

## **1. SCOPE**

**1.1** All current and future purchase orders and contracts placed with our partners (hereinafter referred to as "Supplier" or "Contractor") shall be governed exclusively by these General Terms and Conditions of Business. Provisions that conflict with these Terms and Conditions, including, but not limited to, the Supplier's terms and conditions of business (including any codes of conduct) shall not apply, even if we do not specifically object to their application separately. Nor shall we be deemed to have accepted such terms and conditions of business if we make reference to a writing that contains or makes reference to the Supplier's or a third party's terms and conditions of business or if we unconditionally accept the delivery and / or performance in full knowledge of the Supplier's conflicting terms and conditions of business.

**1.2** Some products or services are subject to special terms and conditions which may amend or modify these Terms and Conditions of Purchase.

## **2. OFFERS AND FORMATION OF CONTRACT**

**2.1** The Supplier shall issue an offer that conforms precisely to the inquiry and expressly identify any deviations therefrom in writing. The offer must be made free of charge and at no obligation to us.

**2.2** All contracts regarding products and services which fail to satisfy the written-form requirement are only valid if confirmed by fax or by a writing with a handwritten signature. Unilateral contractual declarations regarding the contract, including, but not limited to, notices of termination, must be in writing and signed under the maker's own hand; written declarations can also be served by fax or e-mail.

**2.3** Orders placed by means of electronic data transfer shall only form a contract if they comply with the agreed-upon terms and conditions governing such matters.

**2.4** All documents must contain our order references (the complete order number, order item, order date and our reference).

## **3. SUBCONTRACTING**

**3.1** The Contractor must render performance in-house. He may, however, subcontract the work with our written consent.

**3.2** The Contractor must have an adequate number of German-speaking contact people at the construction and assembly sites.

## **4. PRICES AND DELIVERY TIME**

**4.1** The price stated on the order shall be binding. The prices are fixed and remain in force even if volumes change unless one party is entitled by law to a price revision, including, without limitation, if he cannot reasonably be expected to accept the contract prices, as set forth in German Civil Code (BGB) § 313 Sec. 1, given the actual scope of services and the resulting changes in volumes and dimensions. Barring any written agreements to the contrary, the price shall include packaging and delivery to the stated shipping address. Notwithstanding this Item 4.1, if the Supplier reduces his prices and improves his terms between the order date and the delivery, the prices and terms in effect on the day of delivery shall apply.

**4.2** The delivery time specified in the purchase order is binding and shall begin to run on the order date. As soon as the Supplier can assume that he is unable to comply with all or some of his contractual obligations on time or at all, he must notify us without undue delay in writing or by fax, providing the reasons for and expected duration of the delay. If the Supplier fails to provide notification, he cannot invoke the hindrance [as a defense] against us.

**4.3** We can claim agreed-upon liquidated damages until the final invoice has been paid in full.

**4.4** We shall only pay the Contractor surcharges for overtime, nighttime, Sunday and holiday work or unforeseen difficulties if the client has expressly instructed the Contractor to perform the work under these circumstances. The amount of the surcharges must be agreed upon in advance in writing.

**4.5** A detailed, written record must be kept of any use of materials, employees, machines and equipment for which additional fees are charged.

**4.6** Time sheets must be kept in the same format as the template provided by the client, and must be submitted daily immediately after labor hour work is completed. If the parties agree to labor hour work, but the amount of work completed is in doubt because the time sheets were not submitted on time, the client may require that, with respect to work that was demonstrably completed, the parties agree to a level of compensation that covers a reasonable amount of labor and materials, as well as the costs of keeping equipment, tools, machinery and plants, freight charges, loading and transportation costs and any special costs.

**4.7** The client must be timely notified in advance and in writing when the labor hour work is due to begin.

**4.8** Signatures on time sheets do not constitute any acknowledgement of invoices; we reserve the right to verify whether the work is labor hour work or contract work.

## **5. INVOICES AND PAYMENT TERMS**

**5.1** Barring any written agreement to the contrary, we shall pay within 30 days net or within 14 days with a 3% prompt payment discount after delivery of the goods and receipt of the invoice. Invoices must be submitted in one original to our accounts payable department giving the order number. A separate invoice must be issued for each order.

**5.2** If we are delayed in processing the invoice because some of the information required in Sec. 2.4 hereinabove is missing, the deadlines shall be postponed for the duration of the delay.

**5.3** Payment is made by, at our option, sending "for deposit only" checks or making electronic fund transfers to bank accounts. Payment is deemed to be made on the postmark date or on the date the payment instruction is received by the bank or post office.

**5.4** We have the statutory rights of set-off and retention. The Supplier may only assign claims against us to third parties with our written permission.

## **6. DEFECTS AND LIABILITY**

**6.1** The Supplier is responsible for ensuring that the delivered product or service is not defective and complies with all statutory and contractual quality requirements. In particular, the delivered product or service must conform to generally accepted technical conventions, then-applicable safety standards, and environmental, occupational safety and health, and accident prevention regulations.

We have the statutory rights in the event of defects in the delivered product or service. Item 6.2. applies with respect to the limitation period.

**6.2** Claims for defects shall become time-barred 36 months after risk passes, barring any agreements to the contrary or longer statutory periods of limitation.

**6.3** Notifications of any defects as to quality or quantity are deemed to be made in a timely fashion within the meaning of German Commercial Code (HGB) § 377 if we send the Supplier a notification of a defect as to quality or quantity within 12 business days (not counting Saturdays) of the date on which we received the goods. Hidden defects are deemed to be made in a timely fashion within the meaning of German Commercial Code § 377 if we send the Supplier

a notification within 12 business days (not counting Saturdays) after their discovery.

**6.4** If a defect in the delivered product or service is cured through repairs or a replacement with a non-defective thing, the limitation period contemplated by Section 6.2 hereinabove for claims for defects shall start again, unless the effort of curing the defect was merely insignificant or the Contractor expressly made the reservation that he was only curing the defect as a goodwill gesture, to avoid disputes, or in the interest of preserving his business relationship.

**6.5** The Supplier's liability for defects shall be unaffected by our accepting products or services or our approving specimens or samples presented to us.

**6.6** The Supplier shall hold us harmless from claims brought due to producer responsibility or under the German Product Liability Act (Produkthaftungsgesetz), provided the cause of the claim lies within the Supplier's or his supplier's sphere of control and organization. The Supplier shall be liable in accordance with statutory provisions in all other regards.

### **6.7 German Minimum Wage Act and German Employee Posting Act**

**6.7.1** The Contractor agrees to comply with the German Employee Posting Act (AEntG) and the German Minimum Wage Act (MiLoG), among other laws, in particular to pay minimum wages or the minimum compensation timely and constantly. The Contractor must ensure that any subcontractors or temporary work agencies which it may retain also comply with these laws and impose the same obligations on any subcontractors or temporary work agencies which they themselves retain.

**6.7.2** The Contractor agrees to absolve us of any liability as defined by MiLoG § 13 and AEntG § 14 for the obligations of the Contractor, his subcontractor, or a temporary staffing provider retained by the Contractor or a subcontractor to pay minimum wage to an employee or to make contributions to a common institution of the collective bargaining parties as set forth in AEntG § 8. This also applies if we award the contract to the Contractor on behalf and for the account of a third party; the Contractor agrees to absolve such third party of any liability as defined by AEntG § 14 in this case.

**6.7.3** If the Contractor culpably fails to meet his obligation to pay the minimum wage or compensation to his employees or to make contributions to a common institution of the collective bargaining parties for which we, the client, have the same liability as a guarantor under § 13 MiLoG, AEntG § 14, or if he fails to work towards ensuring that the parties with whom he has contracted meet these obligations, he shall indemnify us for the resulting damages.

**6.7.4** The Contractor agrees to prove on request that minimum wages or minimum compensation were properly paid by presenting the corresponding records (documents specified in MiLoG § 17, AEntG § 19, including, without limitation, complete timesheets for workers employed by the Contractor, including for wages paid abroad). The Contractor agrees to audit its subcontractors or any temporary work agency retained by the Contractor or a subcontractor for compliance with the foregoing terms.

### **7. INSURANCE**

**7.1** The Supplier shall at his own expense take out adequate transport insurance.

**7.2** The Supplier shall at his own expense take out adequate liability insurance for damages caused by services, work or things provided by him, his employees or subcontractors. The Supplier must furnish proof of the "per occurrence" limit to us on demand.

**7.3** We shall insure any machines, process equipment, etc. lent to us against the customary risks. No further liability is

assumed for the loss or damage of such lent machines, process equipment, etc., except in cases of willful misconduct or gross negligence.

### **8. SECURITY**

#### **8.1 Security for claims for defects**

If the Contractor has agreed to provide security for claims for defects, the following provisions apply:

**8.1.1** To secure possible claims for defects, we may retain 5 percent of the amount of the final invoice (before tax) for the duration of the period of limitation.

**8.1.2** The retained security can be replaced in full or in part by furnishing a bond that conforms to these Terms and Conditions.

#### **8.2 Advance payment bond**

If we agree to make advance payments, the Contractor must furnish a bond that conforms to these Terms and Conditions for an amount equal to our advance payments to secure repayment of these advance payments.

#### **8.3 Performance bond**

If the Contractor has agreed to provide security for the performance of the contract, the following provisions apply:

To secure performance of the services assigned to him as agreed, including settlement, compensation for damages, liquidated damages and refunding of excess payments with interest, the Contractor must, after the order has been placed, immediately furnish us with a performance bond that conforms to these Terms and Conditions for an amount equal to 10 percent of the order value (before tax).

**8.4** In each of the above cases, the Contractor must furnish an absolute, irrevocable and perpetual bond issued by a bank or insurance company regulated by the German Federal Financial Supervisory Authority or by a bank regulated by the European Central Bank and domiciled in Germany or the Contractor's country. The bond must not allow depositing of valuables in an officially designated place if the creditor fails to accept performance in time ("Hinterlegung").

The bond template that we provide must be used.

### **9. SHIPPING REGULATIONS**

**9.1** On the shipment date, the Supplier shall send a detailed advance shipping notice for each individual shipment, separately from the goods and invoice.

**9.2** A delivery note and packing list must be included with the shipment. Where the shipment is delivered by ship, the shipping papers and invoice must contain the name of the vessel and the shipping line

**9.3** The Supplier must select the most suitable transport method with the lowest costs for us.

**9.4** Our stipulated order references and unloading point information must be fully provided on all advance shipping notices, delivery notes, packing lists, bills of lading, invoices, outside packagings, et cetera.

**9.5** The Supplier must always package, label and send dangerous goods and hazardous substances in accordance with the applicable regulations. The shipping documents must contain all the information required in the applicable regulations for that mode of transportation.

**9.6** The Supplier is liable for damages and shall defray all costs incurred by the failure to comply with these regulations. He is also responsible for ensuring that his own suppliers comply with these shipping regulations.

**9.7** All shipments that cannot be accepted due to a violation of these regulations shall be stored at the Supplier's

expense and risk. We are entitled to verify the contents and condition of these shipments.

**9.8** The price risk and the risk of damage to or loss of goods shall pass when the item reaches the shipment destination point.

**9.9** The Contractor is responsible for the return and the disposal of packaging (including transport materials) at his expense.

## **10. TITLE AND INDUSTRIAL PROPERTY RIGHTS, NONDISCLOSURE, LICENSES AND DATA PROTECTION**

**10.1** All drawings, illustrations, calculations, descriptions, models, tools, standards, guidelines, analytical methods, formulations and other documents and tools that we may provide to the Supplier to produce the delivered product or service as well as any documents prepared by the Supplier in accordance with our special instructions for him shall remain our property and may not be used, copied or made available to third parties by the Supplier for the original purpose or any other purpose whatsoever. These items, and all copies and reproductions, must be returned to us without unreasonable delay on our request. We reserve the copyrights and industrial property rights in and to all documents provided to the Supplier.

**10.2** The Supplier shall treat the inquiry, the purchase order and all work, documents and aids in this connection as well as any information regarding the operating equipment, operations and working methods that comes to his attention while engaging in an activity for us as trade secrets and shall thus treat them confidentially. The Supplier shall bind his employees and subcontractors to an appropriate nondisclosure obligation in our favor. He is liable for all damages that we may incur due to a culpable violation of one of these obligations. The nondisclosure obligation shall only expire if and to the extent the confidential information becomes publicly known.

**10.3** If we require documents of any kind to use, erect, assemble, process, store, operate, service, inspect, maintain and repair the delivered product or service, the Supplier shall supply these documents timely, spontaneously and free of charge.

**10.4** Any originals of the records, including, but not limited to, plans, documents, drawings, models, molds, tools, films etc. to be created by the Supplier and / or that have been produced by the Supplier to fill the purchase order shall become our property on paying the agreed-upon consideration, even if they remain in the Supplier's possession. This also applies to electronic data storage media and electronically created records, which must be handed over to us in a suitable electronic format. These items must be handed over to us on request.

**10.5** We have the transferrable right to use, copy and also modify all plans and other work, materials and services provided by the Supplier. To the extent possible, the Supplier shall enter into corresponding agreements with any architects, engineers and subcontractors retained by him.

### **10.6 Data protection**

**10.6.1** We may process personal data to the extent required for contract management purposes. Personal data is processed in accordance with data protection laws and regulations (GDPR, German Data Protection Act (BDSG), etc.), namely for the performance of a contract (GDPR Art. 6 (1) point (b) alternative 1), in order to take steps prior to entering into a contract (GDPR Art. 6 (1) point (b) alternative 2), for compliance with a legal obligation (GDPR Art. 6 (1) point (c)) or for the purposes of legitimate interests (GDPR Art. 6 (1) point (f)).

**10.6.2** Our privacy policy can be accessed at the following link [www.infraserV.com/datenschutz](http://www.infraserV.com/datenschutz)

**10.6.3** The Supplier hereby agrees to fulfill its information obligations vis-à-vis its employees, agents, servants and service providers ("data subjects") under GDPR Art. 13 and/or 14 whenever it shares personal data concerning these data subjects with us and/or we contact data subjects.

**10.6.4** The Supplier shall ensure that it complies with data protection laws, regulations and agreements and refrains from violating the rights afforded to data subjects under data protection laws and regulations.

**10.6.5** If a data subject holds us liable for the Supplier's wrongful acts or omissions in this regard, the Supplier shall hold us harmless from such claims and from all expenses that we may incur from or in connection with such claims.

## **11. INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS**

**11.1** The Supplier warrants and represents that the delivery and use of the delivered products and services does not infringe on third-party patents, licenses or other intellectual property rights (including copyrights).

**11.2** If a third party brings infringement claims against us that are attributable to the Supplier, the Supplier must hold us harmless from such claims and from all expenses that we may incur from or in connection with such claims.

**11.3** In all other regards and without prejudice to his other contractual and statutory obligations, the Supplier shall, at his own expense and in consultation with us, procure that the party authorized to dispose of the industrial property right grant us the right to use the delivered products and/or services as contracted, without restrictions and at no additional cost to us, or the Supplier shall modify the components of the delivered products and/or services affected by such industrial property right(s) so as to be non-infringing, but still compliant with the contractual provisions.

## **12. GENERAL PROVISIONS**

**12.1** German law shall exclusively govern all legal dealings between us and the Supplier in their entirety. The UN Convention on Contracts for the International Sale of Goods as of April 11, 1980 is excluded from application.

**12.2** The courts of Frankfurt am Main shall have exclusive jurisdiction over any and all disputes arising from the business relationship between us and the Supplier, provided the Supplier is a merchant or is not domiciled in Germany. The statutory provisions governing exclusive jurisdiction shall remain unaffected by this clause. Likewise, this clause does not affect our right to assert our claims against the Supplier in other jurisdictions.

**12.3** If a provision in these General Terms and Conditions of Business or in supplementary agreements is or becomes invalid in whole or in part, this shall not affect the validity of the remaining provisions hereof or thereof. The Supplier shall come to an agreement with us to replace the invalid provision or part of the provision with such legally valid provision as most closely approximates the intent of the invalid provision.

## **13. SPECIAL TERMS FOR PRODUCTS AND SERVICES PROVIDED IN INDUSTRIEPARK HÖCHST IN FRANKFURT AM MAIN ("INDUSTRIEPARK")**

**13.1** The Industriepark's operator is InfraserV GmbH & Co. Höchst KG ("*Operator*").

**13.2** The Supplier acknowledges the applicable regulations and safety rules governing contractors, their employees and agents, as well as the Operator's in-house rules and guidelines for the Industriepark, as they may change from time to time. If the Supplier does not have or know these rules, regulations and/or guidelines, we will send them to the Supplier on request.

**13.3** The Operator may require the Supplier to pay a reasonable fee, as generally set by the Operator in its fair

discretion for such situations, so that vehicles of all types (such as passenger or cargo vehicles, special-purpose vehicles, self-propelled or towed construction machines, etc.) can repeatedly enter the Industriepark and the Supplier's employees and agents can enter the Industriepark. The Operator may make its permission to enter the Industriepark contingent on the acceptance of contractor management provisions, as generally defined exercising fair and reasonable judgment (governing the check-in of vehicles and people, security and safety, penalties for traffic and other offenses).

**13.4** For safety reasons, work may only be begun after the project manager and/or Operator have provided an on-site orientation.

**13.5** Due to the density of pipelines and other lines that have already been laid in the Industriepark, the Operator's written permission must be obtained before beginning any work below ground level.

**13.6** Water may only be obtained from hydrants with the Operator's express prior permission.

**13.7** Rinse/purge water (e.g. from concrete delivery trucks) may not be directed into the sewer system. Water generated at jobsites may only be discharged if and as instructed by the Operator.

**13.8** The Contractor must identify all tools, equipment and machines that he brings into the Industriepark as his property and must ensure that they conform to applicable legal requirements.

**13.9** Excavated soil and demolition debris may only be taken to the collection point designated by the Operator. This material shall remain the client's property.

**13.10** The Contractor is not entitled to perform work for third parties using jobsite equipment owned or possessed by the client.

**13.11** The Contractor must appoint a responsible manager who is authorized to accept the contractor's instructions and individual orders.

**13.12** The Contractor shall protect his work (Leistungen), as well as all items given to him in order to perform such work, against theft or damage until such time as his work has been formally accepted.

**13.13** Once a contract has been completed, the Contractor shall remove his jobsite equipment and restore the area to an orderly condition.

#### **14. COMPLIANCE**

**14.1** As a member of the InfraserV Höchst Group, we have joined the compliance initiative of the German Association Materials Management, Purchasing and Logistics (AMMPL). One of the key elements of the AMMPL compliance initiative is a code of conduct that promotes fair, sustainable, responsible and ethical conduct and contains rules on combating corruption, preventing illegal collusion and complying with the law, among other things. We require our suppliers to acknowledge, respect and follow the AMMPL code of conduct. The AMMPL code of conduct can be downloaded from the AMMPL website at [www.bme.de](http://www.bme.de); we will send the AMMPL code of conduct to the Supplier upon request. We expect our suppliers to require their own suppliers and subcontractors to follow the AMMPL code of conduct as well.

**14.2** We reserve the right to assess the Supplier's performance, particularly with respect to quality, environment, health, safety, energy efficiency, energy use and energy consumption. We expect the Supplier to be ready to participate in this process in a suitable, reasonable fashion (e.g. by completing questionnaires or participating in audits that we perform). We also expect the Supplier to

be ready to cooperate with us in a suitable, reasonable fashion in preventing violations of the AMMPL code of conduct in his business relationship with us and in investigating suspected violations of the code.

**14.3** In the event of a violation of the AMMPL code of conduct, we reserve the right to rescind the contract or terminate the contract without notice for cause in accordance with the statutory provisions.

**14.4** If the Supplier or any persons working for him or engaged by him are proven to have colluded in a way that illegally restrains trade in connection with the contract award, the Supplier must pay 10 percent of the final invoice amount to us, unless the Supplier proves that the damages were significantly less or non-existent. The foregoing applies even if the contract has been terminated or has already been fulfilled. We reserve the right to prove higher damages.