



SPECIFIC PURCHASING CONDITIONS FOR IT - GERMANY

Contents

S1.	Field of application	3
S2.	Structure and Hierarchy	3
S3.	Definitions	3
S4.	Payment terms	3
S4.1	Invoicing	3
S4.1.1	Electronic invoicing system	3
S4.1.2	Conditions for payments and payment terms	4
S4.1.2.1	P2P process	4
S4.1.2.2	Exclusion of P2P process	4
S4.1.2.3	General	4
S4.1.3	Mandatory invoice content	4
S4.2	Due date interest and default	5
S4.3	Partial and final invoices	5
S4.4	Assignment of claims	5
S5.	Offsetting and Rights of Retention	5
S6.	Labour and social security laws	5
S7.	Penalties for failure to perform	6
S8.	Penalties for Late Performance	6
S9.	Governing law and jurisdiction	7
S10.	[Suspension of the Contract]	7

S1. FIELD OF APPLICATION

These Specific Purchasing Conditions IT Germany (also referred to as "**SPC IT GERMANY**") shall be incorporated in Contracts made by companies of the Elia Group and shall apply together with the Elia Group General Purchasing Conditions for IT (also referred to as "**GPC IT**") in all cases where these SPC IT GERMANY are expressly incorporated, but also for all other Contracts made by the TSO as a purchaser and/or principal for the supply of IT products, IT-related developments and/or IT services. This shall include, without limitation, the following services (the "Services"):

- any delivery and installation of hardware, standard computer programs and software;
- the development, production, modification, customization, installation, implementation and testing of computer programs, databases, neural networks and any other software ("Software Development");
- any other IT-related services, including IT consultancy, IT training, support and maintenance services.

Where a Contractor's Service mainly consists of the delivery of hardware or the provision of standard software, with no obligations to customize, install or provide other services, then such the Contract shall be construed as a mixed-type contract containing elements of a purchase and supply contract (*Kaufvertrag*).

If the Services also consist of other services than a straightforward delivery, development of software, or include additional services to be delivered, then the Contract shall be considered a contract for works (*Werkvertrag*) without recourse to § 650 German Civil Code (BGB).

S2. STRUCTURE AND HIERARCHY

Where applicable, these SPC IT GERMANY shall form an integral part of the terms and conditions provided in the GPC IT, and provisions of the GPC IT addressing the content of the document (such as rules of interpretation or a severability Article) shall also apply hereto. In case of contradiction between a particular Article in these SPC IT GERMANY and a particular Article in the GPC IT, the provision in these SPC IT GERMANY will prevail over the provision in the GPC IT.

S3. DEFINITIONS

Terms defined in the GPC IT, when used herein, shall have the same meaning as in the GPC IT, unless a definition of the relevant term is made in this document.

S4. PAYMENT TERMS

S4.1 Invoicing

S4.1.1 Electronic invoicing system

Unless otherwise agreed by the Parties, a P2P is applying. The P2P process is outlined in detail online as "50Hertz P2P-handbook supplier portal" ("*50Hertz P2P-Handbuch Lieferantenportal*"); this document is published online at www.50hertz.com under the menu path "50Hertz > Suppliers". To the extent that the use of the P2P process has been agreed between the Parties, the Contractor must complete the activity record electronically via the portal pursuant to the confirmed measurement/acceptance protocol/time sheet. The performance of the Services has to be documented in the appropriate form .

S4.1.2 Conditions for payments and payment terms

S4.1.2.1 P2P process

Unless the Parties agreed otherwise, the P2P process is applying. The payments owed by the TSO under the Contract are due 30 Days after the proper online registration of the Services..

If the Services are registered by 50Hertz, the payment will take place 30 Days after the service registration or after the receipt of the Services was booked.

S4.1.2.2 Exclusion of P2P process

If P2P process is excluded by the Parties, payments owed by the TSO under the Contract will fall due following the complete fulfilment of the Services (or partial Services, if agreed) by the Contractor (and any agreed acceptance) or, where no acceptance shall be required, after delivery, but not before 30 Days after receipt of a proper invoice, provided that the Contractor has correctly followed the instructions of this Article, and not earlier than 30 Days after the due date or deadline provided in the Contract.

Invoices must always satisfy the applicable legal requirements, above all those concerning VAT law.

S4.1.2.3 General

The TSO is entitled to pay in advance.

If the Day that the payment is due is not a day where banks are usually open for business in Berlin and Frankfurt a.M., the payment will be due on the following Working Day.

Payment will be made by bank transfer, unless the Parties have agreed otherwise for a particular Contract.

S4.1.3 Mandatory invoice content

The invoice, and any correction of the invoice, will contain:

- a) complete name, complete address and VAT number of the TSO and the TSO's order number;
- b) the Contract reference;
- c) the PO number;
- d) the name of the administrative responsible of the PO;
- e) the Services performed and the date of Service performance as well as the bill of quantities if need be;
- f) complete name and complete address of the Contractor;
- g) the invoice date of issuance;
- h) the invoice number given by the Contractor;
- i) the fees broken down by tax rates and individual tax exemptions, and the gross amount;
- j) the separate identification of the relevant tax rates and the VAT amount applicable to the Fee;
- k) the federal tax identification number or the VAT identification number of the Contractor;
- l) time sheets / records of materials / records of tools or other records if need be.

If the Contractor has his official address outside the Federal Republic of Germany the following information also need to be included in the invoice:

- a) the product description;
- b) the statistical total product value free at the German border (without additional costs);
- c) the country of origin of the products;

d) the IBAN (International Bank Account Number) as well as the Swift Code (BIC) of the Contractor's bank.

More details on the presentation of invoices are available under [https://www.50hertz.com/Partners/Suppliers](https://www.50hertz.com/Partners/Suppliers(document%20\)(document "*Rechnungsinhalte und mögliche Rücksendungsgründe*" (invoice content and potential reasons for its return)). However, these details are only for informational purposes and in no way guarantee the completeness and (tax) legal accuracy. Only the arrangements made in Contractual Documents are legally binding.

Incomplete or inaccurate invoices can be rejected by the TSO and shall not meet the conditions which need to be satisfied to trigger a due date.

S4.2 Due date interest and default

Neither Party shall be liable for payment of any interest on payments having fallen due, unless such Party is in payment default (*Zahlungsverzug*). Claims for payment of default interest, if any, shall remain unaffected.

The TSO shall not be in payment default before having received a payment reminder from the Contractor.

The TSO can refuse to pay default interest to the extent that the TSO can prove that the actual loss caused by the payment delay suffered by the Contractor was lower than the statutory interest.

S4.3 Partial and final invoices

Invoices should be marked as ongoing partial invoices or final invoice according to their purpose. Partial invoices should be presented by the Contractor so that they can be used as parts of the final invoice. Each partial invoice must include details about the scope and value of all the Services to date and the partial payments already received. The final invoice should itemise the Services according to the items in the contract and should cite the partial payments separately.

If it emerges after the presentation of a partial invoice that there will be no further partial invoices to come, upon request of the TSO, the last partial invoice should be declared retrospectively by the Contractor in writing to be the final invoice.

Partial or complete payment by the TSO does not imply an acceptance and/or acknowledgement of the delivery of Services.

S4.4 Assignment of claims

The Contractor is not entitled to assign his claims against the TSO or have them collected by third parties without the TSO's written consent; sect. 354a of the German Commercial Code (HGB) remains unaffected. This does not apply if the Contractor has been granted an extended retention of title in the course of normal business.

S5. OFFSETTING AND RIGHTS OF RETENTION

The Contractor shall only be entitled to exercise any right of set-off or retention with respect to undisputed claims or claims which have been finally confirmed by a court or other competent body.

S6. LABOUR AND SOCIAL SECURITY LAWS

The Contractor represents to comply with applicable labour and social security laws including documentation requirements and will provide the TSO with proper evidence on request. A default on its labour and social security obligations is recognized by the Parties as a serious breach of the Contractor's obligations and entitles the TSO to terminate the Contract, pursuant to Article 29.1 of the GPC IT. The TSO cannot be held liable for the payment of fines or taxes if the Contractor does not comply with such obligations. This will in particular apply to the German Minimum Wage Act (Mindestlohngesetz - MiLoG) and the further duties under the MiLoG will be adhered to. The Contractor shall safeguard and prove on request of TSO that this is taken care of for any of its subcontractors as well.

S7. PENALTIES FOR FAILURE TO PERFORM

For each single case of culpable (i.e. at least negligent) breach of an obligation of the Contractor having been agreed to be penalized in the Contract, the Contractor shall pay a contractual penalty. The amount of the penalties is set forth in the Contractual Documents which may stipulate different amounts, depending on the degree of severity and type of default. Otherwise, the Contractor shall owe an adequate penalty, which if disputed between the Parties, shall be fixed by a competent court or arbitral tribunal.

If TSO is claiming further damages as a result of such breach of duty, the Contractor may deduct any contractual penalty paid for such breach of duty.

The penalties are not subject to the liability cap(s) in accordance with Article 30 of the GPC IT.

The TSO is not required to expressly reserve the right to claim a penalty at the time of taking delivery of any Services; the TSO may reserve the right to claim such penalties within a reasonable time period after acknowledging the final delivery of the Contractor.

S8. PENALTIES FOR LATE PERFORMANCE

The culpable exceeding of a deadline by the Contractor shall entitle the TSO to a penalty. Unless otherwise agreed between the Parties, this shall apply for the deadline for completion of the Services and other deadlines individually specified by the Parties in the Contract (for instance by adding the letter "P" or the remark "penalised" to the deadline)

Where the Parties have not agreed on individual rates or amounts elsewhere in the Contract, the penalties for late performance are equal to 0.2% of the amount of the Contract per Working Day of delay, up to a limit of 5% of the amount of the Contract (the total value of the framework agreement in case of framework agreement) for all penalties including those set out in Article S7 above.

If TSO is claiming further damages as a result of such breach of duty, the contractor may deduct any contractual penalty paid for such breach of duty.

The penalties for late performance are not subject to the liability cap(s) in accordance with Article 30 of the GPC IT.

The TSO is not required to expressly reserve the right to claim a penalty at the time of taking delivery of any Services; the TSO may reserve the right to claim such penalties within a reasonable time period after receiving the final delivery of the Contractor

S9. GOVERNING LAW AND JURISDICTION

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by and construed in accordance with the law of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The Parties agree that the courts of Berlin shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims). In addition, the TSO is entitled to take legal action at the competent court at the domicile or place of principal establishment of the Contractor.

S10. [SUSPENSION OF THE CONTRACT]

The TSO may suspend the performance of the Contract, in whole or in part, for the duration that it so determines but no longer than [6] months at any time and without being obliged to provide justification ("Suspension for Convenience"). In case of suspension for convenience , the Contractor is entitled to receive payment for the Services already rendered in accordance with the Contract and for that part of the remuneration which is attributable to the purchase price of the Services to be delivered as of the applicable due date according to the contract and regardless of the suspension where applicable. The Contractor shall also be entitled to compensation up to 5% of the ongoing PO value for any direct damages incurred which has been duly justified by the Contractor, it being understood that the compensation shall not include compensation for loss of profit or margin on the material. This compensation will deprive the Contractor of its right to claim for a compensation for termination for convenience in accordance with Article 29.2 of GPC IT if the suspension for convenience were to turn into a termination for convenience.]