

# General Terms and Conditions for Subcontractors (D) - GTC SUB

## 0. Applicability

All commissions, orders or requests from the Principal as part of the service provision shall be made on the basis of these GTC SUB in their respectively valid version at the time of concluding the contract, unless agreed otherwise in writing. The current version is available at <https://porr-group.com/group/einkauf/> and is provided free of charge upon request.

## 1. Contractual basis

- 1.1 Unless agreed otherwise in writing, the order of precedence of the contractual components is as follows:
  - 1.1.1 Order letter /order confirmation;
  - 1.1.2 Negotiation Protocol, especially the documents listed under section 1.2;
  - 1.1.3 Service specification / service description including technical remarks, supplements and labour rate lists;
  - 1.1.4 Building and construction plans including technical documentation and implementation and detailed plans;
  - 1.1.5 Contract terms /tender documents from the Building Principal including planning permission and other official approvals or conditions;
  - 1.1.6 General Terms and Conditions for Subcontractors (D) - GTC SUB;
  - 1.1.7 The recognised rules of technology and the statutory and official regulations.

The Contractor's own general terms and conditions (e.g. terms and conditions of offers, delivery or implementation) expressly do not apply and shall only form part of the contract if the Principal expressly agrees to them in writing.

- 1.2 The Contractor shall check the contractual components, especially with respect to the completeness and accuracy of the specified quantities (masses). In particular, the Contractor shall check the implementation documents for compliance with the official approvals or requirements.
- 1.3 The Contractor assures that he has checked the implementation documents and the intended type of implementation competently and reliably. This especially applies with regard to his completion of previous work or associated trades. The documents necessary for completing the work must be requested from the Principal in writing in good time before starting the work, unless they are to be prepared by the Contractor. In this case, the documents shall be made available to the Principal in good time. Implementation of the work may only start after the Principal has approved the submitted documents. Even after the plans, drawings and other documents have been inspected and confirmed as having been inspected by the Principal or persons commissioned by the Principal, the Contractor shall remain fully responsible for contractual performance. If the Contractor is of the opinion that the contractual basis is unclear, he shall clarify any issues in good time before concluding the contract by consulting the Principal.

The Contractor shall notify the Principal in writing if components of his offer deviate from the Principal's service specification; the Principal can otherwise assume that the Contractor's offer complies with the service specification provided by the Principal, the valid technical regulations and the recognised rules of technology. Supplementary offers shall be expressly marked as such in a separate appendix to the offer.

- 1.4 Claims by the Contractor due to an incorrect estimation of quantities, possible difficulties or calculation errors are excluded. By submitting the offer, the Contractor confirms that he has fully informed himself of all circumstances relating to his services, pricing and construction and that the items listed in the service specification are sufficient for a full provision of his service, meaning that subsequent claims - for whatever reason - are excluded.
- 1.5 If the Contractor does not state equivalent products of his choice next to the corresponding items in the service specifications in the places provided for this purpose (bidding gaps), the products listed as examples shall be deemed as offered. If products from certain manufacturers or certain types are requested in the invitation to tender, these shall be deemed as agreed.

## 2. The Contractor's services

- 2.1 The Contractor shall provide all services which are necessary for the complete, operationally ready production of the services / scope of services owed by him, even if they are not expressly mentioned in the contractual components or are only described incompletely. The agreed price shall therefore also include all those services which are not expressly included in the contractual components but which are necessary to fully render the services owed.
- 2.2 The Contractor shall coordinate the services of the other pre- and subcontractors involved in order to ensure a smooth completion of the project.

The Contractor shall immediately inform the Principal in writing of any coordination difficulties with these trades that the Contractor cannot resolve himself, so that the Principal can take the necessary measures and decisions.

- 2.3 The Contractor assures that the services he provides do not violate any laws, ordinances or other official orders and regulations and that his work does not infringe any third-party industrial property rights. Where transport is required, the Contractor shall observe the provisions of the GüKG (German Road Haulage Act); he shall use the permission, authorisation or licence only in accordance with the statutory provisions or employ only carriers who use the permission, authorisation or licence correctly. The Contractor shall indemnify the Principal against any possible claims arising from breaches of the above-mentioned obligations.
- 2.4 Detailed drawings from the Contractor shall be submitted in the required number for approval. The Principal shall provide the Contractor upon request with the documents necessary for preparing the detailed drawings against reimbursement of costs.
- 2.5 The Contractor owes services which comply with the recognised rules of technology at the time of acceptance. The Contractor shall inform the Principal immediately of any changes to these rules that occur during the construction period and that have not been taken into account in the contractual service specifications.
- 2.6 Based on the construction specifications from the Principal or the Principal's planners and in agreement with them, the Contractor shall plan the required slots, recesses and openings for cable routing as well as details for other assembly aids and check the plans for accuracy. If these details are incomplete or incorrect and costs are incurred due to subsequent changes or additions, these shall be borne by the Contractor.
- 2.7 The detailed drawings, implementation plans, documentation and records to be prepared by the Contractor shall be coordinated with all trades involved and shall be submitted to the planners for approval in a timely manner so that the service can be completed on schedule. Additional costs incurred by the Principal as a result of incorrect and untimely information or documents provided by the Contractor shall be borne by the Contractor. Ownership shall pass to the Principal upon submission of the plans.
- 2.8 The Contractor assures that he shall only use building materials and carry out procedures that are harmless to health and the environment and that comply with the applicable regulations and laws.
- 2.9 The Contractor shall clear up all building rubble and any contamination caused by the Contractor on each working day and take it away for disposal. The construction site as well as private and public roads used for access must be left in a properly cleared condition and any contamination caused must be removed. Furthermore, the Contractor shall protect the work performed and the objects handed over to him to complete the work against damage, theft, winter damage and ground water up until acceptance, and shall remove snow and ice. The Contractor shall not be entitled to separate remuneration for these additional services. The Principal shall be entitled, after a one-off request and by setting a deadline, to instruct the Contractor to clean the workplace and carry out substitute performance.
- 2.10 Where required due to or in connection with his services, it shall be the Contractor's responsibility to carry out the necessary measures to secure and maintain construction site traffic and to bear the resulting fees and costs. This shall also apply to all measures to secure traffic and the flow of traffic on the adjacent public roads, especially with respect to the implementation of any necessary traffic control measures, insofar as these are caused by the Contractor's services.
- 2.11 Noise, dust or odour nuisances and other disturbances to public transport or third parties that can be avoided by applying the recognised rules of technology must be prevented with appropriate measures. Any costs incurred in this respect shall be borne by the Contractor. The Contractor shall take all necessary safety precautions in connection with his work and shall ensure that the safety measures are maintained throughout the working period. The Contractor shall comply with the requirements of the construction site ordinance and, if applicable, of health and safety plans prepared for the construction site free of charge, insofar as these affect his trade. The Contractor shall indemnify the Principal against any claims of third parties resulting from the non-observance of all aforementioned obligations.
- 2.12 If the Contractor has to obtain the necessary permits and authorisations under public law, e.g. for shift operations, special transports, etc., and if such permits are not granted in time to ensure timely performance, the Contractor shall not be responsible for this circumstance if it can be proven that the necessary applications were submitted properly and in good time.

2.13 The Contractor shall supply, produce, install and remove free of charge any samples of his services and materials to a sufficient extent. The Principal's approval must be obtained before doing so. Samples shall be made available to the Principal without further remuneration upon request.

2.14 Upon request, scaffolding provided by the Contractor shall be made available to the Principal and other contractors free of charge during use for the Contractor's own performance; the Contractor shall be liable for its safety. The Contractor shall continue to make his scaffolding available to the Principal and other contractors against reimbursement of costs even after completion of his work. The Contractor shall inform the Principal in writing and in good time of the intended dismantling of the scaffolding. The Principal shall immediately be provided with a scaffolding acceptance report in accordance with the Ordinance on Protection of Employees.

2.15 Project meetings shall take place at least once a week. Upon invitation to the project meetings, the Contractor shall send a person authorised to represent him without any time limit and without separate remuneration.

2.16 The Contractor shall keep a time log for each employee on each working day (beginning, end, duration of the working day) as well as a construction diary/daily construction report, which lists, amongst other things, the Contractor's employees on the construction site. If the aforementioned documents are not submitted weekly or not on time or not completely, the Principal shall in any case be entitled to withhold payments to the Contractor until the documents are submitted. Failure to submit the documents shall also constitute an important reason for termination of the contract without notice after fruitless expiry of a grace period granted to the Contractor for submission.

2.17 The Principal's expert knowledge or that of the experts commissioned by the Principal shall not release the Contractor from his obligation to check and inform.

2.18 If the Principal has set up or is setting up an Internet-based data room (project communication management), the Contractor shall use this in accordance with the Principal's specifications.

### 3. Remuneration

3.1 The agreed remuneration for the work shall cover all services for the complete and functional production of the work, even if these are not listed separately in the contract documents. This shall also include wages, materials, transport and other supplementary or special services. The price shall also include, for example, the following services from the Contractor that are not specially remunerated, unless separate items are provided for in the service specification:

- All preparatory, supplementary and follow-up work, as well as planning work, drawings, workshop drawings, plans, as-built plans, expert opinions, fees for licences and industrial property rights;
- The delivery of all building materials, equipment and other materials free site, unloading and carrying up to the point of use, careful storage at the building site, transport costs, provision, maintenance, assembly and disassembly of building site facilities, equipment, accommodation, protective and safety devices, rent for the use of foreign land, etc.;
- All overheads, especially storage costs, fees, taxes, etc., all collectively agreed and non-collectively agreed wage and salary costs, as well as ancillary wage and salary costs, in particular surcharges for overtime, night, Sunday and public holiday work, costs for accommodation and meals.

3.2 The unit prices shall include all supplementary services required for the professional preparation of the respective services as well as special services in accordance with the VOB/C, unless they are listed in separate items of the service specification or described as services provided by the customer.

3.3 Incidental expenses, such as travel and separation allowances, compensation for travelling time, supplements for overtime, Sundays and public holidays, costs for a possible multi-shift operation and all other supplements shall not be paid separately.

3.4 All items in the service specification shall apply without distinction as to the building component, the storey, the manufacturing period; this also applies to sectional completion.

3.5 Any agreed discount shall also apply to any changes, supplements, extensions of services and labour services.

3.6 The prices contained in the contract are all net prices. With regard to value added tax, the Contractor shall be responsible for checking whether the construction work to be performed falls within the scope of application of section 13b UStG (German VAT Act (hereinafter: UStG)); reversal of the tax liability to the recipient of the service). Insofar as section 13b UStG applies, it must be ensured that the invoice is issued net without separate disclosure of the VAT and with explicit reference to the reversal

of the tax liability. In all other cases, the invoice must be issued with a separate disclosure of the VAT.

3.7 The item(s) requested in the service specification for any maintenance work to be commissioned is/are not included in the total offer. The commissioning of this/these is the responsibility of the Building Principal/tenant/user. The Contractor assures that the prices offered for maintenance work also apply for the Building Principal/tenant/user.

3.8 If the type of implementation is adjusted prior to starting the work or in the course of the construction work as a result of additional offers or other special technical proposals from the Contractor, the Contractor shall bear the unlimited implementation risk within the scope of the agreed construction task. Any additional services required for this, especially in the field of planning and statics, shall be covered under the scope of services and not be additionally remunerated.

### 4. Additional and modified services

4.1 All additional and modified services within the meaning of section 650b (German Civil Code, hereinafter: BGB), para. 1 sentence 1 BGB shall be governed by the following paragraphs; in all other respects, sections 650b and 650c BGB shall apply. For evidence purposes, instructions/orders must be issued in writing.

4.2 The Contractor shall inform the Principal at the latest within 3 working days after receipt of a request for modification if he considers carrying out the modification to be unreasonable, stating the reasons for this. If the Contractor owes required planning services which go beyond the planning services submitted with this contract, the Contractor shall also provide the planning required for preparing the offer according to section 650b para. 1 sentence 2 BGB. At the latest within 5 working days after receipt of a request for modification, the Contractor shall prepare the offer in accordance with section 650b para. 1 sentence 2 BGB and submit it to the Principal. If this period is not sufficient due to the type or scope of the modification, the Contractor shall inform the Principal about this at the latest 3 working days after receipt of the request for modification, stating the objectively required period for preparing the offer.

4.3 The offer shall be prepared by the Contractor in a verifiable manner on the basis of this contract, taking into account section 650c para. 1, sentence 2 BGB. In the offer, the Contractor shall also define the timing effects of carrying out the modification on the further course of construction and set out any additional costs incurred as a result.

A claim by the Contractor for additional costs due to extensions of the construction period shall be excluded if the Contractor did not draw attention to this fact prior to acceptance of the offer by the Principal. This shall not apply if the Contractor proves that a reference to additional costs for the extension of the construction period was unnecessary for the Principal's protection and therefore had no function or if its failure to do so can be exceptionally excused. The Contractor shall bear the burden of presentation and proof for this. If the Contractor is able to provide such evidence, the Principal shall fix the additional costs at its reasonable discretion.

4.4 Insofar as unit prices or other price determination bases from the previous contractual performance are available for the changed and/or additional services or can be used as a reference value, the remuneration in the case of service changes/additional services shall be determined according to these prices. However, the remuneration may not exceed the customary prices in the locality and the market.

4.5 Based on the offer, the parties shall seek agreement on the modification and the additional or reduced remuneration to be paid as a result of the modification. The Principal shall be entitled to request the modification after 10 working days, provided that it is reasonable for the Contractor to implement the modification, in accordance with section 650b para. 2 BGB. In addition, the Principal shall have the right to immediately request a modification

- a) if overriding legitimate interests objectively justify it;
- b) if there is no objective alternative to carrying out the modification, especially if the modification is necessary to achieve the agreed success of the work;
- c) if agreement has conclusively failed after the offer has been submitted by the Contractor;
- d) if the Contractor has neither submitted an offer within the deadline specified in section 4.2 sentence 3, nor has the Contractor issued justification pursuant to section 4.2 sentence 1 or sentence 4;
- e) if the Contractor definitively refuses to negotiate in order to reach an agreement.

4.6 The Principal's written consent to the provision of services shall not constitute an acknowledgement. Disputes regarding the remuneration shall not entitle the Contractor to discontinue the provision of services. These provisions shall apply accordingly to any claims for an extension of the construction period.

- 4.7 If the Contractor demands an advance payment on the basis of section 650c para. 3 BGB for changed or additional services, the reason and/or amount of which is disputed between the parties, the Principal shall be entitled to make payment of the advance payment claim dependent on the following conditions that the Contractor, in order to secure the Principal's possible claim for repayment, provides the Principal with an unlimited guarantee from a German bank or a German credit insurer in the amount of 10 % of the advance payment claim, whose guarantee provides for a waiver of the plea of set-off on account of disputed and non-legally established claims and a waiver of the plea of anticipatory action (sections 770 para. 2, 771 BGB). The right to deposit the amount of the guarantee must be waived. Claims arising from the guarantee may not expire before expiry of the limitation period for the secured claims.

The above condition regarding the provision of a security shall not apply if the Principal exercises his right under clause 12.1 para. 2 and demands a supplementary performance guarantee from the Contractor for the modified or additional performance.

- 4.8 The Contractor cannot assert any claims for services not rendered or for falling below the order sum, regardless of the reason.
- 4.9 The Principal shall be informed immediately in writing of any significant increase in quantity for individual items. Should the Contractor fail to do this, he shall lose the right to remuneration for the additional quantities. If the Principal suffers a disadvantage beyond this, the Contractor shall compensate for it. This shall not affect the validity of section 313 BGB.
- 4.10 Insignificant changes do not constitute grounds for additional remuneration.
- 4.11 Procurement difficulties shall not entitle the Contractor to demand additional costs or an extension of the construction period.

## 5. Payment and invoicing conditions

- 5.1 All invoices shall be submitted together with all documents that serve as concrete evidence for individual invoice items or the required declaration of the invoice. The services shall only be auditable if all invoices to be submitted have been coordinated in advance with the Principal's local construction management/project management in terms of quantity and amount and the quantities / invoice draft has been approved.

In case of payment according to section 16 VOB/B, the Contractor shall grant a discount of 3.5%; the final payment shall be made within 40 days with a 3% discount. Payments within 60 calendar days shall be made without discount.

- 5.2 The Contractor shall submit the final invoice no later than 4 weeks after acceptance. If the Contractor allows this deadline to elapse fruitlessly, the Principal shall be entitled - without any further reminder - to consider the last partial invoice as the final invoice and to make final payment for the order.
- 5.3 The payment of any security or retention for defects shall be made when due within 30 calendar days minus 3% discount or within 60 calendar days without discount. This provision shall apply accordingly to any special retentions.
- 5.4 The right to deduct a discount shall also apply if the Principal is entitled to deduct on the basis of the contract and therefore not the entire invoice amount is paid out. Furthermore, the discount may be claimed for each individual payment made in due time, irrespective of whether all invoices have been paid within the discount period. In the event of a justified retention by the Principal, the discount period for the withheld amount shall begin upon receipt of the Contractor's written request for payment of the withheld amount once the reason for withholding the amount ceases to apply.
- 5.5 The acknowledgement and/or payment of partial invoices and/or the final invoice shall not exclude any reclaims due to overpayment of the Contractor by the Principal. The Contractor may not assert any claim for the loss of gains.
- 5.6 Timeliness of payment shall be defined by the value date of payment to the Contractor's business account. The agreed net payment periods or discount periods shall also be deemed to have been observed if payment is made on the next transfer date following expiry of the relevant period. The resulting extension of the deadline shall be no longer than 5 working days. If one of the above-mentioned periods falls due within 5 days before the end of a quarter, payment shall be deemed to be on time if it is made within 5 working days after the end of the quarter. Both the discount and payment periods shall be suspended during the Christmas holidays (Thursday before 24.12. until the Monday after 06.01.).
- 5.7 The Contractor is aware that the Principal is obliged under sections 48 and 48 b of the German Income Tax Act (EStG) to pay 15% of payments to the Contractor directly to the tax office, unless the Contractor submits a certificate of exemption. The Contractor shall provide a certificate of

exemption from his competent tax office.

- 5.8 The assignment of claims to third parties by the Contractor shall require the Principal's written consent to be effective. The same applies to pledging and transfer of ownership by way of security. The Principal shall only refuse such consent for justified reasons. In the event of an assignment of claims, pledging or judicial attachment of the Contractor's claims, the Principal shall be entitled to retain 2% of the acknowledged net invoice amount as reimbursement of costs or to charge it, whereby the Contractor reserves the right to prove that the costs incurred by the Principal through the Contractor have not been incurred or have not been incurred to the claimed amount.

- 5.9 The Principal shall be entitled to offset his claims against claims of the Contractor, regardless of the legal foundation on which they are based.

- 5.10 The Contractor may only offset counterclaims or claims from the same contractual relationship if they are undisputed or legally established. The Contractor may only assert a right of retention for reasons based on the same contractual relationship.

## 6. Hourly wage work

- 6.1 Hourly wage work shall only be remunerated if it has already been agreed in writing with the Principal. For evidence purposes, orders must be issued in writing.

- 6.2 The rates agreed in section 6 of the Negotiation Protocol shall apply. The signature of the Principal's site management on hourly wage slips shall not be considered as an acknowledgement of claims. In particular, the Principal reserves the right to subsequently check whether additional hourly wage claims or original contractual work are involved. If it is established upon verification that the acknowledged hourly wage work is contractual work and was charged as such or is part of additional services of contractual work, the costs shall not be remunerated. In the event of any double payment, the Principal shall be entitled to reimbursement without the Contractor being able to claim a loss of gains.

- 6.3 Section 15 para. 3 sentence 5 VOB/B shall not apply and is excluded.

- 6.4 Working hours of supervisory and management personnel shall not be remunerated. The hourly rates shall include all surcharges including those for supervisory and management personnel, profit, expenses, insurance, out-of-town, on-site and city allowances, travel costs for vehicles and drivers, operating costs, provision of tools and equipment, etc.

- 6.5 In all other respects, the same conditions apply to hourly wage work as to contractual work.

## 7. Supplies

- 7.1 The Contractor shall provide his contractual services using his own personnel, materials and equipment. As a rule, he is therefore not entitled to use the Principal's equipment that is set up on the construction site, unless otherwise agreed in the Negotiation Protocol.

If the Contractor makes use of the Principal's facilities with the Principal's express consent in the course of providing the services, the Contractor shall compensate the Principal for the use of such facilities in the amount of the actual costs. If containers are made available to the Contractor by the Principal, the Contractor shall clean the accommodation and dispose of the waste produced. The Contractor shall be liable for damage or destruction from the time of his acceptance. In this case, the Contractor shall be obliged to undertake repairs at his own expense or pay compensation for lost value. If these obligations are not fulfilled, the Principal shall be entitled to deduct the damage incurred from the final invoice. In the case of collective accommodation, invoicing shall be effected proportionally according to the extent of use.

- 7.2 The costs for supplies and possible assistance shall be deducted from the next partial invoice or from the final invoice. The materials shall be provided - at the Principal's discretion - only to the extent and as long as the corresponding installations or equipment are available and are not required by the Principal himself or by another contractor. The Principal shall determine the delivery points.

- 7.3 The Contractor may not derive any claims for remuneration or compensation from temporary disruptions to supplies. If the Principal is responsible for the disruption to supplies and the work is delayed as a result, the working deadlines shall be extended accordingly.

- 7.4 The Principal's instructions (e.g. from equipment operators) must be strictly observed. In the event of misuse or improper use of the systems or equipment provided, the Contractor shall be liable for all resulting disadvantages including consequential damages.

## 8. Contract periods, contractual penalty

- 8.1 The agreed dates are binding contractual dates. The Contractor's services shall be performed by mutual agreement with the Principal in adaptation

to progress on the construction site (if necessary, also in partial sections). Difficulties in keeping to the deadlines must be notified to the Principal's site manager in writing without delay. If the Contractor is notified of deadlines by the construction management, they shall be deemed agreed unless the Contractor objects in writing within one week.

8.2 The Principal reserves the right to change dates. If a postponement of agreed dates should become necessary for reasons for which the Principal is responsible, new contractual dates shall be agreed. The deadlines agreed in the Negotiation Protocol and the resulting completion times as well as the completion times according to the contractual schedule shall be taken as basis. If the Contractor does not meet these obligations or meets them insufficiently or late, the Principal shall be entitled to unilaterally set or establish binding contractual deadlines and/or a corresponding schedule at his reasonable discretion (section 315 BGB). The (individual) deadlines either agreed between the parties or set by the Principal unilaterally at his reasonable discretion, including in the schedule, shall also be binding contractual deadlines, unless they are expressly designated as mere control deadlines.

8.3 The Contractor shall agree and sign a detailed schedule, a staff deployment plan and construction site equipment plan with the Principal's site manager, taking into account the local conditions and based on the agreed framework dates, no later than two weeks after order confirmation.

8.4 A contractual penalty has been agreed in section 8 of the Negotiation Protocol. Unless otherwise stipulated in the Negotiation Protocol, the contractual penalty in the event of the Contractor's default on intermediate deadlines shall amount to 0.2% per working day of the default in relation to the pro-rata net order value. The pro-rata value of the service to be rendered since the beginning or since the last intermediate deadline shall apply.

The contractual penalty for exceeding intermediate deadlines shall be limited to a maximum of 5% of the pro-rata value of the service to be rendered since the beginning or since the last intermediate deadline. A contractual penalty incurred once for an intermediate deadline shall be offset against subsequent contractual penalties for further intermediate deadlines, so that an accumulation of individual contractual penalties is excluded. Contractual penalties already incurred due to exceeding intermediate deadlines shall be waived retroactively, provided that the Contractor nevertheless meets the completion date.

8.5 However, the total contractual penalty incurred shall not exceed 5% of the net order value. Contractual penalties already incurred due to exceeding intermediate deadlines shall be waived retroactively, provided that the Contractor nevertheless meets the completion date.

8.6 Proof of damage is not required.

8.7 Further claims for damages by the Principal shall remain unaffected. However, the contractual penalty shall be set off against such claims for damages.

8.8 A contractual penalty already incurred shall not be cancelled by the agreement of new contractual deadlines.

8.9 The Principal may reserve the right to claim contractual penalties until the final payment is due.

8.10 The Principal's claims for damages due to delay shall not be governed by section 5 para. 4 VOB/B in conjunction with section 6 para. 6 VOB/B, rather by the BGB.

## 9. Warranty/claims for defects

9.1 The limitation period for claims for defects shall begin at the earliest upon formal acceptance by the Principal of the services rendered by the Contractor.

9.2 If the Contractor does not fulfil his obligation to rectify a defect as per section 4 para. 7 sentence 1 VOB/B during completion of his obligation to rectify a defect, the Principal may have the defect remedied at the Contractor's expense after expiry of a reasonable grace period granted to the Contractor for this purpose without the need for termination. Section 4, paragraph 7, sentence 2 VOB/B shall remain unaffected.

9.3 For defects present at the time of acceptance, the limitation period shall not commence until the defect rectification work has been accepted.

9.4 The limitation period shall depend on the regulation in the Negotiation Protocol. If no agreement is made there, the limitation period shall be 5 years and 6 months (including for the services mentioned in section 13 Para. 4 No. 1 and 2 VOB/B) but deviating from this, 10 years and 3 months for the sealing of buildings, especially roof and facade sealing.

9.5 The extent of the Principal's claims for defects shall otherwise be governed by section 13 VOB/B, subject to the further condition that the Principal may also claim a reduction if a deadline set for the Contractor to

rectify a defect has fruitlessly expired.

9.6 Furthermore, the German Civil Code (BGB) shall apply exclusively to the Principal's claims for damages. Section 13 para. 7 VOB/B is excluded.

9.7 By way of security, the Contractor assigns all claims for defects and claims under manufacturer's warranties against any of his possible subcontractors and suppliers to the Principal, who accepts this assignment. Until revoked by the Principal, the Contractor shall assert such claims against the respective third party in its own name on behalf of the Principal and receive any resulting payments on behalf of the Principal in trust and pass them on to the Principal.  
The Contractor's warranty remains unaffected by this.

## 10. Termination

10.1 The contract may be terminated by the Principal and the Contractor for good cause (section 648a BGB). In addition, the Principal shall have the right to terminate the contract freely pursuant to section 648 BGB/section 8 para. 1 VOB/B and the further grounds for termination pursuant to section 8 VOB/B. Section 9 VOB/B is excluded. The refutable presumption of section 648 sentence 3 BGB is waived; the Contractor must actually provide evidence of the expenses saved.

10.2 A right to partial termination shall also apply if the service is not of a self-contained nature, rather can only be identified within a trade/craft.

10.3 Any termination must be in writing to be effective.

10.4 In any case of termination, the performance status at the time of termination shall be recorded in a joint survey, which shall be carried out and documented immediately after termination. If one party refuses to take part in the joint survey of the performance status, the other party shall be entitled, after the setting of and expiry of a reasonable grace period, to carry out the survey alone.

If a joint survey of the performance status is not carried out within a period of 5 calendar days from receipt of the notice of termination, each party may have the survey determined by a publicly appointed and sworn expert at the expense of the party responsible for the reason for termination.

## 11. Determination of performance and acceptance

11.1 All services shall only be accepted formally. As a rule, acceptance shall take place formally as part of an overall acceptance of the building.

11.2 A fictitious acceptance as defined in section 12, para. 5 VOB/B is excluded.

11.3 Partial acceptances or an acceptance through use or partial use are excluded. Acknowledgement of quantities as well as the invoicing of a service and final payment shall not be deemed as acceptance.

11.4 The Contractor shall notify the Principal in writing of the completion of his services and request acceptance in writing two weeks in advance. Acceptance requires that the services have been completed without major defects. A considerable number of insignificant defects shall be deemed equivalent to the existence of one substantial defect. Visual defects shall entitle the Principal to refuse acceptance if the appearance of the affected part of the service is impaired more than insignificantly.

11.5 If acceptance is justifiably refused in the course of an acceptance inspection, the Contractor shall bear all costs incurred by the Principal and third parties (the Principal's representatives, experts, authorities etc.) for the unsuccessful acceptance.

11.6 The Contractor shall carry out functional tests and trial operations at his own expense and record the results in reports, which shall be handed over to the Principal upon completion of the services, at the latest one week before takeover of the services. Functional tests and trial operations shall not be deemed as acceptance.

11.7 The Contractor shall obtain any prescribed or agreed acceptances from the competent authorities in good time at his own expense. Official requirements must be strictly observed; the Contractor shall procure or arrange for any approvals etc. required within the sphere of his services or responsibility.

11.8 In good time before acceptance of the services, and in any case immediately after a corresponding request, the Contractor shall hand over to the Principal all operating instructions, maintenance instructions and other documents in duplicate, five copies of the inventory plans, as well as the agreed spare parts. These documents shall also be sent in digital form. Documents in foreign languages shall be translated at the Contractor's expense. If the documents are not provided in the required number, the copying costs shall be borne by the Contractor.

11.9 Any quality tests, factory or construction site inspections, technical acceptance in accordance with section 4 para. 10 VOB/B and notices or

reports of defects that may take place during the construction period have no acceptance effect.

11.10 The Principal and the Contractor agree that a determination of the condition as defined in section 650g para. 1 and para. 2 BGB shall only be made if the Contractor's services are ready for acceptance. If the Principal has therefore refused acceptance due to defects in the Contractor's performance, the Contractor shall, in the event of a request for a determination of condition, justify in writing why it assumes that acceptance is ready despite the defects that have been complained of. A request for a determination of a condition must be made in writing. In the event of a joint assessment of the condition, the Principal shall be entitled to have this carried out by a publicly appointed and sworn expert instructed by the Principal for the applicable specialist area.

The costs incurred by them in connection with the determination of the condition shall be borne by the Principal and the Contractor themselves. The costs of an expert instructed by the Principal shall be divided equally between the Principal and the Contractor. However, if the Contractor's services were not ready for acceptance at the time of determining the condition, the Contractor shall bear all costs of determining the condition.

The determination of the condition is exclusively a technical documentation and does not constitute an acceptance of the Contractor's services. Until acceptance, the Contractor shall be responsible for the continued protection of its services against damage and destruction, unless other statutory provisions apply.

## 12. Securities

12.1 For the purpose of securing fulfilment of the contract, the Contractor shall provide a performance guarantee in accordance with the template attached to the Negotiation Protocol in the amount of 10 % of the agreed net order value either as a lump sum or as a provisional order value. This guarantee shall be handed over to the Principal within five calendar days after conclusion of the contract (receipt of the order letter by the Contractor). If the Contractor fails to provide this guarantee, the Principal shall be entitled to withhold advance payments up to the amount of the requested security.

The contractual performance guarantee shall be returned in accordance with section 17 para. 8 no. 1 VOB/B.

The Principal's security claim arising from the contractual performance guarantee shall also extend to changes and extensions to the original scope of the contract as a result of changes to and/or increases in performance, up to a maximum amount of 10 % of the net remuneration as defined in the Negotiation Protocol. In the event of changes and/or increases in performance exceeding this limit, the Principal shall be entitled to demand an additional security from the Contractor in the form of one or more supplementary performance guarantee(s). The Contractor shall provide this/these supplementary contract performance guarantee(s) using the template attached to the Negotiation Protocol. The amount of the supplementary contract performance guarantee(s) shall be 10 % in each case, calculated from the net order value due in each case for the changes and/or increases in performance.

12.2 To secure the Principal's claims arising from the Contractor's liability for defects, a security retention amounting to 5% of the determined net final invoice total shall be agreed for the duration of the limitation period agreed for liability for defects.

12.3 The Contractor shall be entitled to redeem the security retention by handing over a guarantee in accordance with section 17 VOB/B in the amount of 5 % of the net final invoice total. Notwithstanding section 17 para. 8 no. 2 sentence 1 VOB/B, the Principal shall return the security for claims for defects only after expiry of the contractually agreed warranty period.

12.4 A security according to section 11 of the Negotiation Protocol and according to the above clauses 12.1 and 12.2 shall also extend to the security of the Principal's claim for restitution including interest in the event of any overpayments made and of the Principal's recourse claims after its claim for payment according to the Employee Secondment Act (AEntG), the Minimum Wages Act (MiLoG) and the social laws, especially section 28e, para. 3a SGB IV and 150 para. a SGB VII (German Social Security Code (hereinafter: SGB), Books IV and VII). If the Contractor provides security by way of a bank guarantee in accordance with these requirements, the text of such a guarantee must also contain a waiver of the defence of unexhausted remedies pursuant to section 771 BGB, a waiver of the right to deposit and a waiver of the defence of set-off, section 770 para. 2 BGB. The waiver of the defence of set-off shall only apply to the extent that the counterclaim is not undisputed or has not been legally established. In the event that the Principal has assigned the secured claims - in whole or in part - to a third party, the Guarantor must further declare that the guarantee (also) secures the claims assigned to the third party. The claim under the guarantee may not expire before the secured main claim. It shall expire at the latest after expiry of the period specified in section 202 para. 2 BGB. The place of jurisdiction agreed in clause 17.2 of these GTC SUB shall be agreed as the place of jurisdiction in the guarantee.

12.5 If the Principal makes an advance payment in favour of the Contractor, the Contractor shall provide a security in the amount of the advance payment in the form of a bank guarantee from a major bank or a credit insurer domiciled in the EEA or Switzerland. The prepayment guarantee must correspond to the Principal's template and be provided upon first request.

The guarantee must be unlimited in time, it expires when the original guarantee is returned or when the guarantee is fully released. The guarantor must waive the defence of unexhausted remedies according to section 771 BGB, the right to deposit and a defence of set-off, section 770 II BGB. The waiver of the defence of set-off shall only apply to the extent that the counterclaim is not undisputed or has not been legally established. In the event that the Principal has assigned the secured claims - in whole or in part - to a third party, the Guarantor must further declare that the guarantee (also) secures the claims assigned to the third party. The claim under the guarantee may not expire before the secured main claim. The guarantee claim may not expire before the secured main claim. It shall expire at the latest after expiry of the period specified in section 202, para. 2 BGB. The place of jurisdiction agreed in clause 17.2 of these GTC SUB shall be agreed as the place of jurisdiction in the guarantee.

## 13. Risk assumption/liability/insurance

13.1 Risk assumption shall be governed exclusively by section 644 BGB. Section 7 VOB/B is excluded.

13.2 The Contractor shall be liable in accordance with the statutory provisions for all damage for which he is responsible - i.e. damage caused intentionally or by negligence - which is caused by his own fault, that of his employees or other agents, such as subcontractors or material suppliers, the Principal, the Building Principal or third parties. If the law stipulates liability regardless of fault, the Contractor shall be liable in this respect even without fault. He shall be obliged to indemnify the Principal in this respect from all possible claims for damages by third parties.

13.3 The Contractor shall comply with current statutory and police regulations and any additional regulations issued during completion of the work, especially the regulations of the building supervisory authorities, the trade supervisory office and the employers' liability insurance association. In the event of non-compliance with these regulations, he shall assume sole responsibility and liability for all accidents, penalties, fines as well as personal injury, property damage and financial losses as a result.

13.4 The Contractor shall take out sufficient business liability insurance and maintain this for the duration of the provision of services. At the Principal's request, the Contractor shall present the original insurance policy for inspection and suitable evidence of payment of the premiums. However, the Contractor's liability shall not be limited to the insurance benefit.

13.5 Unless otherwise agreed in the Negotiation Protocol, the insurance sum must be available at least twice a year in maximised form.

13.6 The Contractor shall bear the sole obligation to ensure safety on the construction site with regard to his trade or trades and shall be liable for all damages resulting from a breach of his obligation to ensure safety on the road. In this respect, the Contractor shall assume the Principal's duty of safety and shall be solely liable to third parties in relation to the Principal. The Contractor shall indemnify the Principal from all claims of third parties due to a violation of the duty of safety on roads, insofar as the Contractor or his vicarious agents are responsible for the violation of the duty of safety on roads.

## 14. Employee and other subcontractor deployment, evidence

14.1 The Contractor shall, on his own responsibility as employer, comply with the provisions on workplace health and safety, including the Occupational Health and Safety Act, contractor obligations according to the Construction Site Ordinance, provisions according to the Workplace Ordinance and accident prevention regulations of the employers' liability insurance associations. In order to prevent industrial accidents, the Contractor shall provide equipment, instructions and measures that comply with the statutory provisions on workplace health and safety as well as the provisions of the employers' liability insurance association's general regulations (BGV) and, in addition, the generally recognised safety and occupational medicine regulations. The Contractor shall prepare a property-related hazard / load analysis (section 5 ArbSchG (German Occupational Safety Act)), sections 3, 10 Betriebs-SicherheitsVO (German Industrial Safety Regulation) as well as the resulting work instructions for the Principal in due time 14 days prior to the start of work on the construction site, comply with them and submit them to the Principal immediately upon request.

The Contractor shall cooperate with the health and safety coordinator and the other parties involved in the construction work in a spirit of trust and follow any instructions that may also result from the health and safety plan. He shall name and deploy a sufficient number of first-aiders on the construction site on a permanent basis and in accordance with the number of his employees, and shall provide evidence of their first-aid qualifications.

The Contractor shall ensure that the provisions and rules of workplace safety are presented to his staff in a comprehensible manner.

- 14.2 As a rule, the Contractor shall provide the services offered by him himself with correctly registered and insured own employees. He shall comply with the provisions of the Supplementary Conditions for the Deployment of Employees and other Subcontractors. If the Contractor's registered office is outside the Federal Republic of Germany, the Supplementary Agreement for the Deployment of Foreign Subcontractors must also be concluded. In the event of a violation - for whatever reason - the Contractor shall already now indemnify the Principal from all consequences.
- 14.3 The Contractor shall only be permitted to subcontract construction work to other subcontractors under the conditions of section 4 para. 8 VOB/B and on the basis of our Supplementary Conditions for the Deployment of Employees and other Subcontractors, and in case of the deployment of foreign subcontractors also only after conclusion of the Supplementary Agreement for the Deployment of Foreign Subcontractors. Any subcontracting of construction work shall require the Principal's consent. The subcontracting of construction services without the provision of own construction services, planning and commercial services as well as the commissioning of a lender is not permitted.

All subcontractors employed by the Contractor require prior written consent from the Principal.

- 14.4 The Contractor shall only deploy workers who are employed by him as part of a regular employment relationship. If the Principal uses other subcontractors, he shall be responsible for ensuring that they also only deploy workers who are in a regular employment relationship.
- 14.5 A change to the authorised representative or construction manager is only possible with the Principal's consent, unless the authorised representative or construction manager leaves the Contractor's company. In this case the Contractor shall name a new authorised representative or construction manager within 5 working days before the last working day of the authorised representative or construction manager on the construction site.

The Principal shall be entitled to demand the dismissal of the construction manager, especially if the construction manager nominated by the Contractor does not meet the technical and/or linguistic requirements needed by a responsible construction manager. In this case, the Contractor shall nominate a sufficiently qualified responsible construction manager within 5 working days.

In the event that the Contractor provides a specialist construction manager in the sense of the applicable state building code (LBO), the specialist construction manager shall coordinate and manage the Contractor's work on site under the Contractor's responsibility. He shall participate in the external and internal construction meetings upon the Principal's instruction. A change to the specialist construction manager is only possible with the Principal's written consent. If the specialist construction manager appointed by the Contractor does not meet the technical and/or linguistic requirements needed by a specialist construction manager, the Principal shall be entitled to demand his dismissal. In this case, the Contractor shall nominate a sufficiently qualified specialist construction manager within 5 working days.

- 14.6 The Contractor assures that he and, if applicable, subcontractors commissioned by him after prior express written approval from the Principal, will exclusively use employees from countries of the European Union or only those from third countries who are in possession of a valid work and residence permit on the construction sites that are the subject of the contract. All employees must possess the required social security or social security replacement cards and identity cards or passports. The list of names of the employees deployed on the construction site as well as the valid working papers, work permits and social security cards shall be submitted to the Principal's local project management before the respective employee starts work. If the aforementioned documents and registrations of the Contractor's employees are not available before the Contractor's employees start working on the construction site, the Contractor shall not be entitled to deploy the employee on the construction site; the Principal reserves the right to deny this employee access to the construction site. The Contractor may not derive any rights, e.g. obstruction or damages, from the refusal of access by the Principal.
- 14.7 The Contractor shall comply with all statutory provisions to combat undeclared work, as well as the AEntG, the MiLoG, the Temporary Employment Act and the provisions of social security law, especially for the payment of contributions. The Contractor assures the Principal that it or its subcontractors will only employ employees who are properly registered and insured.

At the Principal's request, lists of the employees employed by the Contractor and his subcontractors on the construction site and proof that the corresponding social insurance contributions have been paid shall be submitted to the Principal. The Contractor authorises the Principal to obtain

information from the social security funds on the fulfilment of the obligation to pay contributions.

- 14.8 The Contractor shall indemnify the Principal against all claims of the Contractor's employees, the employees of his subcontractors and all employees of further subordinate subcontractors, as well as against claims of any hire companies and the social security funds pursuant to section 14 AEntG, section 13 MiLoG, section 28 e para. 3 a to f SGB IV and further statutory provisions that demand corresponding liability.
- 14.9 If no valid work permits or social security cards are available or if an existing residence/work permit or social security card expires, e.g. as a result of being limited in time, the affected workers must be removed from the construction site immediately and replaced by other workers.
- 14.10 The Contractor shall ensure that access data (user names and passwords) to the prequalification lists of his subcontractors can be disclosed to the Principal and presented to the Principal immediately upon request.
- 14.11 If there is no prequalification, the Contractor shall prove to the Principal by means of itemised proof without being asked that all prequalification criteria have been met, see also section 15.

Should the Contractor lose his prequalification after conclusion of the contract or should it become apparent for any other reason after conclusion of the contract that the Contractor no longer meets the prequalification criteria, the Contractor shall inform the Principal about this circumstance immediately in writing.

## 15. ISHAP software and identification requirement

- 15.1 The Principal uses the ISHAP personnel documentation software. The Contractor shall file the required documents from all employees working on the construction site using this software 5 working days before the respective start of work and send them to the Principal via the user ID [PORR-ID] address. For data entry purposes, the Light package can be used by all of the Principal's contractors via the ISHAP link <https://light.ishap.at/anmeldung>.
- 15.2 Prior to the initial start of work, each of the Contractor's employees and his subcontractors shall report to the construction manager with a valid official photo ID, where - if all required documents are available - they will either be issued with a respective ID or it will be checked that already existing ISHAP IDs (ISHAP CARD hologram ID / PORR central ID) may be used on the construction site. The badge must be worn visibly on the construction site during the entire period of the service provision.
- 15.3 For licence fees and services in connection with the control of personnel documents, the Contractor shall pay a fee of 0.2% of the annual turnover.
- 15.4 If the required documents are presented by the employees at the start of work but have not yet been saved in ISHAP, the construction manager shall be at liberty to either remove the respective employee from the construction site until the Contractor or his subcontractor has completed/achieved an upload of the documents to the software according to section 17.1 or he shall carry out this data entry on behalf of the Contractor and charge the Contractor a fee of 200 Euro plus VAT per employee for this service.
- 15.5 If the Contractor's employees or his subcontractors are found on the construction site without valid identification, the Contractor shall be charged a contractual penalty of 0.5 % of the order sum per employee and day on which work was carried out without valid identification; this shall be done by issuing an own invoice without disclosure of VAT and with the invoice note "penalty that is not subject to VAT".

## 16. Withdrawal

- 16.1 The Principal shall be entitled to withdraw from individual or pending partial deliveries without any obligations if the Contractor violates an essential provision of the order, especially if quality changes occur or if the delivery is not on time or not free of defects.
- 16.2 In the event of a withdrawal, the Contractor shall be liable for all resulting disadvantages, including consequential damages. In particular, the Principal shall be entitled to procure replacements at the Contractor's expense without obtaining quotes from competitors.
- 16.3 If a contract concluded between the Contractor and the Principal as a basis for this order is terminated, the Principal shall also be entitled to withdraw from the delivery or the pending partial deliveries.

## 17. Copyright declaration

- 17.1 The Contractor assures that his services do not infringe any copyrights or other third-party usage rights.
- 17.2 The Contractor hereby now grants his copyright permission, which is unlimited in time and in accordance with section 3 para. 6 No. 1 VOB/B, for drawings, calculations, verifications of calculations or other documents which the Contractor has to provide in accordance with the contract or commercial custom. Accordingly, the Principal shall have the right to use

(also to publish and reproduce) and modify all of the Contractor's implementation documents for the contractual performance, provided that this does not result in any distortion within the meaning of section 14 UrhG (German Copyright Act). This shall also apply if the contractual relationship is terminated prematurely. The Principal shall be entitled to transfer these rights to third parties.

17.3 The agreed remuneration shall cover all claims of the Contractor arising from the transfer of usage rights, exploitation and modification rights.

## 18. Data protection information

18.1 The Contractor shall treat all personal data entrusted to him by the Principal or to which he has gained access as confidential, unless there is a legally permissible reason for transferring the entrusted or accessible personal data. The Contractor shall also comply with data protection legislation.

18.2 The Contractor may only transfer personal data to external third parties following express written consent from the Principal.

18.3 The Contractor shall provide the Principal with all personal data to which it has contractually committed himself.

18.4 All personal data from the Contractor shall be processed in accordance with the applicable data protection legislation - especially the EU General Data Protection Regulation (GDPR) and its national accompanying legislation. The Contractor can download a corresponding information letter at any time from [https://porr-group.com/contractor\\_information](https://porr-group.com/contractor_information).

## 19. PORR Code of Conduct

19.1 The Contractor assures and undertakes to comply with the PORR Code of Conduct in the provision of goods and services. This is available at <https://porr-group.com/group/einkauf>. In particular, the Contractor expressly assures and undertakes to comply with the anti-corruption, anti-trust and competition regulations referred to in the PORR Code of Conduct. The Contractor's employees and subcontractors (if a subcontracting by the Contractor was planned or agreed) shall be obliged to observe the PORR Code of Conduct.

19.2 In the event that the Contractor violates the above obligation according to section 16.1 and does not remedy this violation within a reasonable period of time after having been requested to do so by the Principal, the Principal shall be entitled to terminate the contract with immediate effect or withdraw from the contract for good cause. In the event of a violation of the applicable anti-corruption or anti-trust and competition regulations or other serious breaches of the above obligation defined in section 16.1, the Principal shall be entitled to terminate the contract for good cause or withdraw from the contract without granting a grace period.

## 20. Applicable law/disputes

20.1 German law shall apply, excluding the UN Convention on Contracts for the International Sale of Goods (CISG) and the conflict rules of private international law.

20.2 As far as permissible, the exclusive place of jurisdiction is the place of the construction site.

## 21. Miscellaneous

21.1 All additions and amendments to this contract must be made in writing. This shall also apply to the cancellation of this written form requirement. Should individual provisions or components of the contract be ineffective, the effectiveness of the contract as a whole shall not be affected.

The contract language is German. All, in particular legally relevant declarations, must therefore be made in German.