

## **Special Terms & Conditions of Purchasing for Construction Works of the C&L Group**

The respective contracting company of the C&L Group shall be referred to as client (CL) below.

The contractor shall be referred to below as CON and both parties collectively as "contracting parties".

### **1. Scope**

The present Special Terms & Conditions of Purchasing for Construction Works (STP-CW) shall form an integral part of any contract concluded by the C&L Group in the sphere of construction works.

To the extent that the present Special Terms & Conditions of Purchasing for Construction Works of the C&L Group do not stipulate otherwise, the General Terms & Conditions of Purchasing (GTP) of the C&L Group shall apply.

The C&L Group shall be Casinos Austria AG, Österreichische Lotterien Gesellschaft m.b.H. as well as their affiliated companies (under § 189a (6) to (8) UGB [Austrian Entrepreneurial Code]).

The purchasing terms of the client (referred to briefly as CL) shall apply. The client shall be the respective contracting company of the C&L Group. This shall apply regardless of any reference being made by the contractor (briefly referred to as CON) to its own general or other terms & conditions. Said terms & conditions shall not have any legal effect, even if the CL does not explicitly object to the latter being referred to. Unless the CON has acknowledged the present purchasing terms previously already (e.g. by signing the order confirmation), it shall in any case acknowledge them by performing the service ordered.

Said purchasing terms shall also apply to follow-up or variation orders.

Should the present terms form the basis of a framework agreement, they shall equally apply to those individual services ordered under the respective agreements.

Amendments and supplements to these terms and/or any contract shall be made in writing and shall moreover only be valid if explicitly acknowledged by the CL in writing.

### **2. Integral parts of the contract**

Unless stipulated otherwise in the order, the contractual components shall apply in the following order, with agreements in any document listed first having priority over any contained in a subsequent document:

- a) notice of award (order) and any enclosures (protocols),
- b) the present Special Terms & Conditions of Purchasing for Construction Works
- c) regulations for third-party companies, site and fire prevention rules, and/or explosion prevention, any drawings, sketches, specifications etc. attached to the contract
- d) General Terms & Conditions of Purchasing of the CL as amended at the time of contract conclusion

- e) the Austrian standards (Ö-NORMEN) and European standards (DIN, EN, ISO, etc.) applicable at the respective time, as well as their technical content, with the more stringent provision to be observed in each case.

If the above-stated contractual components contain different regulations or obligations, the stipulations of the respective higher ranking document shall be deemed agreed.

### **3. Provisions regarding offers**

The CL shall have a period of 5 months to award the contract. During said period, the CON shall be bound to its offer. The CON shall not receive any compensation for preparing the quotation.

The prices quoted shall be fixed prices that are not subject to change even for wages, taxes, material etc., including accessory charges in each case, during the agreed period of execution as well as during any overrun of the defined period of execution up to 12 months. Calculation errors shall not establish any right to additional claims.

Unless otherwise agreed, prices shall be based on the date of the written order.

The calculation underlying the offer shall be prepared using K7 sheets (acc. to ÖNORM B2061) and transmitted to the CL upon the latter's request (applicable to the main construction trade).

Additional offers shall be prepared on the basis of the contract calculation based on the K7 sheets.

#### **3.1. Ancillary services**

Relatively minor services in line with trade usage shall be executed even if they are not indicated in the contractual components, to the extent that they are indispensable for complete, proper and competent execution of the contractual service and are directly associated with the same. Moreover, said services shall be included in the unit prices.

The following services shall equally be deemed ancillary services, unless stated otherwise in the specification:

- all scaffolding and hoisting gear, for own works (unless tendered separately);
- weather-related or seasonal expenses and difficulties (covers, heating, cooling, removal of snow and ice, lighting, use of antifreeze etc.), in particular to protect the work and to allow it to be continued;
- protective measures for transport and storage on site and after installation;
- any transport insurance required;
- transports as well as loading/unloading and transfer on site;
- packaging and disposal of packaging materials;
- training of the CL and/or user;
- the meetings and clarifications required before and during execution of the works with competent representatives of utilities and public authorities and/or similar bodies;
- obtaining all inspections and reports regarding own works (foundation, iron inspection, shell inspection, sewer/chimney report as well as pavement certificate etc.);

- submission of all required official approvals up to usage permit and/or notice of completion including preparation of all required documents;
- fees and charges associated with the execution of the works and/or the notice of completion;
- preparation and updating of a detailed construction schedule, which has to correspond to the contractually agreed dates, in consultation with the other trades and site supervision and/or the CL;  
the detailed construction schedule is based on the dates and/or periods of performance defined in the specifications and/or upon contract conclusion;
- any overtime, night work, hours worked on Saturdays, Sundays and public holidays or multi-shift operation, as required;
- the cost of interim storage and transports;
- the cost of all cleaning work required at and around the site;
- any daily opening and closing of the windows (ventilation of the building site) including protection against damage through draught and removal of condensation;
- all items that are indicated in the basic contractual documents or required for competent provision of the services and are not recorded in separate items.

### **3.2. Joint ventures, subcontractors**

If the offerer intends to form a joint venture, this shall be notified to the CL before expiry of the tender floating period. All JV members shall jointly and severally be obliged to perform the service as agreed in the contract (and to perform other obligations from the contract) (even in spite of any agreements to the contrary internally within the JV). The members of the joint venture shall designate an authorised agent for handling the contract upon submission of the quotation at the latest, also any changes to the person of the agent authorised to act for the JV.

The designated agent shall be deemed authorised to make binding statements for all JV partners with respect to quotation, negotiation, contract conclusions and award of the contract, correspondence, execution, dates, quality, acceptance, settlement of accounts, receipt of payments, liability, warranty, removal of damage etc. There shall be no direct claims of the individual JV member towards the CL.

Subcontracting (forwarding of contracts) of deliveries/services to third-party companies shall be permissible with respect to partial performance, with the CON being obliged to notify the CL accordingly in time. Any costs arising for the CL as a consequence, in particular costs of coordination under the *Bauarbeitenkoordinationsgesetz* (BauKG; act governing the coordination of construction works) shall be borne by the CON. The CL may reject subcontractors notified to it for serious reasons (e.g. in case of doubts as to their technical and/or economic capacity, in case of doubts as to reliability or similar qualifications). No claim for damages, loss of profit, the right to rescind the contract or to change the agreed dates shall arise for the CON or the companies proposed by it for subcontracting from refusal of subcontractors for serious reasons on the part of the CL. Subcontracting (forwarding) the contractual performance in full shall not be admissible. The CON shall be liable for the work of any subcontractor in full in the same way as for its own work. In designing contracts with the subcontractors, the CL shall be granted the right (no obligation!) to enter into the contract between CON and subcontractor by unilateral

declaration of the CL vis-à-vis the subcontractor, in case the contract between CON and CL is cancelled, for instance due to the CON going bankrupt.

### **3.3. Obligation to examine and to warn**

The CON shall have the tender documents and specifications examined by experts immediately and with extraordinary care and shall point out any errors and deficiencies in writing enclosed with the quotation. The CON shall have an obligation to warn the CL, in particular also about defects or concerns regarding the technical designs chosen. The obligation to inform and to warn shall also apply in particular to the completeness of the services tendered or ordered.

The obligation to examine and to warn shall also comprise costs and dates. As soon as the CON realises that deadlines may have to be shifted thus affecting the costs or that other extra costs may arise, it shall inform the CL in writing accordingly without delay (i.e. after no more than ten workdays) and shall propose solutions to avoid such extra costs, under pain of forfeiting any claims for extra costs.

Warnings must include both the potential sources of error and the possible effects in case the warning is ignored by the CL. General warnings shall not be accepted and are pointless.

The CON shall comprehensively make itself familiar with its performance and/or delivery, with dimensions, as well as limits of applicability, also with preliminary, ancillary and subsequent services required on site. Even if the CL does not require any mandatory visit on site, the CON shall not be entitled to derive any change of its calculation therefrom.

The CON shall inspect any existing works that it is to build on to such an extent that any undesired effects on its own work remain excluded. Any additional claims and/or amendments of the calculation cannot be derived therefrom.

The prices quoted include all services pertaining to contractual performance in trade practice (guarantee of completeness). Unless stated otherwise, the items include the production, delivery, transfer, possibly interim storage and installation including all required ancillary services in line with official regulations and requirements, the relevant standards and the recognised engineering rules for absolutely finished, fully usable performance, even if the required details are not mentioned in the specification.

### **3.4. Alternative offers**

Alternative offers are admissible, but may only be submitted in addition to a quotation in line with the tender specifications. They shall be marked accordingly and submitted separately. Technical differences with respect to the main quotation must be marked visibly for the CL. Providing evidence of the equivalence of the alternative offer shall be incumbent upon the CON. If the CON submits an alternative offer, it shall guarantee the accuracy of the assumption made by it and shall be fully liable for the engineering solution selected, its implementation and the economic feasibility presented, as well as for the completeness of the designated application. Only products (if this is at all possible based on the type of product) with a warranted supply of spare parts and after-sales service shall be applied.

### **3.5. Material, sampling, equivalence**

Samples of the material offered shall be gratuitously submitted upon request by the CL and/or its authorised representative. The brand indicated in the respective item of the specifications shall be deemed to have been offered as a minimum requirement.

If the invitation to tender adds the words "or equivalent" to any product, the CON may offer an equivalent product by inserting it in blank lines (*Bieterlücken*) of the specifications. Proof of equivalence shall be provided by the tenderer. Any brands offered shall be binding for delivery; the respective amendments shall require the express consent of the CL in writing.

The products stated as examples in the tender documents shall be deemed offered if no other products were inserted by the CON in the blank lines of the specifications (*Bieterlücken*).

Generally, recyclable environmentally friendly products and/or materials used shall be preferred. Upon request, the CON shall provide evidence to the CL of the recyclability of the materials used, as well as of the environmental compatibility of the building materials by means of certificates/expert reports. In case of equivalence in terms of engineering aspects and price, the CL prefers recyclable, environmentally compatible materials.

### **3.6. Tolerances and field measures**

The dimensional accuracy of the building components to be erected shall correspond to the respective intended use, to the requirements of subsequent structures as well as to the other project-specific necessities. What is absolutely required is the respective highest accuracy carried in the relevant guidelines of the respective subsystem, with the uniformity and regularity of the work to be performed to be taken care of in particular and the common tolerance class to be observed at the points and surfaces of transfer to the following subsystem. The values of admissible deviations must correspond to ÖN DIN 18202, with the values for "increased requirements" applicable to finishing crafts in each case.

The CON shall check the openings, breakthroughs, connections and the like available on site by means of on-site remeasurements including preparation of a measuring log. This is an ancillary service that will not be compensated separately. Verification of all measuring points before execution is a mandatory requirement. Any discrepancies shall be reported to the local building inspector and/or to the CL in writing.

The processing of building parts provided or available on site is an ancillary service that will not be separately compensated.

## **4. Award of contract**

The contractual relationship shall be established by a written statement by the CL to the effect that it accepts the tenderer's offer.

### **4.1. Place of performance**

The place of performance shall be the place stated in the respective order.

### **4.2. Performance period**

The performance period shall commence upon award of the (call) order. If no period is agreed, delivery or performance shall take place immediately. In case of imminent default, the CL shall be informed accordingly in writing indicating the reasons, as well as the expected duration of the default. See also items 3.2., 3.3., 5.4. and 7.1.

### **4.3. Excess or short deliveries / supplementary services**

The CL shall be entitled to adjust the type and scope of the agreed service or the circumstances of the service performance. If the proposed change of a service by the CL or of the circumstances influences the contractually agreed price, any contractually agreed dates, or if additional services are required, the claim for a change in prices or adjustment of the construction schedule shall be asserted in writing without delay, before performance of the service by the CON, under pain of forfeiture of any claims for extra costs.

Any excess or short deliveries for individual service or delivery items do not require any increase of the unit price and shall not entitle the CON to claim any compensation whatsoever.

If services are accounted for at unit prices and if the quantities to be invoiced deviate from the quantities quoted, the CL may demand that lower unit prices are agreed, if said deviation causes either the total price to be exceeded by 10% or the price of any group of services to be exceeded by 20%.

Any new or changed services to be offered subsequently shall be offered on the basis of the main contract and furnished with comprehensible basic data for calculation (cost sheets/K7). Even supplements shall only be deemed ordered by written order.

Services which the CON has executed without any order shall only be remunerated if the CL has subsequently acknowledged them. If this is not the case, said services shall be removed by the CON upon the client's request within a reasonable period, otherwise the CL shall be entitled to remove them at the CON's expense. The obligation to provide services ordered in writing shall not lapse as a consequence.

If a guaranteed quantity for the overall performance is provided for in any contract with unit prices, exceeding the total price for change of quantity shall be excluded. In this respect, it shall be irrelevant how the quantities of individual items change. If, however, the total price deriving upon invoicing is lower than the guaranteed price, only the lower price shall be paid.

### **4.4. Daywork**

Daywork shall only be remunerated if it is ordered/called by the CL and/or its authorised representative in writing before execution, otherwise such services shall not be

remunerated to the CON. Any daywork rendered shall be submitted on a daily basis to the CL and/or its authorised representative in duplicate for confirmation in the form of a detailed performance report, otherwise the services shall not be acknowledged and accordingly not remunerated.

Any daywork ordered shall only be billable under the following conditions:

- a) Any daywork hours, regardless of when they occur and/or are rendered, may only be charged at the rates agreed in the main contract.
- b) Before commencing any daywork, circumstances that may cause extra payment for overtime, nighttime work, work on Sundays or public holidays, shift work and complications, as well as expenditure for substitute rest periods shall be mutually agreed in particular, unless this has been settled in the main contract already.
- c) The hourly daywork rates also include the required supervision and the use and maintenance of the equipment and tools required for the purpose.
- d) Only hours that were demonstrably worked shall be acknowledged, not, however, any breaks, public holidays, adverse weather etc.

It is explicitly determined that even daywork services ordered and rendered need not be paid by the CL, if it turns out upon examination of the final certificate (*Schlussrechnung*) that the service performed on a daywork basis is already included in the order and accordingly may be compensated for within the scope of the service items ordered.

In case of contract work, only the qualification required for the respective service shall be paid, regardless of the staff actually employed.

Any material provided on a daywork basis shall only be remunerated on the basis of paid original invoices, as well as upon determination of price adequacy. Any rebates shall be passed on to the CL.

For charging equipment on a daywork basis, the ÖBGL (Austrian register of construction equipment) valid at the time of submission of the offer shall apply.

#### **4.5. Overtime pay/supplements**

Supplements for overtime or the cost of intensification of performance (*Forcierung*) shall only be paid to the CON, if the CL has ordered the overtime supplements in writing.

If overtime supplements are released by the CL in writing, 33% supplements shall be charged for 50% overtime hours and 66% supplements for 100% overtime hours.



## **5. Service provision**

### **5.1. Regulations, authorities, standards**

In the course of contractual performance, the regulations submitted by the CL for handling the contract at the place of performance shall be observed.

Unless agreed otherwise, these shall be in particular:

- a) "Regulations for responsible undertakings and their subcontractors in premises of Österreichische Lotterien Ges.m.b.H. (ÖLG) and of Casinos Austria AG (CASAG)" as amended
- b) "Underground car park rules" as amended
- c) Operating instruction – "work clearance for work with temporary explosion hazard" as amended
- d) "Checklist for persons working alone" as amended

Furthermore, the CON shall ensure on its own that the work performed by it corresponds to the technical content of all relevant standards.

Processing specifications and guidelines of the manufacturers of finished products and materials shall be taken into account.

The CON shall be obliged to provide, at its own expense, all reports and certificates, in particular those officially prescribed or required for the notice of building completion regarding its deliveries and services, before acceptance of the delivery and/or service by the CL; with said reports and certificates having to comply with the relevant legal and official provisions.

### **5.2. Project management, site coordination**

Before commencement of works, the responsible project manager endowed with the corresponding representative authority shall be designated to the CL.

Furthermore, a contact person shall be designated to the site coordinator that will be permanently present on site for the duration of the works ordered and is responsible for compliance with the safety and health plan (SiGe) and any instructions of the site coordinator by the employees and other personnel executing the work on the part of the CON.

If it has been contractually agreed that the project manager, the planning coordinator and/or the site coordinator under the BauKG shall be provided by the CON, the latter shall be obliged to transmit a copy of the announcement under § 6 BauKG to the CL in time.

### **5.3. Interaction at the place of performance**

If several CONs are employed at the place of performance, they shall avoid any mutual interference to the greatest possible extent and shall coordinate their activities themselves. If no mutual agreement between the CONs is reached, the CL or its authorised representative shall be notified accordingly in time.



Regardless of the client's rights of coordination, the CON shall have consideration for the users, the client and the other contractors when performing its services and shall consult with them at its own initiative and coordinate the respective services. In particular, any required preliminary work and deadlines shall be coordinated and documented in writing in a self-reliant manner and in time together with the client's representative (deadlines for performance, reconciliation, rework etc.).

The CON shall take care of proper collaboration by its suppliers and subcontractors.

Each contracting party shall demonstrably notify the respective other party as soon as possible of any circumstances that may impede execution of the works.

#### **5.4. Idle times**

Unless anything else has been agreed in the contract, uninterrupted idle times of more than 2 weeks shall be remunerated according to Ö-NORM B 2110.

#### **5.5. Daily construction records/construction schedule**

From the time of establishment of the building site until completion of elimination of defective performance, daily construction records shall be kept by the CON at its own expense (for the construction project incl. its subcontractors) and/or current entries shall be made in these records as is customary in the trade.

The daily construction records shall be submitted to the CL and/or its representative for signature in weekly intervals. Upon request by the local building inspector (hereinafter "LBI") and/or the CL, the daily construction records shall also be submitted daily. Even daily construction records countersigned by the CL and/or its authorised representative shall not have any effect of amending the contract; such amendments shall require certain documents, such as separate daywork records, correspondence etc.

#### **5.6. Building site equipment**

Before execution, the building site equipment proposed by the CON shall be coordinated with the CL and be released by the same.

The CON shall obtain and avail itself of the rights of use of public areas, streets or adjoining surfaces at its own risk and expense. The CON shall itself be responsible for the correct storage of materials, protection of the building site and consideration of access routes required for emergency vehicles.

Storerooms, sanitary facilities, crew accommodation, connections etc. shall be provided by the CON itself, and the item on-site overheads, unless available, shall be calculated into the unit prices, unless any separate items are provided for in this respect in the specifications.

The premises shall be made lockable by the CON, with representatives of the CL having access at any time (even outside working hours).

The floor areas and connections provided shall be returned in a clean and proper condition in consultation with the CL upon completion of performance within the performance period, but no later than at the time of acceptance.

Any shifting of building site equipment of the CON as the construction project progresses shall be calculated into the unit prices, unless any separate items are tendered in this respect (e.g. item on-site overheads).

### 5.7. Use of personnel / employment of foreigners / industrial safety

The CON shall employ all required skilled personnel for carrying out all works including preliminary, ancillary and follow-up work on site.

As regards the employment of labour, all provisions under collective bargaining agreements, labour and social security law as well as all industrial safety provisions, in particular the *ArbeitnehmerInnenschutzgesetz* (occupational health & safety act) including ordinances as well as the *Antimissbrauchsgesetz* (anti-misfeasance act) shall be strictly observed.

In case of the employment of workers on temporary loan, the *Arbeitskräfteüberlassungsgesetz* (personnel leasing act) shall be observed, too. In case of employment of foreign labour by the CON, the latter shall strictly observe all provisions applicable in this respect, in particular the *Antimissbrauchsgesetz*, the *Ausländerbeschäftigungsgesetz* (act governing the employment of foreigners), the *Arbeitsvertragsrechts-Anpassungsgesetz* (Austrian law amending labour contract law), the *Fremdenpolizeigesetz* (aliens' police act), as well as the *Passgesetz* (passport act), and all documents and proofs required under the law shall be submitted immediately upon request.

In case of violation of the above provisions, the CON shall be liable for all prejudice incurred by the CL including consequential loss.

Moreover, the CON shall be obliged to observe all provisions under occupational health and safety law, in particular the *Bauarbeiterschutzverordnung* (BauV, ordinance on the protection of construction workers) and the *Bauarbeitenkoordinationsgesetz* (BauKG).

### 5.8. Duty to notify

The CON shall verify if all prerequisites of defect-free timely contractual performance are met, in particular also with respect to preliminary work in other subsystems. If the CON has any misgivings, they shall immediately be notified to the CL in writing (no later than 10 workdays upon receipt of the documents, instructions etc.). Any liability of the CON for extra costs (in particular cost of intensification of performance to comply with the construction schedule, or penalties) or other loss due to deviations from the construction schedule shall remain unaffected in spite of corresponding notification.

Warnings must include both the potential sources of error and the possible effects in case the warning is ignored by the CL. The CON shall submit suitable suggestions for improvement. General warnings shall not be accepted and are pointless.

The duty to notify shall apply to the CON even if the relevant circumstances should be known to the CL.

### 5.9. Prevention of damage and accidents

In executing the order, the CON shall take all precautions in order to avert any personal injury or property damage within and outside the building site, as well as in the air space (violation of foreign air space, pivoting range of crane etc.) and shall indemnify the CL with respect to all claims resulting from non-observance of this obligation.

The CON and its employees shall enter the building site at their own risk and responsibility.

Furthermore, to the extent required by its performance, the CON shall itself provide for all loss prevention measures such as safety fences, hoardings, lighting, guardrails, safety scaffolds, supervision by watchmen, fire prevention and fire protection, shutter holdbacks etc. The expenses resulting therefrom shall be covered by the unit prices agreed.

### **5.10. Insurance**

Upon award of the contract, the CON shall contract adequate third-party liability insurance (minimum sum insured of 100% of the gross contract value, at least EUR 500,000) for all damage conceivable through provision of its services (incl. those of its subcontractors) and shall maintain it for the term of performance. 14 days after being awarded the contract at the latest, the CON shall hand over and/or transmit a copy of the insurance policy to the CL. Should the CON fail to provide evidence of sufficient insurance cover, the CL shall be entitled to rescind the contract immediately without granting any period of grace.

### **5.11. Liability until acceptance**

Until acceptance of its performance and deliveries, the CON shall protect [the same] just as any stocks, building components, materials etc. against loss, theft, damage, destruction, embezzlement etc. at its own expense and risk and shall provide for insurance cover if applicable; the CL shall not assume any liability in this respect.

It shall perform all its own services in such a way and protect them until acceptance by the CL in such a way that future damage is avoided. This includes among others the protection of iron parts against corrosion, impregnation of wooden parts, etc.

For any damage to the building structure or to the work of any other contractor which the CON has caused, the latter shall owe restitution in kind (restoration). If the damage is not removed without delay, but in any case within 2 calendar days or in case of urgency immediately, the CL shall be free to have said damage eliminated by third parties at the expense of the CON; subject to an explicit waiver of the objection of an obligation to minimise the damage.

### **5.12. Deliveries / spare parts guarantee**

All deliveries shall be "free site" according to the instructions given by the CL or its authorised representative, including packaging as well as transfer and storage on site, and shall be effected at the risk of the CON.

The disposal of packaging material etc. shall be incumbent upon the CON and shall be effected without delay. The costs shall be borne by the CON.

The CON guarantees availability of spare parts for a period of at least 10 years and/or in case any longer period of use of the contractual object is agreed, also for that respective period. The above-mentioned period shall also apply for parts that are no longer produced.

If no period of use was agreed, the period of use customary in the market shall apply, however, at least a period of 10 years after acceptance.

Should any spare parts be discontinued, there shall be a duty on the part of the CON to notify the CL accordingly. Furthermore, the CON shall offer to the CL, in writing, to order the spare parts so discontinued.

### **5.13. Winter work / adverse weather**

Extra expenses due to work in winter and/or adverse weather (including unforeseeable weather conditions) shall not be remunerated separately. All measures and facilities required in this respect, as well as the provision of materials (antifreeze) shall be included in the unit prices.

The periods of execution shall not be extended due to unexpected environmental and weather conditions, the cost of any intensification of performance shall not be reimbursed.

### **5.14. Site management of CON – accompanying supervision**

The CON shall be obliged to provide for competent on-site engineering supervision appropriate to the size and scope of the building project throughout the day for the entire construction period and/or the period of its performance until acceptance.

### **5.15. General costs / structural damage / site cleaning**

If several CONs are employed at the place of performance, they shall be liable for damage arising during their activity at the place of performance to services undertaken as well as to the existing building stock, unless the originator of said damage is ascertainable, pro rata in the proportion of the gross billing amount per CON. For this reason, 1% of the invoice amounts will be retained until settlement of the actual structural damage.

If the structural damage not attributable to any originator exceeds the flat fee collected preventively, the CL may increase said withholding after corresponding notification to a rate that will cover the cost.

Any objection to the charge for general and/or specifically attributable structural damage shall be raised and justified within 14 days after receipt of the notification, indicating all respective evidence, otherwise the costs shall be deemed to have been accepted. Unjustified objections or general objections shall be pointless.

Own expenses of the CL and its representatives (local building inspector, planner, etc.) for removal and settlement of the structural damage shall equally be included in the cost of structural damage.

Any contamination shall be removed by the CON causing it without delay (i.e. at least at the end of a workday). If the CON fails to do so or if the originating CON cannot be ascertained, cleaning shall be arranged for by the CL and handled as described above (see structural damage).

Any media required, such as electricity, water etc., shall be provided by the CL. Connections shall only be available within the scope of the available installations. Any additionally required distribution devices etc. shall be installed by the CON at its own

expense and risk in time upon approval by the CL. After completion the original condition shall be restored.

### **5.16. Waste disposal and waste separation**

For the period of performance, the CON shall be obliged to remove all debris and waste resulting from its own work in line with legal provisions from its place of work (even from the interior of buildings) on an ongoing basis.

If the CON illegally deposits or temporarily stores any material – including debris – that would have to be disposed of for backfilling or in the backfill area, the CON shall bear the cost of its substitute removal and disposal.

If, in spite of being requested to do so by the CL, the CON fails to remove any waste or special refuse (hazardous waste) attributable to it from the site within five workdays, the CL shall have the disposal of said materials carried out by third parties at the expense of the CON. Recording within the scope of the site consultation meeting shall also be deemed a corresponding request.

The cost incurred by the CL from the above shall be charged on to the CON. If the costs cannot be attributed, they shall be apportioned pro rata in line with the gross order total to all companies (CONs) involved on site.

Generally, the CON shall observe all waste management regulations and indemnify the CL with respect to all claims whatsoever due to their culpable violation.

### **5.17. Reports / documentation**

The CON shall be obliged to submit, at its own expense, all permits, approvals, quality and functional tests, test certificates, reports, attestations and consents, in particular those officially prescribed or required for the notice of completion of its deliveries and services, before acceptance of delivery and/or performance by the CL, with said documents having to comply with the relevant legal provisions and official regulations.

The scope of delivery of engineering plant/equipment includes in any case – unless explicitly stated otherwise in the specifications and/or the contract:

- a) Instructions for use in German (user guide and operating instructions), as well as the required supplements in case of modifications,
- b) a compact operating manual in German,
- c) complete technical documentation in triplicate, including wiring schemes and their description, service, maintenance, repair and inspection instructions, spare parts lists, calibration requirements, care instructions, as well as all further documents required for operation.

The above-stated documents shall be handed over to the CL upon request, however no later than 2 weeks before acceptance by the CL, in full in duplicate, without any claim for separate remuneration.

## **6. Invoicing**

### **6.1. Quantity surveys**

Unless stipulated otherwise in the contract, invoicing shall take place according to quantity surveys, basically to be prepared by the CON. The preparation of quantity surveys shall be

effected in parallel with the progress of construction, if required, with the CL being notified of the preparation of the quantity survey in time and in such a way that it has a chance to supervise the same and/or to participate in its preparation. Quantity surveys shall only be acknowledged if the survey sheets were signed by the LBI and/or the representative of the CL designated for this purpose. However, any corrections shall be reserved until acknowledgement of the final certificate. Quantity surveys and measuring documents shall be accepted exclusively on the basis of the working drawings and execution plans released for implementation. The quantity survey sheets shall be continuously numbered.

The CON shall have to ensure that hidden parts are surveyed in time and checked together with the CL. Quantity surveys shall be prepared upon acceptance at the latest.

If, in the course of preparation of the quantity surveys, it turns out that a change of the contract value is going to occur, the CON shall be obliged to immediately notify the CL in writing accordingly. If modifications of quantity surveys cannot be demonstrated by the CON, they shall only be recognised by the CL to the extent that appears plausible as a minimum under the conditions demonstrated.

## **6.2. Certificate / final certificate**

Certificates (*Teilrechnungen*) must not be issued more than once a month. Records must be prepared by the CON in easily verifiable form, services for the elimination of structural damage shall be determined and documented separately.

Certificates shall be marked with serial numbers and must include the cumulated overall performance in each case.

Neither acceptance of performance nor acknowledgement of the absence of defects by the CL shall be concluded from the fact that the latter effects any (part) payments.

The final certificate must not be issued before overall acceptance of performance is complete and before submission of all documents to be provided (certificates, evidence, documentation records, drawings, letters of guarantee, maintenance documents etc.).

The final certificate shall be submitted one month after overall acceptance has been completed at the CL together with documents verified by the LBI and/or the respectively designated representatives of the CL. Should submission of the final certificate not be possible due to the provisions of the 1<sup>st</sup> paragraph, a list of the services to be charged in the final certificate shall be provided for accounting accrual by 30 November of the year of overall acceptance at the latest.

The period for verification of certificates shall amount to 30 calendar days after the date of receipt, for final certificates 60 calendar days.

The submission of partial final certificates shall not be admissible.

Flat rates shall only be remunerated upon complete performance.

Only verifiable error-free certificates (invoices) shall be accepted by the CL for payment. Faulty non-verifiable certificates shall be returned to the CON, with the term of payment commencing anew upon receipt of the new corrected certificate.

## **6.3. Invoices for daywork**

All daywork (assuming evidence confirmed by the CL) shall be invoiced separately from certificates (*Teilrechnungen*).

#### **6.4. Financial retention (*Hafrücklass, Deckungsrücklass*)**

The *Deckungsrücklass* in the amount of 10% of the total contract amount will be withheld from each part payment (payment of certificate incl. any down payments). Replacement of the *Deckungsrücklass* by a bank guarantee is not possible.

No such retention shall be deducted from invoices for daywork and individual invoices for services completed.

A *Hafrücklass* in the amount of 5% of the total contract amount shall be withheld from the final certificate, unless it is replaced in time by an unconditional, abstract bank guarantee with a term of at least 2 months after expiry of the warranty period.

#### **6.5. Submission of certificates / invoices**

The certificates (or invoices) shall be submitted in one copy to the LBI and/or the CL. They shall be issued in a verifiable manner, itemisation shall be effected according to the order.

Invoices/certificates must include the following as a minimum:

- Exact invoice address of the CL and of the CON as per contract/order
- Designation of subsystem
- Order number of CL
- Serial number of certificate or daywork invoice and designation of final certificate
- Period of performance
- Contractually agreed discounts
- VAT
- Cash discounts
- VAT registration number
- Contractually agreed terms of payment
- Designations of items (brief text)
- Quantity
- Unit price and price per item as ordered

Unless otherwise agreed, the invoice/certificate shall be itemised according to the specifications, a clear allocation of the items in the specifications and in the invoice must be visible at all times.

In any case, auditing deadlines shall only commence upon receipt of a verifiable, proper and complete invoice/certificate complying with the agreed contents, including enclosures.



## **6.6. Due date, cash discounts**

Unless otherwise agreed in the contract, the following shall be the term of payment:

- for certificates and daywork invoices 30 days / 3% cash discount, 60 days net
- for final certificates 60 days / 3% cash discount, 90 days net.

The date of the respective amount being debited to the account of the CL shall be decisive for timely payment.

It shall be agreed explicitly between the CL and the CON that in case of a default on the part of the CL with respect to the cash discount period, the cash discount shall only be forfeited for the respective certificate or the unpaid part of the certificate, and that a cash discount may still be deducted from other certificates as well as from the final certificate.

## **7. Performance deadlines, contractual penalty, defective performance, dissolution of contract**

### **7.1. Performance deadlines**

The CON undertakes to commence the services and deliveries at the time agreed and to complete them in line with the construction schedule. If the CON fails to do so or if any deadlines agreed are exceeded, the CON shall be fully liable for all resulting extra expenses and losses, unless there is third-party responsibility.

In case of default of more than seven calendar days for interim deadlines or 14 calendar days for the final deadlines, and unless any shorter period is provided for in the contract, the CL shall be entitled to have the entire performance or parts of the services not yet rendered carried out by third parties by way of substitution without granting any period of grace and at the expense of the CON, provided that the CL has threatened the CON with execution of substitute performance at least seven calendar days before the same.

Weather-related interruptions (rain, snow, heat, cold, etc.) shall not entitle the CON to extend any deadlines.

### **7.2. Contractual penalty (punitive damages)**

The claim for payment of a contractual penalty shall arise as soon as the CON is in default, both with respect to milestones and/or interim deadlines. The contractual penalty for milestones or interim deadlines may, however, be reimbursed if the CON catches up with the deadlines, unless any subsequent works were impeded or if they have made up for the default without any extra costs.

In case of a subsequently agreed extension of the performance deadline, the originally agreed contractual penalty shall automatically apply to the newly determined (substitute) deadlines.

The amount of punitive damages (contractual penalty) shall be:

- 2.5% of the gross billing amount in case of non-observance of the agreed date for acceptance

- and additionally +0.5% of the gross billing amount per calendar day of default, but at least EUR 100.00. A restriction to 10% of the gross billing amount shall be agreed.

Any damage exceeding the contractual penalty shall be reimbursed to the CL. The contractual penalty will not be subject to the right of reduction in court.

### **7.3. Rescission of the contract**

Should the CON fail to meet its contractual obligations, the CL shall be entitled, subject to a reasonable period of grace for contractual performance, to declare the dissolution of the contract and to have the remaining and missing services carried out and completed by third parties at the expense and risk of the CON, without the CON being able to assert loss of profit or other claims. Any extra expenditure incurred by the CL accordingly shall be borne by the CON.

Failure to meet contractual obligations shall mean among others violations against essential or other contractual provisions, illegal acts, loss of trade permit and/or authorisation, failure to observe safety regulations etc.

Where insolvency proceedings are opened over the assets of the CON, the statutory rules shall apply.

The CL shall be entitled to rescind the contract even if it turns out later that said circumstances already prevailed at the time of contract award.

In case of dissolution of the contract and/or rescission of the contract, the CON shall not be entitled to any claims for damages, in particular not under § 1168 ABGB (Austrian civil code) ("loss of profit").

Rescission may also be declared by the CL for parts of the contract only, without this entailing the invalidity of other contractual provisions.

A right of rescission of the CON due to prolonged obstruction shall be excluded.

## **8. Acceptance, warranty**

### **8.1. Acceptance**

Formal acceptance shall be agreed.

Acceptance shall only take place upon completion and commissioning of the overall performance.

For the purpose of acceptance, as well as to determine the absence of defects, an appropriate inspection and formal acceptance (preparation of a protocol) shall take place. Any prior commissioning shall not be deemed acceptance (approval), but shall constitute a kind of trial operation to ascertain contractual completion of the works.

Before acceptance regarding all equipment, machinery, installations etc. as well as with respect to the cleaning and care of its works, the CON shall ensure the training of the operators.

The CON shall gratuitously provide the drawings, certificates, test reports etc. concerning the scope of delivery and services of the CON and required for the notice of building

completion or by the authority for construction or operation, as well as the documents, reports and certificates required for the notification of change under the trade regulations, and shall hand over the same to the CL.

It is agreed that in spite of execution of the acceptance protocol, acceptance shall not be deemed to have been effected if any expert reports, certificates, training sessions, documentation etc. are missing that are required for the notice of building completion.

If performance is accepted by the CL with remediable defects, the latter shall be entitled to demand removal of defects at a time to be notified by the CL, and to withhold an amount up to five times the expected cost of substitute performance of elimination of defects including own expenses, in addition to the financial retention (*Deckungsrücklass*).

These documents shall be provided upon acceptance of the deliveries and services at the latest.

The CL shall declare acceptance of performance in a protocol prepared and kept by the CON. The following shall be included in said protocol as a minimum:

- any noted, but in any case manifest defects of the performance rendered, setting a deadline for their removal;
- observance or exceeding of contractually agreed performance deadlines;
- determination of contractual penalties;
- participants in the acceptance procedure;
- warranty periods.

## **8.2. Refusal of acceptance**

The CL shall be entitled to refuse acceptance if the works performed show any defects that substantially impair the agreed purpose of use, establishing a right of redhibitory action, if the documents relating to the works (e.g. operating instructions, test instructions, drawings, sketches etc.) were not handed over to the CL, if explicitly required properties do not exist, or if any defects noted already were not eliminated.

## **8.3. Warranty**

Subject to any longer periods under the law, the warranty period shall amount to the following, especially for the following works:

- 5 years for sealing, blacktop and roof tiling works, tinsmith works, sealing concrete, façades and windows
- 10 years for foil roofs
- 5 years for all other works.

For the agreed period, the CON shall warrant the impeccable condition, full functioning and availability of its contractual services and deliveries. If defects occur within the agreed and/or statutory warranty periods, it is presumed for the entire warranty period that the defect was already present at the time of handover or installation, in derogation from the 6-month presumption period under sec. 924 ABGB. The Contractor must prove the contrary.

In case of works based on samples, the properties of the sample shall be deemed warranted.

Liability and warranty of the CON shall not be restricted by the existence of an LBI and/or expert site manager as well as of any other test authorities of the CL.

#### **8.4. Elimination of damage/defects**

Elimination of defects shall start without delay during the construction period, but in any case no later than 2 calendar days, or upon acceptance 14 calendar days after any notice of defects, otherwise the CL shall be entitled to have the defects eliminated by way of substitute performance without effecting any invitation to tender, by third parties at the expense of the CON. In case of imminent danger, the CL shall have this right even without granting any period of grace.

The cost of planning, supervision, coordination etc. of the elimination of defects (even in case of elimination by the CON) and substitute performance shall be borne by the CON and set off against the certificates/invoices or the financial retention (*Hafrücklass*).

If it turns out that defects were not appropriately remedied, the CL shall be entitled to assert a decrease or redhibition even retrospectively.

The premature disbursement of the financial retention (*Hafrücklass*) or the expiry of a bank guarantee provided by way of a *Hafrücklass* shall have no influence on the warranty obligations or periods, and the absence of errors from the subsystem cannot be derived therefrom.

#### **8.5. Final statement of completion (*Schlussfeststellung*)**

Two months before expiry of the individual warranty periods, the CON shall be obliged to ask the CL to effect a final statement of completion. If such request is not made at the agreed time, the warranty period shall be extended by two months upon written request regarding a *Schlussfeststellung* by the CON; any notification effected before that point in time shall not cause a reduction of the warranty period.

In the record, all items as per acceptance protocol shall be included.

It shall further be stated for which parts and until which point in time the warranty will be extended due to the defects remedied.

### **9. Guarantees**

All guarantees provided by the CON may be used for all claims of the CL and shall correspond to the requirements of the CL.

#### **9.1. Advance guarantees**

If an advance payment was agreed, this shall be secured by an abstract bank guarantee (according to sample provided by the CL) of an Austrian credit institution with a term until acceptance of the overall building project by the CL as provided for in the construction schedule.

### **10. Confidentiality, non-disclosure and data protection**

10.1. The CON shall treat as strictly confidential all data, information and documents handed over to the CON by the CL or which become known to the CON in the performance of its contractual obligations ("Confidential Information"). The CON may not provide such data, information or documents to third parties, whether in

whole or in part, directly or indirectly, without the CL's prior written consent. In addition, the CON shall impose these obligations in writing on its employees and all other persons it is entitled to consult under the parties' agreement. These obligations shall survive the termination of the contractual relationship.

- 10.2. "Confidential Information" within the meaning hereof shall mean, in particular, any technical and non-technical information and/or data relating to the present, future or past or information regarding any activity, even if only intended, and further information about products, services and businesses ("Business Activity") of a party ("Transmitter"), their business associates, suppliers, licensors and customers, which one party discloses or transmits to the other ("Recipient") or to which one party gains access, of which it becomes aware or receives disclosure ("Recipient") as a result of the special (contractual) relationship of the parties to one another or under this agreement, for whatever reason and in whatever manner. It is irrelevant in what form the Recipient obtains such information and whether such information is protected by law or otherwise or whether or not it is expressly designated as confidential or secret. Confidential Information also includes combinations of information which, as such, may also be partially in the public domain or known to the public, but result in an actual or potential economic value or benefit only in their context and/or by not being known to third parties who may also derive a benefit from them.
- 10.3. Notwithstanding the foregoing, information shall not be considered "Confidential Information" if the Recipient of such information or data is able to prove that (i) such information was already in the public domain at the time it was provided to him; (ii) the information became known to the public after it was provided to the Recipient and the Recipient does not bear fault for the publication or disclosure of such information; (iii) the Recipient had already received such information prior to conclusion of this agreement without breaching any other contractual and statutory duties of confidentiality; (iv) the information was transmitted to the Recipient without a breach of any contractual or statutory duties of confidentiality; or (v) the information was independently developed by employees or contractors of the Recipient without reference to the Confidential Information of the Transmitter.
- 10.4. Both the CON and the CL expressly undertake to preserve secrecy with regard to "Confidential Information" and to observe the copyrights of the other party hereto and the third parties involved on the project of which they become aware in connection with the performance of a contract. Should one party suffer losses as a result of a breach of this section, it shall be entitled to demand compensation from the other party for the full amount of such damages.
- 10.5. The CON shall comply with the provisions of the Austrian Data Protection Act (German acronym: DSG), the General Data Protection Regulation (GDPR) and any other statutory confidentiality obligations. In particular, the CON shall undertake all necessary data protection measures, in particular those required under the GDPR. Furthermore, the CON expressly undertakes to comply with sec. 6 DSG ("Data secrecy") and sec. 51 GSpG ("Game secrecy").
- 10.6. For purposes of performing the agreement, the CL shall process the personal data of the CON. Further details of this may be found in the data protection statement of the respective C&L group company. These are available on the website of the respective CL.
- 10.7. If the CON is a "processor" within the meaning of the GDPR, then it shall conclude an agreement with the CL pursuant to Art. 28 GDPR. The CON shall not use any other "processor" without the CL's prior separate or general written consent. In the event of general written consent, the CON, as the "processor" shall inform the CL as the "controller" of any intended change with regard to the involvement or

replacement of other “processors”, which shall give the CL the opportunity to object to such changes.

## **11. Disputes, place of jurisdiction**

Disputes concerning the performance by the CL shall not entitle the CON to cease or interrupt the works incumbent upon it.

The materially competent court for the first municipal district of Vienna shall have jurisdiction over all disputes arising from the present contractual relationship.

Austrian law shall apply to the exclusion of its conflict of law rules. Application of the UN Convention on Contracts for the International Sale of Goods shall be excluded.

## **12. Miscellaneous**

### **12.1. Assignment of claims**

The assignment of claims of the CON vis-à-vis the CL shall generally be inadmissible (prohibition of assignment, *Zessionsverbot*).

The CON shall not be authorised to offset any of the CL's claims.

### **12.2. Intellectual property rights**

The use of drawings and documents of the CL and/or its authorised representative for any other purposes shall not be admissible.

The price agreed in the contract shall cover the acquisition of the legal property rights, in particular of patents, to the extent that their acquisition is required for the CL with respect to the free use and resale of the deliverable. To the extent that licences are required, the CON shall procure the same. The CL shall be entitled to use any inventions made by the CON during execution of the contract gratuitously. In case that the CL is held liable by third parties for the violation of third-party intellectual property rights in connection with the ordered delivery or work, the contractor shall fully indemnify the CL accordingly.

Accordingly, the CON undertakes vis-à-vis the CL that it does not violate any third-party rights of any kind whatsoever (intangible property rights).

### **12.3. Damages**

Thus, the CL shall be entitled to demand full indemnification from the CON even if the claim for damages is only based on minor negligence. Should any consequential damage arise from defects, the CON shall be liable to the CL in this respect regardless of the degree of fault.

### **12.4. Legal invalidity**

Should any of the provisions of the present Special Terms & Conditions of Purchasing for Construction Works be invalid, the validity of the remaining provisions shall not be affected thereby.

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The parties shall replace the invalid or inadmissible provision by a valid one that approximates the intention of the invalid provision as closely as possible.