

# General Terms and Conditions of Purchase of Mainova AG (AEB)



The following Terms and Conditions of Purchase shall apply to all contracts for goods and services between the respective contracting affiliate of Mainova (hereinafter referred to as "Client") and third parties (hereinafter referred to as "Contractor"). The Client and the Contractor are hereinafter also referred to as the **Contracting Parties**. Mainova group includes Mainova Aktiengesellschaft, NRM Netzdienste Rhein-Main GmbH, Mainova ServiceDienste GmbH and SRM Straßenbeleuchtung Rhein-Main GmbH.

## 1. Order, purchase order, terms of offer/conclusion of contract

- 1.1 Orders (purchase orders) shall be placed in writing. For purposes of the written form requirement, the transmission by email or fax shall suffice.
- 1.2 The Contractor shall in any case confirm the order placement in writing. The Client's purchase order shall be deemed accepted if it is not rejected in writing by the Contractor within a period of two weeks from the date of the order or if the Contractor commences the commissioned performance within this period without objection. This shall not release the Contractor from the obligation to send the Client an order confirmation. "Performance" refers to the object of the contract, including all ancillary services, which the Contractor is obligated to provide for the Client.
- 1.3 Order confirmations which deviate from the order or the offer are invalid. In this case, the content of the order or offer shall take precedence.

## 2. Parts of the contract

- 2.1 The parts of the contract are, in the order of priority of the following list:
  - a) the ordering letter (purchase order) of the Client, together with its annexes (e.g. minutes of negotiations, statement of work, etc.),
  - b) these General Terms and Conditions of Purchase of the Client (AEB),
  - c) the accepted technical standards, the relevant technical regulations and codes of practice including DIN standards and European specifications, as amended,
  - d) the provisions of the German Civil Code (BGB),
  - e) the Contractor's offer with its attachments.
- 2.2 Through the inclusion of these Terms and Conditions of Purchase, the Contractor acknowledges that the provisions contained in these Terms and Conditions of Purchase become an integral part of the contract and that the Contractor's own terms of contract, in particular terms of payment, shall not apply, even if reference is made to them in the Contractor's offer or other documents.

## 3. Execution of contracts and deliveries

- 3.1 Deliveries shall be made to the place of use specified in the order during the general business hours of the Client.
- 3.2 Deliveries by the Contractor shall be documented by receipts (delivery notes, weight card (original), consignment note, etc.). For all deliveries, the following must be indicated on the delivery documents:
  - Place of delivery,
  - the subject of the delivery, item number,
  - the delivery date,
  - the quantity/weight,
  - Designation of the components, if applicable: number of individual parts with exact designation,
  - Acceptor,
  - Name of the project measure,
  - full order number or the number of the quantity or value contract together with the number of the call-off,
  - the plate number of the motor vehicle with which the delivery was made,
  - for hazardous goods, the classification according to the regulations of the Hazardous Goods Transport Regulation for the relevant means of transport (GGVSE, etc.).
- 3.3 Unless otherwise specified in the contract, delivery of the products shall be made in accordance with INCOTERMS 2020 DPU to the place of performance specified in the contract. By way of derogation, in the case of contracts that have as their object the construction of a work, the transfer of risk shall only take place upon acceptance (section 644 BGB).
- 3.4 In the case of contracts, which, in addition to the delivery of an item, also cover its assembly, the transfer of risk shall not take

place until the completion of the assembly, but not before the Client has been given the opportunity to inspect it. Items or works requiring operation and/or supervision shall be operated by the Contractor on its own responsibility and in coordination with the Client (e.g. trial operation) and secured against deterioration until acceptance or until completion of installation and handover to the Client. During this period, the Contractor shall carry out securing, operation and maintenance in a professional manner and in compliance with the manufacturer's specifications.

- 3.5 At the request of the Client, the Contractor shall be obligated to take back and properly dispose of the packaging material used in accordance with the law. The Contractor carries the costs for packaging and transport.
  - 3.6 The Contractor shall hand over all documents required for operation, maintenance, repair, etc. to the Client free of charge and in good time. They are integral parts of the contractual delivery and performance. They shall become the property of the Client. The Contractor shall be liable for any and all damage incurred by the Client as a result of the breach of this obligation.
  - 3.7 The Contractor shall not assign, transfer, encumber or subcontract the contract or any part thereof without the prior written consent of the Client.
  - 3.8 The Client may refuse consent to subcontracting by the Contractor for good cause and may also revoke such consent for good cause. In this context, breaches of the Supplier Code (see also no. 20.2) which are not remedied by the Contractor, including in relation to the subcontractor, despite a prior warning by the Client, shall also be deemed good cause.
  - 3.9 The Contractor shall inform the Client of any contradictions and/or gaps in the planning and offer documents prior to the conclusion of the contract. In cases of doubt, the higher-quality version of the performance shall be planned. In the event of contradictions or gaps in contractual documents of equal rank, the Client shall decide on the type of execution at its reasonable discretion. This determination of performance shall not constitute a change in performance and shall have no influence on the Contractor's claim to remuneration for work.
- ## 4. Change in the scope of services
- 4.1 In the case of contracts for the provision of services (e.g. contract for work and services), the Client may demand changes to the scope of services (including the contractually agreed deadlines), unless this is unreasonable for the Contractor in an exceptional individual case. The Contractor shall comply with such a request.
  - 4.2 If the basis of the price for the performance provided for in the contract is changed due to a change in the characteristics of the performance, a new price shall be agreed in writing, taking into account the additional and reduced costs. The Contractor shall submit to the Client a supplementary offer in text form regarding the additional or reduced remuneration sought as a result of the change request; such offer shall be submitted without undue delay, at the latest, however, within 5 working days after receipt of a change request. This offer shall be submitted at least in text form. The Contractor shall observe the respective contractual arrangements in each case. Only the purchasing department of the Client shall be authorised to commission the modified performance (supplement). Additional or modified performance rendered without a supplementary order shall be deemed not to have been commissioned. The agreement shall take into account any effects of the change in the performance on other contractual conditions, in particular on execution deadlines. The agreement shall be concluded without undue delay.
  - 4.3 The additional remuneration pursuant to no. 4.2 shall be limited to the actually incurred additional expenditure, which shall be calculated on the basis of the applicable unit prices. If no unit prices have been agreed or if none are applicable (for example in the case of lump sums), the Contractor shall provide evidence that it has calculated the costs in the corresponding amount prior to the conclusion of the contract. In determining the additional expenses, any expenses saved shall be deducted in the same way. Costs that would have been incurred even without the change may not

be charged as additional expenses. The Contractor shall handle changed performance as economically as possible and take all reasonable measures to ensure that avoidable additional costs are not incurred.

- 4.4 If there is the threat of delays or in the event of imminent danger, the Client may demand that the Contractor commence performance even before the costs have been settled by mutual agreement. The Contractor shall comply with such a request. In this case, the contracting parties shall subsequently agree on an appropriate price in accordance with no. 4.3.
- 4.5 Performance rendered by the Contractor without an order (order amendment) or in an unauthorised deviation from the contract will not be remunerated. Upon request, it shall take back or remove such performance within a reasonable period of time, otherwise they may be returned or removed at its expense and risk. However, it shall be entitled to remuneration in exceptional cases if the Client subsequently accepts such performance. Sections 677 et seqq. BGB (negotiorum gestio) shall remain applicable.
- 4.6 Any further claims by the Client shall remain unaffected.

## 5. Remuneration

- 5.1 The Contractor shall be entitled to remuneration for the performance of the contract. This remuneration is based on the contractually agreed prices. The prices (unit prices, inclusive prices, hourly wage supplements, etc.) are net prices. Value added tax shall be paid on these net prices in accordance with the law.
- 5.2 The prices used in the order, purchase order and statement of work are fixed prices for the contractual performance. They include the performance of all ancillary services customary in the trade. Price increases or additional claims of any kind, including those due to wage or increases in material prices that have occurred, shall be excluded.
- 5.3 Price increases falling in the period between the placement of the order and the delivery/service provision shall only be taken into account if the Client has acknowledged them in writing prior to the respective execution.

## 6. Invoicing

- 6.1 Invoices shall be designated as interim, partial or final invoices; instalment invoices shall be numbered consecutively.
- 6.2 The following may be used as documentation for invoicing purposes:
- for performance, the signed and dated measurements and/or measurement record drawings or other suitable proofs and receipts.
  - for deliveries, the delivery notes, weight cards (original), consignment notes, etc.
- 6.3 The measurements that may be necessary for the invoicing of performance shall always be made jointly and signed by a representative of the Client and by the Contractor or by a representative of the Contractor. The Contractor shall apply for the joint measurement in good time.
- 6.4 Hourly wage work shall only be remunerated if it has been expressly ordered in writing or in text form by a representative of the Client authorised for this purpose.
- 6.5 For hourly paid work, workday and person-specific lists (timesheets), containing the starting, interruption and ending times shall be prepared and submitted. These timesheets must be countersigned by an authorised representative of the Client (usually construction or project management). By signing the time sheets, the Client merely confirms receipt. The right to review or correct such document at a later date is reserved. Subsequent signing of timesheets shall not be deemed to constitute an order of hourly paid work.
- 6.6 Hourly rates are all-inclusive fixed prices and include all ancillary costs, expenses, and supervisory or overhead costs, unless expressly stated otherwise in the offer. Travel expenses and travel time shall not be remunerated separately.
- 6.7 Invoices shall be submitted in digital form. The relevant mail addresses and further information are available at [www.mainova.de/zentraleinkauf](http://www.mainova.de/zentraleinkauf).

## 7. Payments

- 7.1 The Client's final payment to the Contractor shall fall due after acceptance of the contractual performance by the Client, the

issuance of the Contractor's auditable invoice, which meets the requirements of no. 6, and the expiry of the agreed, reasonable review periods of the Client.

- 7.2 Progress payments and advance payments are excluded unless expressly agreed. Insofar as terms of payment or a payment schedule are agreed, these shall be deemed to be progress payments and shall be binding. The Contractor shall not be entitled to invoice any progress payments beyond this.
- 7.3 If down payments or advance payments are agreed, these shall be secured by the Contractor with an advance payment guarantee in accordance with no. 16; the payments shall fall due concurrently with the provision of this guarantee.
- 7.4 If the provision of a guarantee for the correction of defects has been agreed in accordance with no. 16, final payments shall only be made in return for the provision of this guarantee. The guarantee document shall be sent to the responsible buyer personally, with delivery confirmation.
- 7.5 The Client shall be entitled to a cash discount under the following conditions: At the discretion of the Client, payment shall be made within 21 days from receipt of the invoice with a 3% discount or within 30 days net.

## 8. Acceptance

Performance under contracts for work and or parts thereof shall be accepted by formal procedure with the preparation of a written record. In the case of purchase contracts with an installation obligation, a joint final inspection of the installation shall take place after completion of the installation. The Contractor shall issue the invitation for the acceptance or final installation inspection with sufficient lead-time, no less than 5 working days.

## 9. Environmental protection and social standards

- 9.1 If performance involves activities involving substances, which are hazardous, hazardous to water or the environment within the meaning of the German Ordinance on Hazardous Substances (GefStoffV), the Contractor shall confirm that it has the required special expertise and experience in this respect and complies with the regulations on the protection of workers and the environment. Without being requested to do so, it shall submit to the Client the evidence required by the relevant regulations and technical rules relating to the planned activity. The Contractor shall inform the Client of its activities involving hazardous substances if they may affect the Client's personnel or the personnel of other contractors of the Client.
- 9.2 If hazardous waste is generated during performance, the Contractor shall coordinate the method of disposal with the Client as a rule and submit the required documentation without undue delay, unless the waste is disposed of via disposal methods of the Client in accordance with the contract. By accepting the order, the Contractor confirms that it is aware of and will comply with the applicable waste management regulations.
- 9.3 The Contractor shall be responsible for the delivery and, if applicable, the removal of the substances and materials which it provides for the provision of the contractual performance as the recipient and, if applicable, dispatcher within the meaning of the dangerous goods regulations and shall also mark these transports as such.
- 9.4 The Contractor undertakes to grant the employees it deploys the minimum wage in accordance with the laws applicable to it in each case (in particular the German Law on the Posting of Workers (AEntG) and the German Minimum Wage Act (MiLoG)). Where the Contractor uses subcontractors, the Contractor shall also ensure that only those subcontractors are deployed who also grant their employees the minimum wage in accordance with the laws applicable to them in each case. The Contractor shall be obligated to provide the information required to verify compliance with the above obligation and to pursue the legal interests of the Client. Likewise, the Contractor shall be obligated to ensure that a corresponding right to information on the part of the Client also applies to subcontractors engaged by the Contractor. The Contractor shall indemnify the Client (in their internal relationship) against all possible claims asserted against the Client due to a violation of the German Law on the Posting of Workers, the German Minimum Wage Act (MiLoG) or comparable provisions by the Contractor or one of its subcontractors.
- 9.5 The Contractor shall be obligated, at the Client's request, to provide evidence of the fulfilment of its current obligations to social insurance institutions and tax authorities by submitting corresponding contribution fulfilment or tax clearance certificates. This also applies to

other evidence, which the Client requires to be able to fulfil its own legal obligations.

## 10. Default, contractual penalty

10.1 Agreed contract dates are binding. This also applies to contractually stipulated interim dates. The Contractor is obligated to inform the Client in writing without undue delay if circumstances arise or become apparent which indicate that the agreed deadlines cannot be met. If a period for delivery or performance has been agreed, the Contractor must commence the performance at the beginning of the period and the performance must be fully completed by the end of the period at the latest.

10.2 The Contractor shall be obliged to pay the Client a contractual penalty of 0.25 per cent of the agreed net order value for each working day that the agreed delivery or completion date is culpably exceeded, but limited to a total of not more than 5 per cent. Claims of the Client for compensation of damages exceeding the contractual penalty shall remain unaffected. However, any incurred contractual penalty shall be offset against any further damage.

The contractual penalty can be claimed by the Client up to the final payment.

If an agreed completion period is extended or redefined by mutual agreement, this shall be recorded by the Client in writing in accordance with no. 1.1. The contractual penalty provision shall apply to the binding completion period, which has been extended or newly agreed, without the need for a new special agreement regarding the contractual penalty provision. A contractual penalty already forfeited shall remain even if a new contractual deadline is agreed, a date is subsequently postponed or an obstruction occurs.

## 11. Product quality

11.1 The Contractor shall provide the contractually agreed quality. Any properties specially highlighted there shall be considered guaranteed.

11.2 All deliveries/services must comply with the official regulations, the relevant accident prevention regulations of the employers' trade associations as well as other occupational health and safety regulations and the generally recognised safety and occupational health rules as well as the state of the art at the time of the delivery/service. Necessary protection devices shall be supplied and are included in the price. The supplied material shall bear the relevant test certification marks or the Contractor must guarantee in writing that the whole of the material is in compliance with these provisions.

## 12. Claims in the event of defects, notice of defects

12.1 The Contractor warrants that the contractual deliverables are new and unused at the time of delivery.

12.2 Defects notified by the Client shall be remedied by the Contractor within a reasonable period set by the Client from the date of notification. If the Contractor fails to remedy defects within the set period, the Client shall be entitled, without further warning and without setting a grace period, to remedy the defects itself or to have them remedied by third parties and to deduct an appropriate amount for the incurred costs from the Contractor's invoiced amounts or to declare set-off. Section 439 para. 3 and 440 sent. 2 BGB shall remain unaffected. However, the Contractor shall provide detailed and comprehensible information to the Client without undue delay of the date and the planned measures if it intends to make a second attempt at subsequent performance or if it plans a type of subsequent performance other than that requested by the Purchaser. If no such notification is made, the subsequent performance shall be deemed to have failed.

12.3 Claims for defects shall become statute-barred after five years in the case of an item that has been used for a building in accordance with its customary manner of use and has caused the defectiveness of the building, and after two years in all other cases.

12.4 Upon acceptance of defect rectification work, the warranty period for such work shall begin anew. However, it shall in no case expire before the expiry of the original contractual limitation period.

12.5 Any enforceable obligations or non-enforceable duties of the Client to inspect the products shall be limited to the inspection (without undue delay) as to whether the products correspond to the ordered type and quantity and whether there are any visible external defects or damage caused by transport. Such an inspection of the products is only carried out at the responsible specialist department and not upon delivery to the central acceptance points.

12.6 To the extent that the contract for deliveries and services is a commercial transaction for both parties (*Handelsgeschäft*) within the

meaning of the German Commercial Code (HGB), the Client shall be entitled to notify defects in deliveries within two weeks after receipt of the delivered item, in the case of hidden defects within two weeks after discovery.

12.7 Until the expiry of the limitation period for claims for defects, the Contractor shall be obligated to inform the Client in writing without undue delay if its place of business changes, if it changes its company name or if there is a change in its shareholder or ownership structure. If a letter or communication from the Client to the address last given by the Contractor cannot be delivered and is marked "undeliverable" or "address unknown" or similar, or if a registered letter (with advice of receipt) is not collected, the letter shall be deemed to have been received by the Contractor regardless. In these cases, deadlines set for the Contractor shall begin to run no later than 3 days after the Client has sent a notice of defects.

## 13. Termination

13.1 The Client shall be entitled to terminate the contract with four weeks' notice to the end of the month. If the contract is terminated prior to the expiry of an agreed term, the Client shall remunerate the Contractor not only for the performance rendered in accordance with the contract up to the termination of the contract but also for the additional costs incurred as a direct result of the termination, insofar as they can no longer be averted, less any saved expenses and taking into account the duty to mitigate damages. The Contractor shall not be entitled to any additional claims for performance or damages based on the termination.

13.2 If the Client terminates a contract for deliveries and/or other services, the Client and the Contractor shall be obligated to provide each other with all information necessary for the assessment of the amount of the remuneration claim and to prove the accuracy of such information.

13.3 The right to extraordinary termination for good cause shall remain unaffected. Cause for extraordinary termination by the Client shall exist in particular if:

- The Contractor itself or one of its subcontractors or vicarious agents commits a serious breach of one of the Contractor's obligations under the contract and fails to remedy the situation despite a corresponding warning from the Client. A contractual obligation is not fulfilled despite prior warning and setting of a deadline.
- The fulfilment of a contractual obligation is rejected earnestly and with final conclusiveness.
- The Contractor in the context of rendering performance violates public law provisions that are subject to criminal penalties or fines and fails to remedy the situation despite a corresponding warning from the Client.
- If identified environmental or human rights-related risks are present, the Contractor, contrary to the remedial measures agreed with the Client in this context, fails to comply with or implement these - also in relation to its subcontractors and despite prior warning by the Client.
- The opening of insolvency proceedings against the Contractor's assets has been applied for or insolvency proceedings against the Contractor's assets have been opened or rejected for lack of assets.

13.4 In the event of an extraordinary termination, the Client may use the performance already rendered by the Contractor against reasonable remuneration. It shall also be entitled to continue to use the facilities required for the continued provision of the performance in return for appropriate remuneration.

Further contractual or statutory rights of termination remain unaffected.

## 14. Set-off

The Contractor may offset only against undisputed or legally established claims.

## 15. Prohibition of assignment

The Contractor may assign its claims against the Client only with the Client's written consent. Section 354a HGB shall remain unaffected.

## 16. Security

16.1 The Client shall be entitled to demand security a) to ensure that the delivery or service is performed in accordance with the contract (performance guarantee) and/or b) for the satisfaction of the rights arising from defects (warranty guarantee). The security provided

- to ensure the contractual performance of the delivery or service shall amount to 10 per cent of the gross order value, the collateral provided to ensure fulfilment of the claims for rectification of defects shall amount to 5 per cent of the gross order value. Such security can be established by the Client withholding amounts from the respective invoices or other claims of the Contractor or by the Contractor providing a guarantee in accordance with no. 16.2.
- 16.2 The Contractor shall be entitled to redeem the holdback pursuant to no. 16.1, insofar as it has not been realised, by providing a guarantee in accordance with German law, which serves to secure the claims of the Client.
- In this case, security shall be provided through an unconditional, irrevocable and directly enforceable guarantee (performance guarantee) of a major bank, a savings bank or a credit insurer, in each case with general place of venue in Germany pursuant to section 12 Code of Civil Procedure (ZPO), in accordance with the specifications of the published guarantee forms of the Client ([www.mainova.de/zentraleinkauf](http://www.mainova.de/zentraleinkauf)).
- The guarantor shall waive the defences of set-off pursuant to §§ 770 and 771 BGB; however, the waiver of the defence of set-off shall not apply to undisputed counterclaims or those counterclaims of the Contractor established with final effect. The Guarantor's waiver of the defence of voidability shall not apply to voidability under section 123 BGB. The claim under the guarantee shall be time-barred according to section 195, 199 BGB, but shall not be barred before the secured principal claim is.
- The Contractor shall also have the option to avert the retention of a holdback and the obligation to provide a performance guarantee or warranty guarantee by providing security in the same amount to an escrow or blocked account or by providing an equivalent insolvency-proof security.
- 16.3 Insofar as these have not been realised, the performance guarantee or holdback shall be surrendered/released by the Contractor after complete performance of the contract and final acceptance, concurrently with the provision of the warranty guarantee to the value of 5% of the gross order value (plus any supplements commissioned up to the time of the exchange of the guarantee).
- 16.4 The performance guarantee shall secure all claims of the Client against the Contractor for breach of all contractual obligations assumed by the Contractor, together with contractual penalties, irrespective of the legal grounds, all of these plus interest and claims for the reimbursement of costs, insofar as they have arisen up to the time of acceptance. The security purpose in particular covers claims of the Client due to the breach of contractual obligations by the Contractor up to acceptance, irrespective of the legal grounds, in particular claims for contractual performance including invoicing, contractual penalty, reimbursement of overpayments (insofar as asserted prior to acceptance), claims for damages of any kind, breaches of duty due to fault in conclusion of a contract and from unwinding relationships (e.g. justified termination of the contract) and fulfilment of recourse and indemnification claims of the Contractor in the event of the assertion of claims by third parties. Insofar as claims for defects are being secured, the guarantor shall only be liable for claims due to defects which the Client has notified by the time of acceptance or which the Client has reserved at the time of acceptance. The guarantee shall not secure claims from defects which the Client notifies for the first time after acceptance has been carried out.
- 16.5 The defects guarantee shall serve to secure all claims and rights of the Client due to defects in quality or title in the Contractor's performance which the Client notifies for the first time after acceptance (i.e. defects occurring after acceptance and/or defects which were present at the time of acceptance but not discovered and thus not reserved by the Client at the time of acceptance). Claims due to overpayment of the Contractor shall be secured insofar as the Client asserts them for the first time after acceptance. Claims for damages of any kind are covered insofar as they have arisen after acceptance. Claims of the Client for recourse and indemnity shall be covered in the event of the Client being held liable by third parties after acceptance due to a breach of duty on the part of the Contractor, its subcontractors and/or other downstream subcontractors. All claims are secured together with interest and claims for the reimbursement of costs.
- 16.6 The Client shall surrender to the Contractor any security for defect claims that has not been realised if there are no longer any secured claims of the Client, i.e. as a rule after the expiry of the contractual limitation periods for defect claims. However, to the extent that the asserted and justified claims of the Client have not yet been satisfied, the Client may retain a part of the security amounting to twice the anticipated costs of remedying the defect.
- 16.7 Only German law may be applicable to the guarantee contracts. To the extent permitted by law, guarantee contracts shall designate Frankfurt am Main as the place of jurisdiction.
- 17. Insurance policies**
- 17.1 The Contractor shall take out, at its own expense, adequate insurance against the dangers and risks arising from its deliveries and services and shall provide evidence of such insurance coverage to the Client upon request.
- 17.2 At the request of the Client, the Contractor shall provide evidence of a business liability insurance policy with an insured sum of no less than EUR 10 million.
- 18. Protected rights and confidentiality**
- 18.1 The Contractor shall guarantee that no legally protected rights of third parties, in particular no patent rights, are infringed if the Contractor itself offers the proprietary process or the use of protected objects or if the Client has prescribed the use and pointed out the protected right. The Contractor undertakes to indemnify the Client against any claims by third parties and assumes sole liability vis-à-vis parties who assert the infringement of legally protected rights. Any royalties/licence fees attached to the delivered items shall be borne by the contractor.
- 18.2 The Client may use the object of the contract without restriction, including the underlying patent and other protected rights. This right of use shall also entitle the Client to make changes or repairs to the object of the contract and also covers illustrations, drawings, calculations, methods of analysis, recipes and other works created or developed by the Contractor during the conclusion or performance of the contract. For the purpose of producing spare parts, the Client may provide documents to third parties.
- 18.3 The contractual partner undertakes to treat all information obtained in the course of its activities for Mainova group and all documents created or arising in connection therewith confidential as business secrets; it shall also refrain from making any direct or indirect use thereof outside the purpose for which the information is made available to it and it shall not pass the information on to third parties, publish it or make it available to third parties in any other way, unless Mainova group has given its prior written consent. This shall not apply if the contractual partner is obligated to disclose the information due to the law or requests by government authorities, or if the information is generally known.
- The information obtained by the contractual partner of Mainova group shall remain the property of Mainova group without exception.
- The contractual partner undertakes to subject its corporate bodies, employees or other vicarious agents to the provisions of this contract; this shall extend even beyond the time of the departure of the employees concerned.
- 18.4 The duty of confidentiality shall continue for a period of 2 years after fulfilment or termination of the contract.
- 18.5 Drawings, samples and models supplied by the Contractor shall become the property of the Client free of charge upon handover, unless special agreements have been made.
- 19. Data protection**
- 19.1 When acting as data controller or processor in providing the contractual performance, the Contractor shall comply with the relevant data protection regulations, in particular the provisions of the General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (BDSG-neu).
- 19.2 The supplier undertakes to process the personal data made available to it by us exclusively in a lawful and transparent manner, in good faith and exclusively for the provision of the contractual performance. Any further use of the data, in particular any use for the Supplier's own purposes or for the purposes of third parties, shall require the prior written consent of the Client; excepted from this shall be data processing, which must be carried out due to requirements under the law.
- 19.3 The Contractor shall only use employees for the provision of the contractual performance who have been familiarised by means of suitable measures with the statutory provisions on data protection and the specific data protection requirements of the contract, and who have been committed to comprehensive confidentiality in writing, insofar as they are not already subject to appropriate statutory duties of confidentiality. These obligations must be worded in such a way that they remain in force after the end of this contract or of the employment relationship between the employee and the Contractor.

- 19.4 The Contractor undertakes to maintain confidentiality about the data obtained, even after the end of the contractual relationship. Upon termination of the contractual relationship, the Contractor shall return all data of the Client and its customers in its possession or under its control or confirm the erasure of such data. In commercial business transactions, the Contractor shall have no right of retention in this respect.
- 19.5 Upon the Client's request, the Contractor shall provide the Client without undue delay with all information to which it has access regarding the Client data or to provide information so that the Client can fulfil its information obligations pursuant to Art. 12 et seqq. GDPR vis-à-vis data subjects.
- 19.6 If the Client deems this necessary, the Contractor shall conclude a data processing agreement or joint data processing agreement with the Client. Should there be reason to doubt whether the conclusion of such an agreement is necessary, the agreement shall be concluded, as the possible consequences of not concluding it (despite an obligation to conclude it that is established later on) are disproportionate to the cost of concluding it. The Client shall keep suitable sample contracts available.
- 19.7 If, in the course of rendering contractual performance, personal data of the Client are processed by the Contractor in a third country, the Contractor shall ensure an adequate level of data protection within the meaning of Art. 44 et seqq GDPR.

## **20. Compliance**

- 20.1 The Client places the highest priority on value management in the awarding and handling of contracts. The Contractor undertakes to take all measures necessary to prevent unlawful acts to the detriment of the Client and to assist in e.g. preventive measures by the Client. By incorporating these contractual terms and conditions, the Contractor in particular undertakes not to tolerate or engage in any form of corruption or bribery, including any unlawful offers of payment or similar inducements to public officials or employees of the Client to influence decision-making. The Contractor shall ensure that its employees and subcontractors comply with the law and the applicable legal systems.
- 20.2 The Contractor undertakes to comply with the Code of Conduct for Suppliers issued by the Client and to also contractually bind its own subcontractors or other vicarious agents to this Code of Conduct for Suppliers. This Code is published on the Client's homepage ([www.mainova.de/zentraleinkauf](http://www.mainova.de/zentraleinkauf)).

## **21. Liability**

The liability of the contractual partners shall otherwise be determined in accordance with the statutory provisions.

## **22. Concluding provisions**

- 22.1 The language of negotiation and contract is German.
- 22.2 The Client expressly reserves the right to transfer, at a later date, its rights and obligations under this contract with discharging effect to a third party (e.g. property owner / investor / builder) as a new contractual partner of the Contractor. The Contractor hereby agrees to this.
- 22.3 Any amendments and additions to this contract must be made in writing. This also applies to any waiver of this clause requiring the written form.
- 22.4 Ancillary agreements shall only be effective if they are agreed in writing. If the basic contract was concluded in text form, the form chosen for the basic contract (email, fax, etc.) shall be sufficient for any contractual amendment; the contractual amendment shall be clearly marked as such. An implicit amendment is excluded. Verbal amendments or ancillary agreements shall be ineffective unless they are confirmed in writing or in text form subject to the condition set out in sentence 2.
- 22.5 Should any provision of the contract be invalid, the contracting parties shall replace the invalid provisions with a provision that comes as close as possible to the intended purpose. The same shall apply for gaps in the contract.
- 22.6 The contractual relations and any legal disputes shall be exclusively governed by German law. The application of the UN Sales Convention CISG shall be excluded.
- 22.7 The place of performance shall be the agreed place of use, otherwise the registered office of the Client in Frankfurt am Main.
- 22.8 If permissible under the law, the place of jurisdiction for all disputes arising from the contract shall be Frankfurt am Main.