

# Special Terms and Conditions of Purchase for Construction Work of DELO (as of 02/2021)

## § 1 Scope of the Terms and Conditions of Purchase for Construction Work and Contractual Bases

(1) These Special Terms and Conditions of Purchase for Construction Work (Bau-BEB) shall apply to the commissioning of construction work by DELO Industrie Klebstoffe GmbH & Co. KGaA and WSH GmbH & Co. KG (hereinafter both individually referred to as "DELO" "we") in addition to the General Terms and Conditions of Purchase (AEB) in the order specified in § 4 therein.

(2) Construction work is work of any kind to build, maintain, alter or remove any type of construction.

(3) The German Construction Contract Procedures (VOB/B) standard in the version applicable at the time of conclusion of the contract shall apply in addition to these Bau-BEB.

## § 2 Execution of the Construction Work

(1) The Contractor shall perform the construction work commissioned to it ("contractual performance") on its own responsibility and in accordance with the generally recognized rules of technology applicable at the time of acceptance as well as the relevant legal requirements and official regulations and shall also observe the installation instructions (installation guidelines) and other specifications of the manufacturers.

(2) The Contractor shall provide all supplies and services required to achieve the success of the work described in the contractual bases. Consequently, the Contractor's obligation to perform includes all supplies and services which are presented in words, drawings, and calculations in the contractual bases, including all individual tasks necessary for this. Furthermore, it shall also include those supplies and services which are not explicitly listed in the contractual bases, but which are necessary in order to render a complete, contractual, functional and serviceable performance in accordance with the generally accepted rules of technology, and which were apparent to the Contractor on the basis of the specialist knowledge to be expected of it at the conclusion of contract.

(3) If the documentation or information provided by DELO for service provision is incomplete or incorrect, the Contractor shall notify DELO immediately hereof.

(4) The materials or components used by the Contractor must not contain any pollutants known up to the time of acceptance or be hazardous to health or the environment in any other way.

(5) The Contractor shall regularly dispose of the construction debris resulting from its work as well as waste caused by it, including hazardous waste and packaging material, etc., in a professional manner and shall remove any contamination.

(6) Upon acceptance at the latest, the Contractor shall completely and properly clear the construction site as well as any storage areas, workplaces, and access roads made available by DELO. Any contamination or damage caused by the Contractor shall be professionally removed at the Contractor's expense.

(7) The Contractor shall at any time surrender to DELO upon request all plans, calculations, workshop drawings or other execution documents related to its services as well as the results of quality tests. At the request of DELO, the Contractor shall also provide these documents digitally on a data carrier in a format that allows unrestricted further processing.

(8) The power and water consumed on the construction site shall be provided to the Contractor by DELO up to a defined transfer point, provided that the Contractor has notified a corresponding need for this prior to the start of work. The Contractor is responsible for distribution on site at its own expense. Unless otherwise agreed in the negotiation protocol, power and water for the construction site shall be provided to the Contractor free of charge.

(9) Any modification or removal of facilities existing at the construction site requires the prior written consent of DELO. In any case, the Contractor shall notify DELO in due time before the modification and/or removal.

(10) Construction signs may only be erected by the Contractor with the prior consent of DELO.

(11) The Contractor shall carry out its work in such a way that other companies working at the construction site are not hindered or damaged. The execution of the work must be coordinated with DELO. The Contractor shall ensure that DELO is informed in a timely manner and comprehensively with regard to its technical workflow and schedule.

## § 3 Representation of the Contractor

(1) The Contractor shall ensure that qualified German-speaking management personnel are available in sufficient numbers to supervise the contractual performance during the entire execution period.

(2) It shall appoint a project manager who is authorized and empowered to make and receive legal statements and to perform other legal acts.

(3) DELO is entitled to demand from the Contractor the immediate replacement of the project manager or any other responsible

employee if this person has violated general order, safety, or basic secrecy or confidentiality, and/or does not appear to be sufficiently qualified from a professional point of view for the execution of the relevant project.

## § 4 Construction Management of DELO

(1) The construction management appointed by DELO (e.g. local construction management, project management) shall be entitled to give the Contractor instructions regarding the general course of construction, in particular the general order at the construction site, the manner in which construction is to be carried out, and the elimination of defects. The Contractor shall comply with these instructions. In all other respects, however, the construction management appointed by DELO is not authorized to make any legal or financial declarations at the expense of DELO.

(2) The Contractor's responsibility for its contractual services shall not be limited by the use and activity of the construction management. Therefore, the Contractor shall be liable in full, in particular, for defective contractual performance and other breaches of contract. It is its own responsibility to check any instructions given by construction management for technical correctness and compatibility with contractual and other regulations. It shall immediately notify DELO in writing of any reservations in this regard.

(3) Only DELO is authorized to receive statements that are of particular importance for the execution of the contract, not individual employees of the construction management. Such particularly important statements include, in particular, the setting of deadlines, notices of termination and announcements to prepare for or threaten termination, as well as other statements which, in terms of their legal consequences, are equivalent to termination in whole or in part, e.g. challenges, contract withdrawal. The Contractor shall send such letters directly to the management of DELO in writing.

## § 5 Execution Documents and Sampling

(1) The Contractor shall – in accordance with the progress of the construction work – inform DELO as early as possible of the date on which it may require documents to be supplied by DELO, in particular implementation plans, so that they can be handed over by DELO in good time. The Contractor shall then retrieve the corresponding execution plans itself. The Contractor may not invoke the fact that execution documents of any kind whatsoever have been delivered late by DELO if the Contractor, for its part, has not called them off in due time.

(2) Documents to be prepared by the Contractor, in particular work and assembly planning, supplementary workshop drawings, and other calculations and diagrams, shall be submitted to DELO for review and approval in good time (unless otherwise agreed, at the latest two weeks before the start of execution). If these documents contain deviations from the contractual bases, the Contractor shall point this out in writing, specifying the changed, omitted, or additional services. When sending these documents, the Contractor shall state in writing when it needs the confirmation of the documents at the latest, so that no delay occurs in the execution of the construction work. When DELO confirms the documents prepared by the Contractor, this shall not constitute a release from liability for the Contractor. Neither is DELO obligated to confirm such documents.

(3) DELO is entitled to sample materials and components in accordance with the contractual bases. In this respect, the Contractor shall inform DELO in good time of the date by which the sampling request must be made and the sampling carried out, taking into account reasonable inspection deadlines. The offer for sampling of the materials and components to be made shall be made by the Contractor in due time before manufacture. The Contractor shall provide at least three cost-neutral samples free of charge.

## § 6 Deadlines and Contractual Penalty

(1) Unless otherwise agreed, all dates and deadlines contained in the negotiation protocol and in other contractual bases (e.g. construction schedule) are binding (article § 5(1) of the German Construction Contract Procedures standard).

(2) If the Contractor defaults on an agreed completion date, it shall pay a contractual penalty of 0.3% of the agreed net remuneration (including remuneration for any commissioned/ordered additional services/modified services) for each working day that the deadline is culpably exceeded.

(3) If the Contractor defaults on an agreed interim deadline (which is subject to a contractual penalty), the Contractor shall pay a contractual penalty of 0.3% of the share of the agreed net remuneration (including remuneration for any commissioned/ordered additional services/modified services) for each working day of culpably exceeding the deadline, which corresponds to the services to be performed by the respective interim deadline. A contractual penalty forfeited once for an interim deadline shall be offset against subsequently forfeited contractual

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penalties for further interim deadlines and/or the completion deadline.

(4) The total contractual penalties to be forfeited in accordance with this clause shall amount to a maximum of 5% of the agreed net remuneration (including remuneration for any commissioned/ordered additional services/modified services).

(5) DELO may reserve the right to claim contractual penalties until the final payment is due.

(6) Further claims for damages by DELO remain unaffected. The contractual penalty shall be offset against such claims for damages.

### § 7 Prices and Remuneration

(1) All prices are fixed prices for the agreed performance period. Flat rates shall remain valid even if the executed quantity of a service or partial service covered by a flat rate deviates from the originally intended scope, unless DELO is responsible for this deviation. Section § 313 of the German Civil Code (BGB) remains unaffected. In the event of invoicing on the basis of flat rates, the Contractor shall be obliged to continuously track the quantities/masses provided. As soon as it becomes apparent that the anticipated invoice amount will exceed the order value, the Contractor shall inform DELO promptly in writing.

(2) The agreed remuneration shall cover all services owed by the Contractor in accordance with the contractual bases and with what is common usage. This shall also apply in the event that the cost of labor, materials, equipment, and/or substances increases during the contractual construction period.

(3) Measures, supplies, and services which, in the opinion of the Contractor, give rise to an additional claim to remuneration shall be notified in writing to DELO prior to execution. All supplementary offers shall always be prepared in writing. The discounts agreed in the main order are also valid for service changes. Supplementary offers following the main order shall be numbered consecutively. The supplementary offer shall also state any extension of the construction period, its expected duration, and any additional costs associated therewith. If this notice is not given right away and is not promptly handed in later, the agreed deadlines shall remain unchanged and the Contractor shall not be entitled to any contractual claim for compensation of additional costs due to a longer construction period.

(4) In the event of additional and/or modified services ordered by DELO, the parties shall, if possible, reach an agreement on the remuneration to which the Contractor is entitled prior to the commencement of performance. The Contractor shall submit to DELO without undue delay, but in any case in due time before the start of the execution, a written supplementary offer including prices. Upon written request of DELO, the Contractor shall perform the service even without a remuneration agreement. In this case, the Contractor may demand 70% of the remuneration stated in its supplementary offer as a down payment for the defect-free performance concurrently with the handover of a guarantee in the corresponding amount as security for any claim for repayment from DELO. The guarantee shall comply with the requirements of § 11.3. The right of DELO to obtain a different court decision (section § 650d of the German Civil Code [BGB]) remains unaffected.

### § 8 Acceptance

(1) DELO shall accept the contractual performance as soon as the Contractor has produced the work in accordance with the contract and without any significant defects, and the Contractor requests acceptance of the performance in writing. Acceptance of self-contained parts (§ 12(2) of the German Construction Contract Procedures standard) is excluded.

(2) Fictitious acceptance as well as acceptance by use (§ 12(5) of the German Construction Contract Procedures standard) are excluded – irrespective of the regulation in section § 640 of the German Civil Code (BGB). Acceptance may not be replaced by earlier use, commissioning, or official acceptance, nor by the Contractor's notification of completion of the contractual performance.

(3) Insofar as the technical situation is recorded during the course of construction by mutual agreement, in particular for those services that are covered by subsequent construction services or cannot subsequently be inspected, this shall not replace the formal acceptance and does not constitute partial acceptance. The contracting party claiming facts deviating from the jointly recorded condition at the time of acceptance shall bear the burden of proof for this.

(4) DELO is entitled to use the services of the Contractor for operational reasons even before acceptance. In this case, use shall not be considered acceptance. At the request of the Contractor, the condition of the service can be documented in a written protocol before use by DELO so that its current condition is confirmed.

### § 9 Claims for Defects

(1) The claims for defects of DELO shall be governed by the provisions of the German Construction Contract Procedures

standard. Unless the parties have agreed on different limitation periods in the negotiation protocol, the initial limitation period for defect claims shall be five years, starting with acceptance.

(2) Article § 13(4)(2) of the German Construction Contract Procedures standard is waived.

### § 10 Invoices and Payment

(1) The Contractor shall invoice its services in an auditable manner and in compliance with the applicable value added tax law.

(2) The Contractor shall submit an exemption certificate from its competent tax office pursuant to Section § 48b of the German Income Tax Act (EStG), at the latest with the first partial invoice, and shall submit a new certificate without being requested to do so when its period of validity expires. The Contractor is obliged to immediately notify DELO of any change made by the competent tax office with regard to the exemption certificate submitted. If DELO does not have an exemption certificate or if a certificate presented is revoked or withdrawn, the Contractor is obliged to inform DELO promptly about its tax number, the tax office responsible for it, and its bank details, and DELO is entitled to withhold the amount of tax to be paid. Insofar as DELO pays this retention to the competent tax office, the Contractor shall accept this as having been paid with the remuneration for the work.

(3) In the event that the Contractor is in arrears with contributions to social security, employers' liability insurance association, or vacation and wage compensation fund, for which DELO can be held legally liable, DELO may retain the amount corresponding to the arrears accrued. This retention will immediately be paid by DELO as soon as and insofar as the Contractor has proven that the arrears have been settled, for example, by submitting a corresponding confirmation from the responsible collection agency.

### § 11 Collateral

(1) The Contractor shall provide security for the performance of the contract to DELO in the amount of 10% of the agreed net remuneration. This security includes all claims of DELO for the contractual fulfillment of the contractual performance. If the Contractor does not provide security for the performance of the contract within 14 calendar days after placing the order (receipt of the order) by submitting a guarantee that complies with § 11.3 below, DELO shall be entitled to reduce each partial payment by a maximum of 10% and to retain this amount until the security amount is reached. DELO shall refund this security amount for the performance of the contract to the Contractor after acceptance in return for the provision of the security for defect claims agreed in § 11.2, unless claims of DELO, which are not covered by the security for defect claims, have not yet been fulfilled. Then DELO may retain a part of the security corresponding to these claims regarding performance of the contract.

(2) The Contractor shall provide security for defect claims in the amount of 5% of the agreed net remuneration (including remuneration for any commissioned/ordered additional services/modified services). Once the net final invoice amount has been determined, it shall be decisive. DELO shall be entitled to retain 5% of the final payment (net) as security for the defect claims (security retention). The Contractor shall be entitled at any time to replace the security retention by a guarantee for defect claims in a corresponding amount which meets the requirements of § 11.3 below. DELO shall refund any unused security for defect claims after expiry of the agreed warranty period as soon as the Contractor requests it to do so. Insofar as there are still claims for defects, which were notified before expiry of the warranty period, at the time the request for return is made, DELO may retain the corresponding part of the security until these claims for defects have been satisfied.

(3) If security is provided by way of guarantee, the guarantor must be a credit institution or credit insurer authorized in the European Community. The declaration of surety must be made in writing, for an unlimited period of time, and waiving the defenses of unexhausted remedies and set-off pursuant to Sections § 771 and § 770(1), insofar as the Contractor is not entitled to any undisputed or legally established counterclaims against DELO. The right of deposit must be excluded. Furthermore, the guarantor must declare that the place of jurisdiction is Munich and that the claim under the guarantee shall not become time-barred before the secured principal claim.

### § 12 Allocation of Risk

The allocation of risk shall be governed exclusively by section § 644 of the German Civil Code (BGB).

### § 13 Termination of Contract

(1) In addition to the statutory grounds for termination (including the grounds for termination regulated in the German Construction Contract Procedures standard), DELO shall be entitled to terminate the contract for good cause with immediate effect, in particular (alternatively) if

(i) the Contractor ceases its payments or files for insolvency proceedings or comparable statutory proceedings or such

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proceedings are opened or their opening is rejected for lack of assets;

(ii) the Contractor is in default with the performance of its services despite a reminder, in which termination of the contract is threatened, and the continuation of the contract is no longer reasonable for DELO;

(iii) the Contractor employs subcontractors without the Client's consent even after expiry of a reasonable period of time (§ 5(11) of the General Terms and Conditions of Purchase);

(iv) the Contractor violates provisions of the German Act to Combat Undeclared Work and Unlawful Employment (SchwarzArbG) and/or the German Act on Mandatory Working Conditions for Workers Posted Across Borders and for Workers Regularly Employed in Germany (AEntG) and does not refrain from doing so despite a written request setting a deadline has been sent.

(2) If DELO terminates the contract for the contractual services for good cause, the Contractor is only entitled to charge for the services demonstrably provided on site up to the date of termination, provided DELO has use for them. DELO may also demand partially completed services against reimbursement of the demonstrably incurred costs, but no more than the value of the partially completed service in relation to the total value of the respective service.

(3) The right of termination according to § 6(7) of the German Construction Contract Procedures standard is excluded on both sides.

(4) Notices of termination shall be given in writing.

### **§ 14 Prohibition of Assignment**

The transfer of contractual rights or obligations by the Contractor requires the prior written consent of DELO to be effective. The Contractor is not entitled to assign its claims against DELO or have them collected by third parties without prior written consent of DELO, which may not be unreasonably withheld. If the Contractor assigns its claim against DELO without our consent, the assignment is nevertheless effective; DELO may, however, make payment to the Contractor or the third party with discharging effect at our discretion.

### **§ 15 Choice of Law, Place of Jurisdiction**

(1) The contracts concluded with the inclusion of these Bau-BEB are subject to the law of the Federal Republic of Germany (excluding the UN Convention on Contracts for the International Sale of Goods).

(2) Exclusive place of jurisdiction is Munich. However, DELO is also entitled, at our discretion, to sue the Contractor at its general place of jurisdiction.

### **§ 16 Miscellaneous**

(1) Subsidiary agreements, amendments or supplements to the contractual agreement must be made in writing.

(2) Should one or more of the above provisions be or become invalid, the validity of the remaining provisions shall not be affected.