum by mailing a letter or a fax within seven (7) days starting from the date of the event on which the request is based. SC shall provide a relevant detailed estimate for the effect on the contract price and the scheduled completion date as soon as possible. If SC fails to make the aforementioned formal written request in respect of a variation or other circumstances, SC shall not be entitled to a contract addendum and losses the right to apply for variation to the contract prices or schedule completion date on the basis of such variation or other circumstances even if such variation or other circumstances is known or ought to be known.

## **17 Miscellaneous**

- 17.1 The SC's claims against the MC under the present contract may be assigned or pledged to third parties only with the MC's consent.
- 17.2 The offsetting of counterclaims of the SC is barred, unless these are uncontested or have been confirmed by a decision in accordance with Clause 17 which is final and legally binding (res judicata).

## **18 Applicable law/place of jurisdiction**

The contract is subject to the law of the Federal Republic of Germany. In performing the works the relevant laws and regulations of the country in which the project is being executed shall be complied with.

The courts of Mannheim, Germany shall have exclusive jurisdiction over any disputes arising out of or in connection with this contract.

## **19 Code of Conduct for Subcontractors and Suppliers**

The SC shall abide by the following Code of Conduct for Subcontractors and Suppliers.

## **20 Assignment of personnel abroad**

- 20.1 The SC must comply in all respects with the laws and any official regulations issued by the authorities of the country in which the project is performed. It shall not involve itself in political or religious matters, shall not engage in trade, shall accept no

benefits from third parties, shall accept no sideline work or offices outside the present contract without the MC's written consent, and shall respect the manners and customs of the country.

The SC shall strictly adhere to the respective construction site and camp rules.

The MC prohibits the SC from taking weapons into the country where the project is being performed and from carrying weapons there.

The SC shall ensure that the employees to be engaged by it shall also comply with the above regulations.

In particular, in cases of breaches of the above provisions, the MC shall have the right to have SC's personnel replaced within fourteen (14) days. The costs shall be borne by the SC.

Moreover, in the event of any contravention of the present provision by the SC or the employees to be engaged by it the SC shall hold the MC harmless.

- 20.2 The SC shall perform the work on its own responsibility. It shall be responsible for taking out accident, medical, pension, aged care and unemployment insurance for personnel assigned by the SC, and for providing proof of their fitness for work in the tropics.

Unless sufficient coverage is provided by a medical insurance covering illness abroad, the SC shall provide sufficient insurance coverage for ambulance flights.

- 20.3 The costs of necessary trips by the SC's supervisory staff to meetings with the MC's senior site management in Germany and in the country where the project is performed belong to the scope of work of the SC's contractual performance.

Any changes in the SC's personnel, in particular in technical site management, must be made in consultation with the MC site management. The incurred travel expenses shall be borne by the SC. In the event of longer interruptions of work, the MC shall be entitled to require the repatriation of the SC's personnel. In this case travel expenses shall be borne by the MC.

- 20.4 Unless otherwise agreed in the Tender Negotiation Report, the SC on its own responsibility has to obtain all consents and approvals which are required for an assignment of personnel to the country where the project is performed.

## Code of Conduct for Subcontractors and Suppliers

Bilfinger SE and its group companies (hereinafter "Bilfinger") are bound by the principles of ethical behaviour, integrity and compliance. Adherence to the Code of Conduct and the Compliance Guidelines of Bilfinger<sup>1</sup> as well as the principles of the United Nations Global Compact Initiative<sup>2</sup> (Global Compact Initiative) is mandatory for all Bilfinger employees.

Also from its subcontractors and suppliers, Bilfinger expects integrity and ethical, law-abiding behaviour in line with the Global Compact Initiative and the minimum standards set out below.

### Counteracting Corruption

- Subcontractors and suppliers actively and consistently counteract criminal or unethical influence on decisions taken by Bilfinger or other companies and institutions and fight corruptibility within their own companies.

### Counteracting Bid Rigging

- Subcontractors and suppliers do not participate in anti-competitive bid rigging and take action against illegal cartels.

### Counteracting Illegal Employment

- Subcontractors and suppliers comply with the applicable legal requirements and effectively eliminate illegal employment.

### Respect for the Fundamental Rights of Employees

- Subcontractors and suppliers respect the health, safety and personal rights of their employees and adhere to the principles of respect, fairness and non-discrimination. They employ and remunerate their employees on the basis of fair and compliant contracts. They maintain international minimum labour standards.

### Respect for the Environment

- Subcontractors and suppliers observe relevant legal environmental standards and minimise environmental pollution.

Bilfinger requests from its subcontractors and suppliers that they require their own subcontractors and suppliers also to comply with the principles of the Global Compact Initiative and the minimum standards of this Code of Conduct for Subcontractors and Suppliers (Flow Down).

Subcontractors and suppliers of Bilfinger are required to report their own violations of this Code of Conduct for Subcontractors and Suppliers, insofar as these affect their business relations with Bilfinger. They are also asked to report any knowledge of misconduct on the part of Bilfinger employees.

### Bilfinger Compliance Communications

- Anyone wishing to report compliance violations can do so using Bilfinger Compliance Communications. The system also allows misconduct to be reported anonymously.

Bilfinger Compliance Communications can be reached via:

**Internet:** [www.bilfinger.com/compliance](http://www.bilfinger.com/compliance)

**Telephone:** 00 800 – BILFINGER (00 800 – 2 45 34 64 37)

Subcontractors and suppliers are required to actively resolve any suspicious cases and to cooperate unconditionally with Bilfinger in this regard.

If there are reasonable grounds to believe that a subcontractor or supplier has violated this Code of Conduct for Subcontractors and Suppliers or if a subcontractor or supplier, when a suspicious case arises, fails to sufficiently meet his obligations to resolve the case and to cooperate, Bilfinger, on the basis of existing contractual or legal rights, can end all business relations with the subcontractor or supplier with immediate effect. In the event of a violation of this Code of Conduct for Subcontractors and Suppliers, Bilfinger retains the right to initiate further legal measures, particularly damage claims.

Bilfinger, from time to time, can appropriately update this Code of Conduct for Subcontractors and Suppliers and expects that its subcontractors and suppliers accept any such changes.

<sup>1</sup> <http://www.bilfinger.com/>

<sup>2</sup> <http://www.unglobalcompact.org>