

Conditions of Purchase for Engineering Services
(Issue July 1997)

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15. Award of Contract and Execution

1. Award of Contract and Execution

- 1.1 Purchase Orders including changes and supplements shall only be binding if made or confirmed by Purchaser in writing. The following shall be deemed an integral part of the Purchase Order and shall apply in the following sequence of priority: The Purchase Order, the present Conditions of Purchase, the technical specifications, General standards (such as DIN, VDE, UVV, VDI etc.) and the law applicable in Germany. Terms and conditions proposed by the Contractor shall apply only to the extent expressly accepted by Purchaser in writing.
- 1.2 If the engineering services (the "Work") are carried out on the Purchaser's premises, Purchaser will provide suitable offices. Contractor shall provide all required materials and equipment to perform the Work, except drafting machines. If Contractor uses equipment provided by the Purchaser, this equipment shall be returned to the Purchaser after use in proper condition. Contractor shall be liable for any loss of and damage to such equipment caused while in his custody.
- 1.2.1 Contractor shall perform the Work at his own risk and responsibility using his own fully qualified and reliable specialists as well as his own materials and resources. Contractor shall appoint a Contract Manager responsible for the professional and disciplinary management and supervision of his personnel. The Contract Manager shall be responsible and be duly authorized to receive from, and to discuss with the Purchaser changes, complaints, instructions, etc. relating to the Work.
- 1.2.2 The Contractor shall be responsible for the introduction to the Work, direction and supervision of his staff, without prejudice, however, to the Purchaser's right to check Contractor's performance at any time as to its accordance with the Purchase Order.
- 1.2.3 Contractor shall ensure that his personnel has all required residence and work permits and that his personnel complies with the safety rules and regulations applicable on Purchaser's premises, including but not limited to Purchaser's leaflet containing instructions for Contractor's personnel. Contractor shall indemnify and hold Purchaser harmless from all claims, cost, penalties, fines and damages resulting from his or his employees' failure to comply with these rules and regulations or other statutory regulations.
- 1.3 Contractor shall not subcontract any part of the Work without Purchaser's prior written consent.

2. Deadlines

Contractor shall meet the agreed deadlines.

3. Remuneration

- 3.1 Engineering Services at a Lump Sum-price:
Services will be invoiced at the agreed lump sum price in accordance with the Purchase Order.

3.2 Engineering Services at unit rates:
Services will be invoiced according to units completed at the agreed unit rates in accordance with the Purchase Order.

3.3 The agreed prices are fixed prices.

4. Invoices and Payment

Demands for payment and invoices shall be issued in triplicate and shall be sent to the department KRK-RP at the Purchaser's address. Value Added Tax shall be shown as a separate item.

5. Assignment

The Contractor shall not assign any claims against the Purchaser except with Purchaser's prior written approval, which shall not unreasonably be withheld.

6. Third Party Insurance

Contractor is obliged to take out sufficient third party liability insurance, with a minimum coverage of DM 1.000.000,--.

Contractor shall furnish an insurance certificate to Purchaser together with the order confirmation.

Contractor shall also take out professional indemnity insurance, if so agreed in the Purchase Order.

7. Warranty / Liability

Contractor shall carry out the Work in accordance with the recognized state of the art, standards and regulations, using professional care and diligence, of proper quality and free of third party rights.

Should errors or defects occur, Contractor shall immediately rectify and/or complete the Work free of charge.

Changes requested or approvals given by the Purchaser shall not release Contractor from his warranty or responsibility for the Work.

Contractor's liability for errors and defects of the Work shall expire 24 months from the date of acceptance of the Work.

The term of limitation for claims in respect of individual defects shall start from the date the claim is lodged and shall, at the earliest, expire on the expiry date of the aforesaid defects liability period.

8. Secrecy, Ownership

- 8.1 All drawings, data, systems, processes, operating procedures, figures, illustrations and other information, irrespective of their nature and origin which have been forwarded or come to the knowledge of the Contractor in connection with the inquiry documents and during the execution of the Work shall be treated as strictly confidential and shall remain the property of the Purchaser.
- 8.2 The above documents and information shall not be copied, published or made available to third parties and shall only be used for the execution of the Work. It is the Contractor's responsibility to instruct and oblige his personnel accordingly.
- 8.3 Upon completion of the Work, Contractor shall return all drawings, data and information to the Purchaser without prior request.
- 8.4 All drawings, calculations, data and other work products prepared by the Contractor in connection with the Work shall become the exclusive property of the Purchaser with an unrestricted right of disposal and use without additional remuneration.

9. Copyright

Should any part of the Work under this Purchase Order become qualified to be protected under a copyright, all rights thereunder shall be vested in the Purchaser including the right to use, change, adapt or exploit the same in any way.

10. Suspension and Cancellation

Even if no delays have occurred, Purchaser shall have the right to suspend or cancel the Purchase Order against payment of the part of the Purchase Order Price corresponding to the part of the Work completed up to the date of the suspension or cancellation, e.g. if and when Purchaser's Client cancels or changes his purchase order, Acceptance of the Work by the Client is temporarily or permanently impeded, Purchaser's Client becomes insolvent or insolvency is to be expected, or Contractor is in substantial default as to the Purchase Order.

Contractor shall only be entitled to payment of substantiated cancellation and suspension costs in cases where the Purchase Order is cancelled or suspended for reasons attributable to the Purchaser.

11. Place of Fulfilment

For supplies the place of fulfilment shall be the place to which the supplies have to be delivered according to the Purchase Order.

For supplies ex-works the place of fulfilment shall be the place of passing of title.

For documentation and payments the place of fulfilment shall be Purchaser's registered office.

12. Applicable Law

Unless otherwise agreed, the Purchase Order shall be governed by and construed in accordance with the laws of Germany with the exclusion of the law of conflict, the Hague Uniform Laws of Purchase as well as the Vienna UN-Law on International Sales.

13. Place of Jurisdiction

Munich shall be the venue for any disputes arising from this Purchase Order, if the Contractor is a business which is obliged to be incorporated in the commercial register. Purchaser is also entitled to institute proceedings at Contractor's main registered place of business.

14. Partial Voidness

The Purchase Order and these Conditions of Purchase shall remain valid even if individual clauses or provisions become invalid or ineffective. Purchaser and Contractor shall agree on a replacing clause which comes nearest to the general and economic intent of the original clause.