

Contractual Conditions
of SKW Stickstoffwerke Piesteritz GmbH
for
Construction, Assembly and Services

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1 Validity

- 1.1 The following Contractual Conditions for construction, assembly and services are a component of all construction, assembly and service contracts (with the exception of haulage/transport contracts) issued by SKW Stickstoffwerke Piesteritz GmbH (SKWP) as Client to the relevant Contractor.
The Contractor declares agreement to the validity of the conditions – insofar as other terms are not agreed – also applicable to any additional follow-up orders and contracts on the conclusion of this contract.
- 1.2 The conclusion of any contracts, oral subsidiary agreements, exclusions, amendments or additions must be in written form in order to be valid.
- 1.3 Contractor delivery and contract conditions apply only insofar as the Client expressly declares agreement with this in written form.
The tacit inclusion of Contractor delivery and contract conditions in the contract is hereby expressly ruled out.

2 Contractual basis

The contractual basis comprises:

- The order letter from the Client, in particular contracts for work and services with all appendages including any subsequent written amendments and additions.
- SKW inquiries incl. inquiry specifications, service descriptions, technical drawings.
- These Contractual Conditions for Construction, Assembly and Services, insofar as not otherwise agreed in the contract document.
- Fundamental standards of behaviour / safety instructions of SKWP for external contracting companies (in www.skwp.de – in accordance with issue of former access privileges).
- The General contractual conditions for the implementation of building contracts (Allgemeine Vertragsbedingungen für die Ausführung von Bauleistungen VOB/B) under German law (BGB) shall apply insofar as not otherwise agreed under terms of these contractual conditions.
- Appropriate works norms, standards and test guidelines of the Client
- The generally accepted engineering rules.

3 Offer processing

- 3.1 Inquiries on the provision of deliveries and services shall be issued to the Contractor by the Client's purchasing department.
- 3.2 The production of offers shall be made by the Contractor on schedule with the inclusion of all the required documentation and shall be free of charge to the Client. This shall be without obligation for the Client.
- 3.3 The offer must comply with the inquiry specifications. Alternatives are to be provided separately together with a detailed description.
- 3.4 All cost factors required for the provision of service are to be considered in the setting of prices. A site inspection prior to submission of an offer is to be coordinated with the Client's contact person responsible for the contract.

4 Insurance obligation

- 4.1 The Contractor is under obligation to take out adequate liability insurance cover and must present the policy to the Client on request to do so. The Contractor has the right to cancellation of the contract without notice should the insurance cover not be adequate.
- 4.2 The Client reserves the right to take out construction and assembly insurance himself for all contracts of a value of 0.5 million euros and upwards. In such cases the costs involved shall be invoiced proportionately to the Contractor.
- 4.3 The Contractor has the obligation to prove to the Client that adequate construction assembly insurance cover has been taken out in the case of contracts with a value of less than 0.5 million euros. The Contractor's liability remains unaffected by this.
- 4.4 The Contractor has the general obligation to insure all property he has brought in and that of his employees and sub-contractors in a suitable manner.
The Client can accept no obligation or responsibility of any kind for this property.
- 4.5 The equipment and materials delivered are to be insured by the Contractor against damage in transportation / losses as a general rule until hand-over to the Client.

5 Liability

- 5.1 The Contractor is liable for all damage which either he or his contract fulfilment helpers cause in accordance with the applicable statutory regulations.

- 5.2 The Client accepts no liability for damage or loss of the Contractor's property or that of his sub-contractors.

6 Schedules

- 6.1 On a failure to maintain intermediate and final deadlines to contractually agreed schedules due to causes for which the Contractor is responsible, the Client has the right to deduct an agreed penal sum from the final invoice.
- 6.2 Without prejudice to any contractual or statutory claims extending beyond this in scope, the Contractor has the right in the event of any additional costs incurred as a result of any failure to meet scheduled deadlines (in particular in cases of bringing in other firms, increased production costs of subsequent works etc.) to charge these to the Contractor and deduct them from the final invoice.

7 Guarantee

- 7.1 The Contractor shall provide a warranty that the service he provides has the characteristics as assured at the time of acceptance, that it complies with the acknowledged technical rules and is not encumbered with errors as a result of which the object is either worthless and fully unsuitable for the agreed use or of reduced utility and value and that the relevant standards which have binding effect for the object of the service have been maintained.
- 7.2 The Contractor guarantees that the materials and equipment used for the fulfilment of the contract meet the specifications as required by the Client.
- 7.3 The Contractor is under obligation to rectify any faults the occurrence of which can be traced to services that are not compliant with the contract, in a professional manner and at own cost. This must be done within a reasonable period of time following a written request to do so from the Client.
- 7.4 Should the rectification work not result in a correction of the faults, or should the Contractor refuse to carry out rectification and improvement work, the Client has the right to bring in another supplier to assure fulfilment of the service. The Contractor shall bear the additional costs incurred for this.
- 7.5 Warranty duration period:

VOB/B construction rules under German law (BGB) apply for the service provided.

A warranty period of two years shall apply for material deliveries insofar as other terms are not specifically agreed.

8 Responsibility of the Contractor

- 8.1 The Contractor undertakes the obligation to perform the services entrusted to him in compliance with the statutory regulations in force, the rules of the competent authorities and to the acknowledged technical rules applicable at the time of implementation. The Client must be informed in the event of an amendment to these rules or regulations up to the time of the completion of the service.
- 8.2 The Contractor shall present to the client together with his offer the certificates and verifications that are required for the implementation of the agreed service e.g. verification of expertise and environmental expertise required under the German Federal Water Act (WHG).
- 8.3 The Contractor must comply with the law concerning the posting of employees from abroad and the other relevant statutes in respect to the employment of foreign workers.
- 8.4 The Contractor guarantees that all his employees as allocated to the Client's premises comply with the EU directives and all the requirements under public law for employment in Germany, i.e. they must possess valid work permits and visas. These must be presented to the Client for inspection on request. Foreign workers must have sound basic knowledge of German.
- 8.5 The intended employment of sub-contractors must be reported to the Client in writing before the appointment of the sub-contractor is made. The Client reserves a right of refusal in the issuing of such contracts.
- 8.6 The Contractor must oblige any sub-contractor to comply with the existing contractual obligations before the award of a sub-contract and this must be confirmed in writing to the Client on request to do so.
- 8.7 Should the Contractor use temporary-employment agency workers, he shall be under obligation to maintain the terms of employment law and the first German act for modern services on the employment market in the relevant currently valid versions.
- 8.8 In the event of changes in the workforce employed the Contractor shall be responsible for instructing new staff on the SKWP specific operational terms and conditions. The Contractor must provide the Client with verification of this instruction on request to do so.
- 8.9 Insofar as the employment of a project/construction manager is required, the Contractor must name this person in writing. A change in this position must be reported to the Client in writing. The project/construction manager declaration must be supplied to the Client after fulfilment of contract.
- 8.10 Should the Contractor have reason to believe he may be hindered in the orderly carrying out of the service, he must inform the Client of this in writing without delay and if required provide proof of the downtime that has occurred.

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- 8.11 Should the Contractor employ sub-contractors for the fulfilment of his service, then these shall be by preference companies with which SKW Stickstoffwerke Piesteritz GmbH has concluded a framework contract agreement.
- 8.12 The Contractor has the obligation to inform the Client immediately on the recognition of deviations occurring in the scope of the contractual fulfilment.
- 8.13 The Contractor must provide information on request at any time on the costs that have been incurred and on all future costs that are to be expected.
- 8.14 The Contractor shall provide the Client with as-built documentation and drawings, revised as appropriate by hand for the contractual service.

9 Safety and health at work / environmental protection / presence on the works premises

- 9.1 The relevant statutory regulations on safety and health at work / environmental protection, the regulations of the German statutory accident insurance institutions, the data sheet bulletins of BG Chemie, the technical rules in engineering and the Client's own safety regulations, which shall be a component of this contract upon signing, are all to be maintained by the Contractor.
- 9.2 The Contractor is himself responsible for the acquisition and orderly use of working safety equipment, in particular for personal safety equipment. This material shall not be supplied by the Client.
- 9.3 The Client's safety instructions and regulation system are available in Internet under: www.skwp.de in the currently valid version and are available for downloading when an access right is available. The issuing of the access right is made within the scope of awarding of contract.
- 9.4 The Contractor must behave in the course of providing his services on the Client's premises in such a manner that any damaging effects on the environment are avoided.
- 9.5 The ACP may only be entered on production of a valid works ID card or in the scope of a first instruction.
- 9.6 The first instruction on behaviour in the works shall be made before the start of work for the responsible persons as named by the Contractor as also for all employees of the Contractor and will be given in the Client gatehouse at the entrance to the Agro-Chemie Park (ACP) north (in exceptional circumstances this may be at ACP south) where the instruction shall be provided in electronic form on the basis of the applications which have been received for the issue of works ID cards.
- 9.7 In addition to this the relevant Client operator shall instruct the responsible person

nominated by the Contractor on company specific issues and this instruction shall be placed signed on record.

- 9.8 Further regulations, which also become a part of this contract on signing, are to be found in the SKWP fundamental behaviour requirements for external companies (see www.skwp.de). The issuing of access rights is done analogous to Point 9.3.

10 The management of construction, assembly and services

- 10.1 The overall management of the contractually agreed service and for any safety coordination that may be required lies with the Client.

The persons responsible for this are defined in the Safety Instructions SA-19/20 "Deployment of external company contractors" of the Client, which become a component of the contract on signing.

The Contractor's own liability remains unaffected by this clause.

Where a single firm is appointed as a general contractor, this contractor must assume the sole responsibility for overall management and safety coordination.

The responsible persons of the Contractor and the Client for the implementation of the service must be suitable for these tasks, they must be named in writing and provided with all authority required for the implementation in the context of receiving or giving immediate explanatory instructions.

- 10.2 The Client has the right to carry out work inspections or to have these performed by third parties without giving prior notice. He shall inform the Contractor promptly of any faults established in the course of an inspection. The Contractor shall rectify these faults.
- 10.3 When faults are not established by the Client inspections, this does not release the Contractor from the obligation to provide the service to the terms of the contract. Client claims remain unaffected when existing faults are not detected in the course of inspections.

11 Refusal of Workers

- 11.1 The Client has the right to turn down Contractor employees when these are in infringement of the
- a) existing EC directives (on work permits and residence permits),
 - b) safety at work regulations or
 - c) the SKWP internal safety at work and the environmental regulations

or when

d) the electronic first instruction is not successfully completed.

11.2 In the event of existing infringements the Client has the right to withdraw from the contract without notice. The additional costs incurred in this context shall be invoiced to the Contractor.

12 Client deliveries and services

12.1 The Client shall provide free of charge:

- a) hand-over points for media / energy
- b) hand-over point for electrical energy at the nearest feed point for the voltage level 380/220 V.

12.2 The Client shall provide against payment:

- a) media / energy on the basis of the available quality parameters and quantities
- b) electrical energy for all construction site equipment and for offices, accommodation and materials rooms. The electrical power requirement must be made known in good time. Equipment with a performance requirement of over 40 kW must be specifically listed.
No liability is accepted for interruptions to the energy supply.
Compensation claims due to operational interruptions arising from an interruption to the electricity supply are ruled out.
- c) Washing and changing rooms on consultation with the Client, to the extent that these are available.

13 Additional deliveries and services of the Contractor for the fulfilment of contract

The costs for these are included in the offer price insofar as not otherwise contractually agreed:

- Construction main distribution cabinets or small-scale construction power distributors complying with the German construction statutes data sheet with the inclusion of connection cables (HO7RN-F) or cables of an adequate length.
The construction power distribution cabinets must be fitted with metering devices and fuse protection switches (nominal fault current 0.5 A max.) and must comply with the VDE 0612 standard.
- The Client is to be permitted in individual cases to connect own equipment required for the carrying out of work tasks to the Contractor's construction power distributors insofar as the Contractor is not interrupted in the carrying out of his own work as a result. A shared use of the construction power distributors

by other contractors for supplying their equipment is also to be permitted under the same terms. This applies in particular to those contractors who are involved in the carrying out of work of a limited scope.

- Subcontractor equipment is to be connected to the Contractor's construction power distributors.
- All electrical devices from the construction power distributor.
- All electrical equipment used for lighting the assembly and workplace.
- All electrical equipment used for offices, accommodation and materials rooms.
- Any equipment required for assuring the energy supply for special working procedures (e.g. emergency power supply).
- Assembly scaffolding up to a 2 m height calculated from the ground or from a firm platform base. The standard DIN 4420 applies for scaffolding work.
- Essential road closures on the Client's site on previous application to the Client.
- The Contractor shall himself assure the maintaining of the traffic safety obligations.
- Unloading, transport, storage and security for all materials and equipment required for the fulfilment of contract.
- The constructing, maintaining and removal of office, accommodation and material rooms as also of sanitary facilities for the employees, insofar as other arrangements have not be agreed.
The construction site facilities shall only be erected on site areas that are specifically allocated for the purpose by the Client. The Contractor shall provide the security for these facilities.
- Installation of a drinking water supply on the construction site.
The costs of the installation and of the drinking water used shall be charged to the Contractor. Should these drinking water taps no longer be required, this is to be reported to the assembly manager. All water use shall be charged to the Contractor until the time that this report is made.
- Erecting and maintaining as also inspection and checking of electrical facilities from the feed point in accordance with the applicable standards.
- The installation and maintenance of the lighting required for the carrying out of the assembly work including workplace lighting.

- Data and telecommunications connections that may be needed are to be applied for in writing from the Client. The Client shall install the desired connections following the conclusion of a leasing contract. Faults on the line must be reported to the Client.
- Removal and disposal of all construction site equipment and all materials and wastes.

14 Acceptance and Proof of Service

14.1 The acceptance shall be made formally. Any faults established in the acceptance are to be recorded in the acceptance protocol with the inclusion of a time schedule for their improvement.

Until complete rectification of a defect the Client may declare the retention of a security deposit from the invoiced sum over and against the Contractor.

14.2 The following forms confirmed by both the Contractor and the Client are valid as a certificate of performance:

- the acceptance record
- a detailed proof of work done or a measuring record
- a list of the materials used.

15 Invoicing and Payment

15.1 Invoices including a certificate of performance are to be submitted to the Client one month after acceptance of the service at the latest.

Invoices must always quote the Client's order number, they must be in a form that can be readily checked and be in compliance with the order positions.

Should these requirements be ignored the invoice shall be returned to the Contractor without being processed.

15.2 All payments shall be made subject to the condition that a subsequently established difference between the actual and the calculated service will be balanced out.

15.3 All payments are made in accordance with the contractual agreements, subject to verification of the invoice and an orderly carrying out of the works done.

16 Data Protection Clause

The Contractor declares acceptance of the computer storage and processing of personal related data to the extent that this is required for the orderly fulfilment of the contract.

17 *Partial Invalidity Clause*

Should one or more of the contractual terms be invalid or become invalid, the contractual partners accept the obligation to replace the ineffective term with another effective term that approaches so closely the business purpose of the ineffective term with the effect that it may be reasonably assumed that the partners would have concluded the contract containing this clause.

Should it not be possible to agree on a regulation of this kind, the fact of the the ineffectiveness of one or several contractual terms shall have no effect on the validity of the contract in its entirety, unless the terms that are not valid are of such great significance for the contract that it may be reasonably assumed that the contracting partner had not entered into the contractual relationship without the ineffective term.

18 *Place of Fulfilment and Court of Jurisdiction*

The place of fulfilment is Lutherstadt Wittenberg.
The exclusive court of jurisdiction is Lutherstadt Wittenberg.

The law of the Federal Republic of Germany applies.