



# Conditions of Purchase for Construction Services of the ROHDE & SCHWARZ group of companies

Edition 10/2020

## 1. Contractual Bases

- 1.1 The following contractual terms and conditions apply to all construction deliveries and services between the contractor (hereinafter referred to as the "Contractor") and the ordering company within the Rohde & Schwarz group of companies (hereinafter referred to as "R&S").
- 1.2 The Contractor shall provide the contracted services ("Contractual Services") in accordance with the following contractual bases, which shall apply in the order set out below in the event of any discrepancies:
  - (1) R&S order
  - (2) Minutes of negotiations on construction services (incl. Appendices)
  - (3) These Conditions of Purchase for construction services
  - (4) German Construction Contract Procedures (VOB/B) in the version applicable at the time the Agreement is concluded
  - (5) R&S occupational safety guideline
  - (6) Code of conduct for R&S suppliers
- 1.3 General conditions of the Contractor (e.g. terms and conditions of delivery and payment, order terms and conditions, terms and conditions of sale), as well as amendments or supplements made to the order by the Contractor shall not become part of the Agreement unless R&S explicitly agrees to them in writing.
- 1.4 In addition to these Conditions of Purchase, the statutory provisions shall apply if and to the extent the statutory provisions are not amended or explicitly excluded by provisions of these Conditions of Purchase.
- 1.5 The contractual bases also apply to all additional and supplementary orders.
- 1.6 If, from the Contractor's perspective, there is a discrepancy between the contractual bases, the Contractor is obliged to notify R&S of the alleged discrepancy in written or electronic form without delay, but in any case in good time before the performance of the service affected, and to work towards a decision on the nature and scope of the service actually requested. A scenario in which a subordinate contractual basis merely supplements or substantiates a previous one does not, however, constitute a discrepancy in the aforementioned sense.

## 2. Nature and Scope of the Service

- 2.1 The Contractor shall perform the Contractual Service on its own responsibility and in accordance with the generally accepted rules of engineering that apply at the time of acceptance, as well as the relevant legal requirements and official regulations, and shall also observe the installation instructions (installation guidelines) and other specifications of the manufacturers.
- 2.2 The Contractor shall perform all measures, make all deliveries and provide all services required to achieve the work result as described in the contractual bases pursuant to para. 1.2. As a result, the Contractor's obligation to perform includes all measures, deliveries and services which are set out in words, drawings and calculations in the contractual bases, including all individual activities which are necessarily required for this purpose. It also includes those measures, deliveries and services that are not explicitly set out in the contractual bases, but are necessary in order to achieve complete, contractually compliant and functional performance, ensuring readiness for use, in accordance with the generally accepted rules of engineering, and that were foreseeable for the Contractor at the time the Agreement was concluded on the basis of the specialist knowledge it can be expected to have.
- 2.3 The Contractor shall, at its own expense, apply for and obtain all official approvals and approval certificates required for the Contractual Service in good time, in particular from the building supervisory authorities, the employer's liability insurance association, inspection bodies, chimney sweep, etc.
- 2.4 The materials or components used by the Contractor must not contain any pollutants known up to the time of acceptance and must not be hazardous to health or the environment in any other way.
- 2.5 At the request of R&S/the construction management team appointed by R&S, construction meetings shall be held for the purpose of promptly clarifying all questions relating to the construction project. The Contractor shall send the project leader, or a competent individual who has been authorized accordingly, to these meetings. R&S or another person designated by R&S shall prepare minutes of the outcome of each construction meeting which shall be sent to all parties involved. The Contractor undertakes to object to the findings contained in the protocol within five working days of receipt if it does not agree with them.
- 2.6 The Contractor is obliged to keep a construction diary. It must use this diary to record, on a daily basis, the weather conditions and temperatures, the number of employees working on the individual sections, the scope of the work performed there every day, the delivery of construction equipment and materials, when daily working hours start and end, when acceptance deadlines start and end, all agreed changes with regard to design and execution, as well as any particular incidents that occur, in particular any obstructions that arise (in this respect, entry in the construction diary is no substitute for an obstruction notification). A copy of the construction diary must be handed over to R&S/the construction management team appointed by R&S at least once a week, or daily upon request.
- 2.7 The Contractor must properly dispose of the construction debris resulting from its work, as well as any waste caused by it, including hazardous waste and packaging material, etc. on a regular basis, and must remedy any contamination.
- 2.8 At the latest at the time of acceptance, the Contractor must clear the construction site properly and in full, including any storage areas, workplaces and access roads provided by R&S. Any contamination caused by the Contractor shall be remedied professionally.
- 2.9 The Contractor must always provide the Customer with all plans, calculations, workshop drawings or other execution documents relating to its services, as well as the results of government quality assurance tests, upon request.

## 3. Representation of the Contractor

- 3.1 The Contractor shall ensure that a sufficient number of qualified German-speaking management employees are available to supervise the contracted services during the entire execution period.
- 3.2 It shall appoint a project manager who is entitled and authorized to make and receive legally binding declarations and to perform other legal acts.
- 3.3 R&S is entitled to ask the Contractor to replace the project manager or any other responsible employee immediately if the latter has breached general site housekeeping, safety or fundamental secrecy or non-disclosure regulations and/or does not appear to be sufficiently suitable for the execution of the order placed from a professional standpoint.

## 4. R&S Construction Management Team

- 4.1 The construction management team established by R&S (local construction management, project management) shall be entitled to issue the Contractor with instructions regarding the general construction process, in particular the housekeeping rules that apply on construction site, the manner in which the construction work is to be executed and the elimination of defects. The Contractor must follow these instructions. In all other respects, however, the construction management team established by R&S shall not be entitled to make any legal or financial declarations at the expense of R&S.
- 4.2 The Contractor's responsibility for its Contractual Services shall not be limited by the establishment and activity of the construction management team. This means that the Contractor shall be liable in full for defects concerning its Contractual Services and other breaches of contract, in particular. It must check any instructions issued by the construction management team independently to ensure their functional accuracy and their



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- consistency with the contractual and other provisions. It must notify R&S immediately in writing of any reservations in this respect.
- 4.3 Only R&S, and not individual employees belonging to the construction management team, shall be entitled to receive declarations that are of particular importance for the execution of the Agreement. Such declarations that are of particular importance include, in particular, the setting of deadlines, termination notices and declarations preparing for or threatening termination, as well as other constitutive declarations which, in terms of their legal consequences, are equivalent to termination in full or in part, e.g. contestation, declarations of rescission. The Contractor must send any such letters to the Corporate Management of R&S in writing.
- 5. Execution Documents and Sampling**
- 5.1 The Contractor shall – based on the progress of the construction work – inform R&S as early on as possible of the time at which it may require documents to be supplied by R&S, in particular execution plans, so that these documents can be handed over by R&S in good time. The Contractor must then request the corresponding execution plans itself. The Contractor shall not be entitled to claim that execution documents of any kind whatsoever have been delivered late by R&S if the Contractor has not requested them in a timely manner.
- 5.2 Documents to be prepared by the Contractor, in particular the work and assembly plan, supplementary workshop drawings, as well as other calculations and diagrams, shall be submitted to R&S for review and approval in a timely manner (unless otherwise agreed, no later than two weeks prior to the start of execution). If these documents contain deviations from the contractual bases, the Contractor shall point this out in writing, specifying the altered, omitted or additional services. When sending these documents, the Contractor must state in writing by when the documents must be approved at the latest so as to ensure that the execution of the construction work is not delayed. Approval by R&S of the documents prepared by the Contractor shall not constitute any release from liability for the Contractor.
- 5.3 R&S is entitled to take samples of materials and components in accordance with the contractual bases. In this respect, the Contractor must inform R&S in a timely manner of the point in time by which the sampling request must have been made, and of the point in time by which the samples must have been taken, taking reasonable inspection periods into account. The offer for the samples of the materials and components to be used shall be made by the Contractor in due time prior to production. The Contractor must make at least three cost-neutral samples available free of charge.
- 6. Deadlines and Contractual Penalty**
- 6.1 Unless otherwise agreed, all dates and deadlines set out in the negotiation minutes and in other contractual bases (e.g. construction schedule) are binding contractual dates (§ 5 subpara 1 VOB/B).
- 6.2 If the Contractor defaults on an agreed completion deadline, it shall pay a contractual penalty corresponding to 0.2% of the agreed net remuneration (including remuneration for any additional services commissioned/ordered or modified services) for each working day by which the deadline is culpably exceeded.
- 6.3 If the Contractor defaults on an agreed interim deadline (that is subject to a contractual penalty), it shall pay a contractual penalty corresponding to 0.2% of the share of the agreed net remuneration (including remuneration for any additional services commissioned/ordered or modified services) corresponding to the services to be performed up until the interim deadline in question for each working day by which the deadline is culpably exceeded. A contractual penalty already imposed for an interim deadline shall be offset against contractual penalties imposed at a later date for further interim deadlines and/or the completion deadline.
- 6.4 The total contractual penalties to be imposed in accordance with this paragraph shall amount to a maximum of 5% of the agreed net remuneration (including remuneration for any additional services commissioned/ordered or modified services).
- 6.5 R&S can reserve the right to claim contractual penalties up until the final payment is due.
- 6.6 Any further rights to damages of R&S shall not be affected by this provision. The contractual penalty will be offset against such claims for damages.
- 7. Prices and Remuneration**
- 7.1 All prices are fixed prices for the agreed period of performance. Unit prices shall continue to apply even if the executed quantity of a service or partial service covered by a unit price deviates from the originally intended scope, unless R&S is responsible for the deviation. § 313 of the German Civil Code (BGB) shall remain unaffected.
- 7.2 The agreed remuneration shall cover all services owed by the Contractor in accordance with the contractual bases and standard practice in the industry. This shall also apply in the event that an increase in the cost of labor, materials, equipment and/or substances occurs during the contractual construction period.
- 8. Additional and Modified Services**
- 8.1 Services that are not contractually agreed and represent a modification of the agreed work result or constitute an additional service (arbitrary order), or which are necessary to achieve the agreed work result (necessary order), shall be performed by the Contractor upon the Customer's instruction. This shall only apply to modified or additional services to the extent that the Contractor can reasonably be expected to perform them. If the Contractor claims that it cannot be reasonably expected to execute the order due to internal processes, the burden of proving this shall be on the Contractor.
- 8.2 The amount of the remuneration entitlement for the increased or reduced outlay of the Contractor as a result of an order pursuant to paragraph 8.1 above shall be calculated based on the actual costs, applying appropriate mark-ups for general business costs, risk and profit. Any agreed discounts are to be taken into account. Insofar as the Contractor's performance obligations also include planning the service affected by the modification, the Contractor shall not be entitled to any compensation for increased outlay in cases involving a necessary order. Any reduction in the agreed remuneration to be agreed due to the necessary order shall remain unaffected. § 650 c subpara 2 BGB (update to an original calculation presented by the Contractor) shall remain unaffected.
- 8.3 The Contractor shall submit a written supplementary offer, including prices, to the Customer without delay, but in any case in a timely manner before execution starts. Together with this supplementary offer, the Contractor shall also state whether or not and, if so, to what extent the contractually agreed deadlines will be shifted as a result of the execution of the modified or additional service.
- 8.4 The agreement on the new price shall be made, if possible, before the start of execution. Upon the written request of the Customer, the Contractor shall also perform the service without a remuneration agreement. In such cases, the Contractor is entitled to demand 70% of the remuneration shown in its supplementary offer as a down payment for defect-free performance concurrently with the handover of a guarantee in the same amount to secure any repayment claim on the part of the Customer. The guarantee must meet the requirements set out in paragraph 13.3. The Customer's right to obtain a different judicial decision (§ 650 d BGB) shall remain unaffected.
- 8.5 If the scope of performance provided for in the Agreement is reduced because partial services are canceled, the Customer shall be entitled to demand a reduction in the remuneration. In this respect, the reduction in the remuneration shall be determined based on the actual costs saved by the Contractor as a result of the partial services being canceled, applying paragraph 8.2 accordingly. The surcharges applied by the Contractor for this partial service shall be adjusted in accordance with the ratio of the actual costs for the original service to those for the modified service.
- 8.6 Project managers, construction managers, architects or other individuals are not authorized by the Customer to agree on, or issue instructions regarding, deviations from the Agreement, modifications to the execution or additional/reduced services. As a result, the presentation of modified plans or other specifications by the architect or other parties involved in the planning process shall not constitute an assignment and shall not give rise to any claim to additional remuneration. If the Contractor finds that such modifications have been made to the plan, it shall notify the Customer



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without delay and obtain a decision from the latter on the type of execution and any additional remuneration resulting therefrom.

## 9. Work Charged by the Hour

- 9.1 Remuneration shall only be paid for work charged by the hour if this has been explicitly agreed before such work commences in each case. The amount of the hourly rate shall also be agreed upon within this context; otherwise, R&S shall set the hourly rate at its reasonable discretion.
- 9.2 The Contractor shall submit reports on any work charged by the hour on each working day. The reports must include legible information on the construction site, date, names, the workers' occupation, wage or salary grade, hours worked (broken down by overtime, work performed at night, or on Saturdays and public holidays if applicable), the worker, the type of service and equipment, the materials used, and justification for the use of supervisory personnel, where applicable.
- 9.3 The construction managers, architects or other individuals appointed by R&S shall only be authorized to sign off on time sheets. The associated acknowledgment effect relates exclusively to the nature and scope of the services rendered. Otherwise, construction managers, architects or other individuals are not authorized by R&S to agree, or issue instructions on, work charged by the hour.

## 10. Acceptance

- 10.1 R&S shall accept the Contractual Service as soon as the Contractor has produced the work in accordance with the Agreement and has requested acceptance of the Contractual Service in writing. There must be a period of at least ten working days between the acceptance request and the acceptance date.
- 10.2 Notional acceptance as well as acceptance through commencement of use are excluded – notwithstanding the provision set out in § 640 BGB. Acceptance shall not be replaced by earlier use, commissioning or official acceptance, nor by the Contractor's notification of completion of the Contractual Service.
- 10.3 The Contractual Service shall be accepted in its entirety. There shall be no entitlement to the partial acceptance of individual partial services.
- 10.4 A material defect entitling R&S to refuse acceptance shall also be deemed to exist if not all revision plans, as-built plans, documentation, instructions for use, as well as other documents ("Revision Documents") required for the long-term use and/or operation of the Contractual Service are submitted at the time of acceptance at the latest. Insofar as the contractual bases list further documents to be submitted by the Contractor, these shall be submitted four weeks after acceptance at the latest. R&S is entitled to withhold 1% of the net final invoice amount until all agreed Revision Documents have been submitted in full.
- 10.5 Documents not required for the contractual use of the Contractual Service shall not constitute an acceptance condition if suitability for use is only slightly impaired by their not being available. R&S is, however, entitled to withhold a reasonable portion, but at least 1%, of the net invoice amount in the event that documents are submitted late.
- 10.6 The request for a condition assessment in accordance with § 650 g BGB (condition assessment) must be made in writing giving five working days' notice. A record of the results that is of informational value must be prepared. Each Party shall bear the costs of the condition assessment itself, unless the Contractor has asked R&S to accept and/or assess the condition even though the Contractual Service showed material defects. In such cases, the Contractor shall bear the costs associated with the condition assessment in full.
- 10.7 Insofar as technical condition assessments are recorded by mutual agreement during the construction process, in particular for those services that are covered over by subsequent construction work or are not subject to subsequent inspection, these are no substitute for formal acceptance and do not constitute partial acceptance. The contracting party that claims, at the time of acceptance, that the condition deviates from the jointly recorded condition shall bear the burden of proving this.

## 11. Claims Based on Defects

- 11.1 The claims based on defects that R&S can assert are based on the provisions set out in the German Construction Contract Procedures (VOB/B). Unless the Parties have agreed on different limitation periods in the negotiation minutes, the initial limitation period for claims based on defects shall be five years, starting at the time of acceptance.
- 11.2 § 13 subpara 4 no. 2 VOB/B shall not apply.
- 11.3 The Contractor assigns, by way of security, all claims for performance and claims based on defects against its subcontractors, including present and future security, to R&S, which accepts this assignment. The Contractor shall, however, remain entitled to continue to assert these claims in its own name until R&S revokes such authorization. R&S is entitled to revoke the authorization if the Contractor does not, or can no longer, meet its performance and/or supplementary performance obligations (e.g. because insolvency proceedings have been opened against its assets). Following such justified revocation, R&S shall be entitled to disclose the assignment and to demand performance/payment from the subcontractor and/or its guarantor directly to itself. The Contractor's own obligations shall not be affected by this assignment.

## 12. Invoices and Payment

- 12.1 The Contractor shall invoice its services in a verifiable document and in compliance with the applicable value added tax law.
- 12.2 All prices are net and shall be payable, plus any value added tax, at the statutory tax rate that applies at the tax point.
- 12.3 The payment term for partial payment invoices is 30 calendar days. This payment term begins upon receipt of a correct and complete invoice. The final payment shall be made once an appropriate verification period has expired, at the latest within two months of receipt of the final invoice.
- 12.4 R&S is entitled to deduct a discount of 3% from each invoice. This applies subject to the proviso that payment of partial payment invoices is made within 14 calendar days and payment of the final invoice within 30 calendar days after receipt of the invoice by R&S.
- 12.5 The Contractor shall submit a tax exemption certificate issued by the tax authority responsible for it in accordance with § 48b of the German Income Tax Act (EStG) along with the first partial payment invoice at the latest and shall submit a new certificate without having to be requested to do so when the original certificate expires. The Contractor shall notify R&S immediately of any change made by the competent tax authority with regard to the exemption certificate that has been submitted. If R&S does not receive any valid tax exemption certificate, the Contractor shall notify R&S without delay of its tax number, the tax authority responsible for it and its bank account details. If no tax exemption certificate is presented or if a certificate that has been presented is revoked or withdrawn, R&S shall be entitled to withhold tax corresponding to the amount of tax to be paid. Insofar as R&S pays this withheld tax to the competent tax authority, the Contractor must accept this as having been paid as part of the remuneration for the work to be performed.
- 12.6 If the Contractor is in arrears with contributions to be made to the collection body for the total social security contributions, the employer's liability insurance association or the Paid Holiday and Wage Equalization Fund of the German Construction Sector (*Urlaubs- und Lohnausgleichskasse*), for which R&S may be held legally liable, R&S is entitled to retain an amount corresponding to the accumulated arrears. R&S shall pay this retention out immediately as soon as, and to the extent, the Contractor has furnished evidence showing that the payment arrears have been settled, for example by presenting corresponding confirmation issued by the responsible collection body.

## 13. Security

- 13.1 The Contractor shall furnish R&S with security for the performance of the Agreement in an amount corresponding to 10% of the agreed net remuneration. This security shall cover all claims of R&S to the contractual performance of the Contractual Service. If the Contractor fails to furnish security for contractual performance within 14 calendar days of the order being placed (receipt of the order) by presenting a guarantee that complies



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with paragraph 13.3 below, R&S shall be entitled to reduce progress payments by a maximum of 10% in each case, and to retain this amount until the security amount is reached. R&S shall return the contract performance security to the Contractor after acceptance concurrently with the furnishing of the security for claims based on defects agreed in paragraph 13.2, unless claims of R&S that are not covered by the security for claims based on defects have not yet been satisfied. In such cases, R&S is entitled to retain a corresponding part of the security for these contract performance claims.

- 13.2 The Contractor shall furnish security for claims based on defects in an amount corresponding to 5% of the agreed net remuneration. Once the net final invoice amount has been determined, this amount shall be decisive. This security shall cover R&S's claims based on defects, in particular for defects at and/or after the time of acceptance, including damages, as well as the fulfillment of claims of R&S for subsequent performance by the Contractor that has been effected without resolving the defect, and clawbacks of excessive payments (together with interest). R&S is entitled to retain 5% of the final payment (net) as security for the aforementioned claims (security retention). The Contractor is entitled, at any time, to replace the security retention by a guarantee for claims based on defects in the corresponding amount that meets the requirements set out in paragraph 13.3 below. R&S shall return any unused security for claims based on defects following the expiry of the agreed warranty period as soon as the Contractor asks it to do so. Insofar as, at the time of such request for return, there are still claims resulting from defects that were reported before the expiry of the warranty period, R&S is entitled to withhold a corresponding portion of the security until these claims based on defects have been satisfied.
- 13.3 If security is furnished by way of a guarantee, the guarantor must be a credit institution or credit insurer that is licensed in the European Community. The guarantee declaration must be issued in writing for an indefinite period and waiving the defense of setoff, as well as the defense of unexhausted remedies, pursuant to §§ 770 subpara 1, 771 BGB unless the Contractor has undisputed counterclaims, or counterclaims established in a final and non-appealable judgment, against R&S. The right of deposit must be excluded. Furthermore, the guarantor must declare that the place of jurisdiction shall be the location of the construction project or Munich, at the discretion of R&S, and that the claim under the guarantee shall not become statute-barred before the principal claim that is secured as a result.

## 14. Contractor's Employees and Subcontractors

- 14.1 Unless otherwise agreed, the Contractor shall perform all of the services using its own staff. It provides its assurance that it has the necessary expertise, capabilities and reliability to execute the order and that it is in possession of all necessary permits and approvals.
- 14.2 The Contractor shall not be entitled to use third parties, in particular subcontractors or temporary employment companies, for the performance of the Contractual Services without the explicit prior written consent of R&S. In any case, the Contractor shall be solely responsible for careful selection and supervision, for the contractual fulfillment of its obligations, as well as for the actions and omissions of any third parties it commissions.
- 14.3 The Contractor shall be obliged to comply with the provisions set out in the German Posted Workers Act (AEntG), the German Temporary Employment Act (AÜG) and the German Act to Combat Undeclared Work and Unlawful Employment. The Contractor is also obliged to comply with the provisions on payment of the minimum wage and the regulations on payment of vacation fund contributions in accordance with the collective bargaining and statutory provisions.
- 14.4 The Contractor shall bear sole responsibility for compliance with the statutory, official and employer's liability insurance association requirements regarding the deployment of personnel. In particular, it warrants that the statutory and any applicable collective bargaining requirements regarding pay, as well as the obligations to pay taxes and social security contributions are fulfilled, that all statutory and trade law requirements and occupational health and safety requirements are complied with, and that the Contractor will only use workers who have any required residence permits/work permits and are properly insured under the social security system and for accidents. In the event that the Contractor makes use of third parties, and for any further third parties deployed by the latter, the Contractor shall ensure the fulfillment of these same requirements. The Contractor shall provide R&S with corresponding written evidence showing that these obligations have been fulfilled on request.
- 14.5 The Contractor shall ensure that the required personal documents, in particular identity cards, passports, substitute passports or substitute identity cards, as well as proof of social insurance, are carried by the workers at all times during the performance of the services.
- 14.6 The Contractor shall indemnify R&S against any claims resulting from a breach of the obligations set out in this paragraph by the Contractor or by third parties. Any further rights R&S may have shall not be affected by this provision.

## 15. Liability Insurance

- 15.1 The Contractor is obliged to take out sufficient general and environmental liability insurance and to provide R&S with confirmation of such cover by submitting a corresponding insurance certificate. The insurance cover must remain in place until acceptance and the elimination of any material defects. Unless agreed otherwise, the limits of liability under these policies must be at least EUR 5,000,000.00 for personal injury and EUR 3,000,000.00 for physical loss or damage and purely financial loss. Progress payments shall not fall due until the insurance confirmation has been submitted.
- 15.2 The Contractor must notify R&S without delay if and to the extent that the insurance cover is no longer in place in the agreed amount and scope.
- 15.3 The Contractor hereby assigns to R&S any future claims against the liability insurer relating to the construction project. R&S accepts this assignment.

## 16. Public Safety and Construction Site Safety

- 16.1 For the entire duration of the construction work, the Contractor shall be responsible for ensuring public safety in the area affected by the work performed by it. The Contractor shall also notify R&S of any violations of public safety obligations and cases of conflict with other parties involved in the construction work of which it becomes aware as part of its due supervision of the construction site.
- 16.2 Until the time of final acceptance and the elimination of any material defects relating to its contractual performance, the Contractor shall be obliged, granting full discharge to R&S, to comply with all statutory and/or other public-law and official regulations governing safety on the construction site, as well as the rules for the prevention of accidents, and to implement and maintain any measures that need to be taken in line with these regulations. This shall apply irrespective of whether the relevant regulations are addressed to the Contractor or to R&S. In particular, the Contractor shall comply with all statutory occupational health and safety regulations and shall take all of the necessary measures to exclude any risk to the health and safety of the staff employed by it, or by its direct and indirect subcontractors, to perform the services, and to ensure that any individuals who are authorized to be on the construction site are not injured.
- 16.3 The Contractor shall indemnify R&S against all claims based on its construction activities, a breach of its obligations to ensure public safety or a violation of statutory, public-law and/or official regulations.

## 17. Assumption of Risk

- 17.1 The assumption of risk shall be based exclusively on § 644 BGB.

## 18. Setoff, Right of Retention, Assignment

- 18.1 Claims can only be offset against counterclaims of the Contractor if these claims are undisputed or have been established in a final and non-appealable judgment.
- 18.2 If the Contractor makes use of an alleged right to refuse performance/right of retention, R&S shall be entitled to avert the assertion of this right by furnishing security in the amount claimed. The costs of the security shall be borne by the Contractor if the exercise of the right to refuse performance/right of retention was not justified.



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18.3 Any assignment of claims of the Contractor shall require the prior written consent of R&S to be effective. R&S is entitled to withhold its consent if there is a legitimate interest in maintaining the receivables relationship with the Contractor.

## 19. Termination

- 19.1 In addition to the statutory grounds for termination (including the grounds for termination set out in the German Construction Contract Procedures (VOB/B), the Customer shall be entitled to terminate the Agreement for good cause with immediate effect, in particular (as alternatives) if
- (1) the Contractor stops making payments or files for insolvency or applies for comparable statutory proceedings, or if such proceedings are opened or the opening of such proceedings is rejected due to a lack of assets;
  - (2) the Contractor is in default with the performance of its services, despite a reminder having been issued, threatening termination, and the Customer can no longer be reasonably expected to continue with the Agreement;
  - (3) the Contractor employs subcontractors without the Customer's consent, even after a reasonable period set has expired (paragraph 14.2);
  - (4) the Contractor violates provisions of the German Act to Combat Undeclared Work and Unlawful Employment and/or the German Posted Workers Act and does not cease such violations despite having been asked to do so in a written notice that also sets a deadline (paragraph 14.3).
- 19.2 In the event of termination for good cause, the services rendered shall be invoiced by the Contractor. Claims for damages or contractual penalties on the part of the Customer remain unaffected.
- 19.3 Notice of termination must be issued in writing.
- 19.4 The termination right provided for in § 6 subpara 7 VOB/B is excluded by both Parties.

## 20. Planning Documents/Copyright

- 20.1 R&S is entitled to use, modify and exploit all documents of the Contractor, including data on data media, for the contractual performance without the Contractor's involvement.
- 20.2 R&S shall also have this right in respect of the finished structure, and even if not all services have been transferred to the Contractor. R&S is also entitled to modernize and/or otherwise adapt the structure to meet current requirements after its completion, without the Contractor's involvement. This also applies if material changes have to be made to the structure as a result.

## 21. Occupational Safety and Environmental Protection

- 21.1 Wherever commercially and technically feasible, the Contractor shall make sure that environmentally compatible products and processes are used for the delivery, its packaging as well as for supplies and additional services rendered by third parties.
- 21.2 The Contractor shall fulfill its information obligations under the Environmental Protection Act and the Occupational Safety and Health Act.
- 21.3 The Contractor must observe the requirements set out in the R&S occupational safety guideline.

## 22. Nondisclosure/Provision of Materials

- 22.1 The content of this Agreement and all information received from R&S, or from third parties on behalf of R&S, in connection with the performance of the Agreement shall be treated as confidential by the Contractor. R&S does not grant the Contractor any rights whatsoever to this information, other than the right to use it for the performance of the contract. Disclosure to third parties is only permitted with the prior written consent of R&S and, in the event that such consent is granted, the Contractor shall subject these third parties to confidentiality obligations no less stringent than the provisions set out herein prior to disclosure. The aforementioned confidentiality obligations shall end five (5) years after the start of the limitation period for claims based on defects, but shall not apply to information that is generally known or becomes generally known without any breach of this Agreement, was already known to the Contractor before it is passed on without being subject to confidentiality obligations towards any third party, or is lawfully obtained by a third party later on without being subject to confidentiality obligations towards such third party, or to information developed by the Contractor independently or which it is under a legal obligation to disclose, or has been ordered to disclose by a competent court or competent authority.
- 22.2 The Contractor may only disclose its business relations with R&S after having obtained the prior written consent of R&S to do so.
- 22.3 Objects and documents of any kind provided by R&S or third parties on behalf of R&S, as well as any objects or documents created on the basis of such objects and documents, shall not be passed on to third parties without the prior written consent of R&S and R&S does not grant the Contractor any rights whatsoever to such objects and documents, other than the right to use them for the performance of the Agreement. The objects provided shall be reasonably insured by the Contractor, at its own expense, to cover loss and damage, shall be stored separately, maintained if necessary and shall be marked as the property of R&S. The objects and documents provided shall be reasonably protected to prevent unauthorized inspection or use, and shall be returned to R&S as soon as they are no longer required for the performance of the Agreement; the Contractor shall have no right of retention in this respect.

## 23. Third-Party Rights

- 23.1 The Contractor guarantees that the contractual performance does not infringe any patent rights, utility model rights, trademarks, design rights, copyrights or other third-party rights that exclude or restrict the intended use by R&S.
- 23.2 If the use of the delivery or parts thereof is restricted or prohibited due to an asserted infringement of third-party rights, or if there is the risk that such use will be restricted or prohibited, the Contractor shall indemnify R&S and/or its customers on first demand against all in- and out-of-court third-party claims. In addition, the Contractor shall reimburse R&S for any expenses incurred for legal defense and for any damage incurred as a result of such claims for infringement of third-party rights.
- 23.3 In order to ensure effective defense against such claims, the contracting parties shall inform each other without undue delay if they become aware of any alleged infringement of third-party rights.

## 24. Place of Jurisdiction/Applicable Law/Miscellaneous

- 24.1 The contractual relations between the Contractor and R&S shall be governed exclusively by German law, excluding the rules of conflict of laws. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 24.2 The place of performance for all services to be performed is the location of the construction project.
- 24.3 The courts of Munich shall have exclusive jurisdiction for any disputes arising directly or indirectly from the contractual relationship, provided that the Contractor is a businessman, a legal entity under public law or a special fund under public law. R&S shall also have the right to take legal action in the place where the Contractor has its registered office.
- 24.4 English shall be the language of contract. If the Contracting Parties use another language in addition to English, the English wording shall prevail.
- 24.5 If one or more of the aforementioned provisions is or becomes invalid, this shall not affect the validity of the remaining provisions. The Contracting Parties are obliged to replace the invalid provision with a provision that most closely approximates its economic effect.