

# Supplementary Conditions of Purchase for Construction Work (EB-Bau)



The following Conditions of Purchase shall apply, in addition to the General Terms and Conditions of Purchase, to contracts for the performance of construction services between the respective contracting group company of Mainova (hereinafter referred to as "Client" or and third parties (hereinafter „Contractor“). Mainova group includes Mainova Aktiengesellschaft, NRM Netzdienste Rhein-Main GmbH, Mainova ServiceDienste GmbH and SRM Straßenbeleuchtung Rhein-Main GmbH.

## 1. Terms of offer/conclusion of contract

- 1.1 The Client reserves the right to choose among the bidders. If consortiums are formed, this must be stated when the tender is submitted, and the authorised representative must be named.
- 1.2 The preparation of the offer by the Contractor shall be free of charge and without any obligations for the Client. This shall also apply insofar as the submission of the offer requires and includes the preparation of implementation planning or calculations.
- 1.3 The Contractor shall be obligated to point out independently before or with the submission of the offer if the services put out to tender do not conform with generally accepted technical standards or contain deviations therefrom. If the Contractor does not provide a written note to this effect in its offer, the Client shall assume that the construction work put out to tender pursuant to the Contractor's offer complies with the generally accepted technical standards and meets the guaranteed properties.
- 1.4 Before submitting a tender, the Contractor shall inform itself about the local conditions on the construction site, the condition of existing structures and the adjoining terrain as well as with regard to all other questions additionally affecting the execution of its contract. Subsequent objections and subsequent claims arising from lack of familiarity with the construction site shall not be accepted.

## 2. Parts of the contract

- 2.1 The following provisions are integral parts of the contract, in the order in which they are listed (descending):
  - a) the ordering letter (purchase order) of the Client with its annexes (e.g. minutes of negotiations, statement of work incl. additional technical terms of contract etc.),
  - b) these Supplementary Conditions of Contract for Construction Work,
  - c) the General Terms and Conditions of Purchase of the Client,
  - d) the applicable state building code,
  - e) all public-law permits for the project (e.g. building permits, permits under Federal Emission Law (BlmSchG), permits to dig into or cordon off public areas), including provisional planning permissions and applications,
  - f) the VOB Part C (General Technical Terms of Contract for Construction Work),
  - g) all standards, technical regulations and provisions of government authorities and testing institutes as well as manufacturer's guidelines and instructions for use,
  - h) the construction site regulations, the property regulations or safety information of the Client,
  - i) the technical part of the Contractor's offer.
- 2.2 Through the inclusion of these Conditions, the Contractor acknowledges that the provisions contained in these Conditions 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. Remuneration

In addition to the provisions in clause 4 of the General Terms and Conditions of Purchase, the following shall apply:

- 3.1 In the case of orders commissioned by NRM Netzdienste Rhein-Main GmbH or SRM Straßenbeleuchtung Rhein-Main GmbH, it must be taken into account that they themselves provide construction services and that section 13 VAT Act (UStG) applies.
- 3.2 The prices also include the costs for instructing the Client's or builder's personnel in the operation and maintenance of the equipment supplied and/or installed by the Contractor.

- 3.3 If a lump-sum contract is agreed, invoicing shall be carried out without measurement. The Contractor shall be obligated to check the specifications for the completeness of the tendered performance for the provision of the completed, functionally appropriate, contractually owed overall performance and to include all necessary performance items/partial/auxiliary performance items, even if they were not tendered in the individual case. In such cases, the Contractor shall be obligated to determine the quantities and services from the specified tender documents on its own responsibility. This shall also apply, in particular, if performance items initially tendered at unit prices are later settled at a flat rate.
- 3.4 If the Contractor submits a change proposal (special proposal) to the Client and the Client then places an order with the Contractor implementing this change proposal, all performance items influenced by the change proposal, including any necessary planning services, which become necessary for the complete fulfilment of the contractual performance, shall be compensated with the remuneration agreed for this. The Contractor shall notify the Client of change proposals as early as possible. Where justified in individual cases, the Client may also remunerate any planning expenses incurred separately, but only after prior express agreement of such remuneration.
- 3.5 The Contractor shall inform the Client in good time if the dimensions on which the offer is based deviate from the actual dimensions by 10 % or more.

The Contractor shall submit a supplementary offer to the Client for the additional or reduced expenditure. The Client shall be free to decide whether to accept the supplementary offer or to procure the additional work elsewhere.

## 4. Implementation of construction work

- 4.1 The Contractor shall appoint the German-speaking site manager and specialist site manager responsible required under the state building code of the State of Hesse prior to commencement of work and shall make this person available at the commencement of work. In addition, a German-speaking responsible representative of the Contractor shall be appointed who is permanently present on the construction site, who is authorised and obligated to participate in the construction meetings arranged by the Client's site management, to receive binding instructions from the Client on behalf of the Contractor and, if necessary, to have them carried out immediately. The Contractor shall prepare daily site reports and submit them to the Client at the Client's request, at the latest, however, with the final invoice. The daily site reports at least contain the information on:
  - the number of workers employed on the construction site, with name and job title as well as social security number,
  - the working hours,
  - the weather conditions, in particular the temperature,
  - equipment used, services performed and instructions issued,
  - acceptances and inspections, important contract dates,
  - any special incidents,
  - changes with regard to the design and execution of the work,
  - construction site meetings.The daily working time on the construction site shall be agreed with the Client.
- 4.2 The Contractor shall itself provide the necessary storage and workplaces. It shall be responsible for concluding corresponding agreements with the property owners. If the Client is the property owner, the land shall be made available in its existing condition. It may be used by the Contractor to carry out the commissioned services at its own risk and must be returned in its original condition at the end of the work.

- 4.3 Insofar as this is necessary for its performance, the Contractor shall, in order to avoid damage to underground lines and installations, inform itself of their exact location and of the necessary protective measures before the start of construction. The Client shall be notified without delay if lines or other installations not shown in the plans are uncovered.
- 4.4 The Contractor shall be obligated to measure the pipelines installed by it and to draw up a measurement sketch. Any costs resulting from this shall be included in the contract prices.
- 4.5 At the Client's request, the Contractor shall be obligated to deploy the Client's construction site signs in a clearly visible manner and maintain them.
- 4.6 The Contractor shall request the documents required for the execution from the Client in writing in due time and shall check them for completeness and correctness immediately upon receipt.
- 4.7 The Contractor shall maintain order on the construction site, leave its work area cleaned every day and continuously, but at least once a week, remove from the construction site any waste and dirt caused by its work; this shall all be done without requiring a special request. After completion of the contractually owed performance, both the storage and workplaces as well as the construction site itself shall be cleared and returned to a proper condition. The Contractor shall hand over the object of performance in cleaned condition. If the Contractor fails to comply with this obligation, the Client shall be entitled, after one unsuccessful request, to have the cleaning carried out at the expense of the Contractor.
- 4.8 The Contractor shall ensure that only reliable and suitable workers are entrusted with the execution of the work. Upon request, the Contractor shall submit documentation of qualification (e.g. welding test certificates, journeyman's certificates) as well as the safety pass (documentation of personal data, occupational medical check-ups, qualification measures, instructions and training courses in occupational health and safety as well as (if applicable) authorisations of the employees deployed) to the Client for review. The Contractor shall ensure that all deployed workers carry a safety pass (e.g. BVEG) on the construction site. This also applies to the employed subcontractors. The Client shall be entitled to demand that the Contractor and its subcontractors replace unsuitable workers immediately.
- 4.9 The Contractor shall ensure that its workers employed on the construction site and all workers employed by subcontractors wear the personal protective equipment (e.g. safety helmets, safety shoes) required by the relevant professional associations. The Contractor shall provide protective equipment in sufficient quantity. Workers of the Contractor or a subcontractor who fail to comply with their obligation to wear the protective equipment may be expelled from the construction site. The Contractor shall implement all regulations on its his own responsibility.
- 4.10 If the Client determines that the work has not been performed in accordance with the contract, it may demand that the Contractor rectify the defect even before completion or before the completion date has been reached. If the Contractor fails to comply with the request to remedy the defect within a reasonable period set by the Client, the Client may remedy the defect itself or have it remedied by a third party at the Contractor's expense after expiry of the deadline, without first giving notice of termination or partial termination; if the Contractor refuses to remedy the defect, the Client may effect such remedy without undue delay. This shall apply correspondingly to partial or residual performance items not provided in due time or not in accordance with the contract.
- Insofar as the Client is entitled itself to carry out the Contractor's performance items which are not in accordance with the contract or which are not performed on time, or to have it carried out by a third party, the Client may demand a surcharge in addition to the resulting costs in the amount of a flat rate of 10 per cent of these costs for its expenses in handling such work, insofar as the Contractor does not prove that the Client has not incurred any expenses or has incurred only lower expenses.
- 4.11 The Contractor warrants that it will indemnify the Client against extended reservation of title and comparable detriments and that it will use any amounts received primarily to settle payment obligations arising from subcontracted performance for this contract.
- 4.12 To the extent that the Contractor intends to have parts of its performance carried out by subcontractors, it shall notify the Client of this in advance. The Client shall be entitled to object to the award to the subcontractor within a period of 14 calendar days after this notification; such objection shall include its reasoning. If no objection is made after the expiry of this period, the subcontractor shall be deemed to have been approved by the Client.

## 5. Contract dates

- 5.1 Vertragstermine sind vereinbarter Arbeitsbeginn, Fertigstellung
- 5.1 The contract dates are the agreed start of work, the completion and the interim dates agreed in the negotiation protocol, in the purchase order or in the invitation to tender. If, at the time of the contract award, only approximate time indications of the probable start of construction are possible, and therefore only the duration of the construction has been established with binding effect, the work shall commence upon request within the contractually stipulated period, otherwise within an appropriate call-off period. The start of construction thus defined constitutes a contractual deadline. Taking into account the bindingly agreed construction period, this results in the binding completion date and, if applicable, further binding interim dates. These dates constitute contract dates. If new binding interim or final dates are mutually agreed in writing (also in text form) between the parties during the course of construction, these shall constitute contractual dates.
- 5.2 The Client reserves the right to make changes to the schedule, including acceleration orders. The Contractor shall be informed of the postponement in due time. New contract deadlines shall then be agreed. Except in the case of acceleration orders, the number of agreed working days for the execution of the whole of the performance or individual performance items shall be observed.
- 5.3 Any default on the part of the Contractor shall not be cured by the updating of the dates and deadlines or their re-agreement.
- 5.4 In the event of culpable non-compliance with the contractual deadlines, the Contractor shall be liable for all damages and disadvantages incurred by the Client as a result.

## 6. Impediments

- 6.1 In the event of an impediment attributable to the Client, an extension of the Contractor's deadline shall be excluded, provided that the impediment does not exceed a total period of up to 10 per cent of the contractually agreed duration of performance, but not more than 24 hours (de minimis limit). Otherwise, the Client shall be entitled to an extension of the deadline for the duration of the impediment. Sentence 1 shall apply accordingly for claims for damages by the Contractor due to such impediments.
- 6.2 The Client shall only reimburse damages or additional costs resulting from impediments to the extent that the Client is answerable for such impediment and it was not foreseeable for the Contractor. Furthermore, the Contractor shall only be entitled to a claim if it has fully notified the Client of the impediment without undue delay with the information pursuant to clause 6.4. The Contractor shall prove the actual damage on the basis of the original calculation and that he was unable to carry out any other work for the duration of the impediment.
- 6.3 If the Contractor believes itself to be impeded in rendering its performance, it shall notify the Client in writing without undue delay. If the Contractor fails to provide such notice, it shall only be entitled to invoke the impeding circumstances if the Client was obviously aware of the fact and its impeding effect.
- 6.4 The notice of impediment must specify the relevant impeding circumstances as well as which work planned according to the construction schedule is specifically obstructed. Furthermore, the expected duration of the impediment shall be stated. The Contractor shall also inform the Client when the impediment has ended and the work can be resumed. A claim by the Contractor shall be excluded if the Contractor itself was not ready to perform or was in default with the performance of its work at the time of the impediment.
- 6.5 Even in the event of an impediment, the Contractor shall be obligated to do everything it can reasonably be expected to do for the further execution of the construction work and to mitigate the damage caused by the impediment/delay, and to resume the work without undue delay after the impediment has been removed.

## 7. Cordoning and protective measures

- 7.1 7.1 The Contractor shall bear the responsibility for the safe custody and storage of its materials and equipment. The Client declines any liability in this regard. It is the Contractor's responsibility to protect its performance from damage and contamination until acceptance.
- 7.2 The Contractor shall carry out the road closures, erection of construction fences, lighting, protective scaffolding, temporary staircases, etc. required for its performance at its own expense and provide its employees with the necessary work safety equipment. The Client shall be entitled to carry out necessary safety measu-

res at the Contractor's expense if the Contractor is in default or if immediate execution is imperative. If necessary, facilities of the Contractor at the construction site shall be made available to other companies on reasonable terms. The Contractor shall appoint an employee responsible for occupational safety who shall cooperate with the safety coordinator to ensure safety in the Contractor's own and adjacent work areas in accordance with section 8 of the German Occupational Health and Safety Act (ArbSchG).

7.3 Insofar as the Client provides protective and safety facilities, these shall be jointly accepted upon handover. They are to be maintained and, if necessary, supplemented by the Contractor on its own responsibility. The Contractor shall return them to the Client in due form after completion of the work. Existing protective covers, railings or similar that have to be temporarily removed in order to carry out the work shall be duly restored. For the duration of the removal, all danger points shall be cordoned off and signposted in an accident-proof manner by other suitable measures.

7.4 For the transport, storage and processing of hazardous substances, hazardous substances regulations shall be strictly observed in addition to fire protection regulations. Hazardous substances exceeding the legal limits of 'smallest quantities' (Kleinstmengen) may not be stored on the construction site without the prior written consent of the Client. In the case of consolidated storage on the construction site, the legally permissible total quantities may not be exceeded by storing different hazardous substances together. Hazardous substances shall be stored in approved containers marked with the appropriate hazard symbols and must be secured against escape, leakage and ignition of the contents. The corresponding material safety data sheets shall be kept accessible.

## 8. Termination

8.1 In the event of termination, the Contractor shall hand over the working documents required for the continuation of the planning and construction work to the Client without undue delay. These documents include in particular contracts with subcontractors / suppliers of building material, official permits and notices as well as planning documents of any kind. A right of retention against this claim for surrender shall be excluded.

## 9. Liability

9.1 If claims are asserted against the Client by third parties due to damage in connection with the Contractor's performance or the performance of third parties commissioned by the Contractor, the Contractor shall be obligated to indemnify the Client against such claims without undue delay, unless the Contractor proves that it did not cause the damage in question. The indemnification does not imply recognition of the claims of the third parties.

9.2 In the case of work in the foundation soil, the Contractor shall determine whether there are any supply and disposal lines, explosive ordnance, etc. in its construction area. Information on the location of underground lines shall be obtained in writing from the utility company's offices. Information provided by construction management is non-binding and requires confirmation by the utility company. Should damage or destruction nevertheless occur through the fault of the Contractor, all costs (including consequential damage) shall be borne by the Contractor. In the event of damage, the Contractor shall indemnify the Client without undue delay and provide evidence thereof. If this is not done, the Client shall not be required to coordinate in advance with the Contractor with regard to a settlement or payment to the injured party.

9.3 The Contractor shall prove to the Client the existence of liability insurance sufficient in terms of scope of cover and insured amount and shall document that it is maintained during the construction period.

9.4 The Contractor hereby assigns to the Client the claims arising from the business liability insurance to be taken out in accordance with clause 9.3 by way of collateral and the Client accepts such assignment; however, as long as it performs in accordance with the contract, the Contractor shall remain entitled and obligated to assert all claims in its own name. Should an assignment not be permissible under the insurance contract, the Contractor hereby irrevocably instructs the insurance company to make any payments only to the Client. After the conclusion of the contract, the Contractor shall present without undue delay confirmation by the insurance company that it has been informed of the assignment and payment instruction.

9.5 If materials and components are supplied or handed over to the Contractor at the site, the Contractor shall assume the liability and duty of care for the safekeeping and contract fulfilment upon their acceptance. Complaints shall be made in writing no later than the third day after receipt.

## 10. Acceptance

10.1 The Contractor's performance is subject to formal acceptance. A joint written record shall be made of the acceptance.

10.2 Notional acceptance (Abnahmefiktionen) shall be excluded, as is partial acceptance.

10.3 Defect rectification work shall also be subject to formal acceptance. Items of work which are no longer visible or accessible by the time of acceptance shall be notified to the Client in writing after their completion and jointly inspected. A written record shall be made of this. Such inspections and protocols shall not constitute partial acceptance.

10.4 The Contractor shall be obligated to remedy the defects discovered upon acceptance without undue delay and within a reasonable period.

10.5 The Contractor shall ensure that the subcontractor checks its performance for completeness and freedom from defects prior to acceptance and, if necessary, carries out remaining work and rework without delay.

10.6 The presentation of the final invoice does not constitute a request for acceptance.

## 11. Claims for defects

11.1 The limitation period for claims for defects shall be 5 years, unless agreed otherwise. After acceptance of the rectification of defects, the limitation period agreed in sentence 1 shall start to run again for this performance item.

11.2 The Contractor shall replace at its own expense any items of work, which are found to be defective or not in conformity with the contract during the performance of the work – without prejudice to the statutory provisions – with defect-free work. Should the Contractor fail to comply with this obligation despite the Client's request and setting of a reasonable deadline, the Client shall be entitled to remedy the defect itself even before acceptance and demand reimbursement of the required costs from the Contractor, unless the Contractor is not answerable for the defect or the performance is in breach of contract.

This shall not require termination or rescission of the contract.

11.3 The Contractor shall give written notification of the completion of the defect rectification work. Formal acceptance of the defect rectification work shall take place upon written application by the Contractor. No. 8 shall apply accordingly.

11.4 The Contractor shall assign all claims for defects against its subcontractors to the Client subject to the condition precedent that an application for the opening of insolvency proceedings or comparable statutory proceedings against its assets is filed or such proceedings are opened; the Client accepts the assignment.

## 12. Invoicing / hourly paid work / payment

12.1 Invoices shall be issued in an auditable form and with cumulative performance progress, designated as interim, partial or final invoices according to their purpose; interim invoices shall be numbered consecutively.

Invoices must show the following header data:

- Name of the project measure,
- Order number of the Client according to the SAP system,
- Purchase order number (with department ID), the number of the quantity or value contract together with the call-off number,

The invoice may only cover one order at a time. The item numbers shall be listed in numerical ascending order.

12.2 The documentation for the invoicing are primarily the bilateral measurements and/or measurement record drawings, signed and dated by the contracting parties, as well as daily site reports or similar proofs. The Contractor shall be at liberty to prove the performance of the work rendered by it in another way.

12.3 Work sheets signed by the Client for the Contractor's employees merely document the Contractor's presence and are not an acknowledgement of work rendered.

12.4 If invoicing according to construction progress has been agreed, the Contractor shall provide the Client with monthly proof of the actual construction progress. In this case, the actual construction progress shall be decisive for the amount of the progress payments and not the planned progress.

- 12.5 The audit period for the final invoice shall be 30 calendar days from receipt of an auditable invoice by the Client. Payment within the audit period shall entitle the AG to a discount of 3%.
- 12.6 The unconditional acceptance of the final payment shall exclude subsequent claims if the Contractor has been informed in writing about the final payment and this exclusion effect has been pointed out to it.
- 12.7 Acceptance of the final invoice as well as its payment shall not exclude recovery due to incorrectly calculated performance and claims. The defence of a lapse of enrichment shall be excluded.
- 12.8 Section 641 II BGB is excluded.
- 12.9 The documents required in the tender documents, such as drawings with dimensionally accurate entries of all work actually performed (as-built drawings) as well as other documents required for the Client or the Owner (circuit/connection diagrams, equipment books and descriptions, operating and maintenance instructions, manufacturer's certificates, etc.) shall be submitted with the final invoice. As long as these documents are not submitted, the final invoice shall not fall due.