



# **SPECIFIC PURCHASING CONDITIONS SHORT VERSION – GERMANY**

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# 1 FIELD OF APPLICATION

These Specific Purchasing Conditions (also referred to as "**SPC - SHORT VERSION**") shall be incorporated in Contracts made by companies of the Elia Group and shall apply together with the Elia Group General Purchasing Conditions – Short Version (also referred to as "**GPC - SHORT VERSION**") in all cases where these SPC - SHORT VERSION are expressly incorporated, but also for all other contracts made by the TSO as a purchaser and/or principal if the PO does not include any reference to other general purchasing conditions of the TSO (electrical equipment, IT, works or services). The Services supplied will be described in the Contract and/or PO.

## 2 STRUCTURE AND HIERARCHY

Where applicable, these SPC - SHORT VERSION shall form an integral part of the terms and conditions provided in the GPC - SHORT VERSION and provisions of the GPC - SHORT VERSION 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 - SHORT VERSION and a particular Article in the GPC - SHORT VERSION, the provision in these SPC - SHORT VERSION will prevail over the provision in the GPC - SHORT VERSION.

## 3 DEFINITIONS

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

## 4 PAYMENT TERMS

### 4.1 Invoicing

#### 4.1.1 Electronic invoicing system

Unless otherwise agreed by the Parties, a P2P process applies. This 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](http://www.50hertz.com) under the menu path "50Hertz > Suppliers". 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.

#### 4.1.2 Conditions for payments and payment terms

##### 4.1.2.1 P2P process

Under the P2P process, 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 the TSO, the payment will take place 30 Days after the service registration or after the receipt of the Services has been booked.

##### 4.1.2.2 Exclusion of P2P process

If the 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 is required, after delivery, but not before 30 Days after receipt of a proper invoice, provided that the Contractor has correctly followed the invoicing instructions provided by the TSO, 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.

### 4.1.2.3 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.

### 4.1.3 Mandatory invoice content

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

- a) the complete name, address and VAT number of the TSO;
- 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 applicable;
- f) complete name, address and federal tax identification or VAT number 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/price;
- k) time sheets / records of materials / records of tools or other records, if applicable.

If the Contractor has his official address outside the Federal Republic of Germany, the following information also has 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> (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.

## 4.2 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 interest owed under statutory law.

## 4.3 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 , after the presentation of a partial invoice, it turns out 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.

#### **4.4 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.

#### **4.5 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.

### **5 INTELLECTUAL PROPERTY RIGHTS**

To the extent that rights in Developments protectable as copyright works, databases or subject matters of neighbouring rights are transferred or granted to TSO according to Article 16.1 of the GPC - SHORT VERSION, the following applies:

- The transfer or granting of rights refers to all known and unknown types of use. This shall include the rights for exploitation and use of the Developments on PCs, servers and other stationary computers, mobile services, in embedded systems (including control systems, robots and autonomous systems), on offline media (in all standards and file formats in each case), in the LAN, online via the Internet and in all other wireless or wired public or closed networks, as up/download, as software as a service, within the context of application service providing, via cloud computing (IaaS, PaaS, SaaS) and all other forms of decentralized (e.g. server client environment, grid computing) or centralized computing (e.g. via servers and mainframes) and also use for the purpose of outsourcing or operation for and/or by third parties.
- TSO without further consent is entitled to transfer in full or in part, permanently or temporarily, the rights referred to above to third parties or to grant rights of use to third parties and to grant sublicenses.

The compensation for the transfer and licensing of these Intellectual Property Rights in the Developments is included in the remuneration.

The Contractor grants to the TSO the right to use any standard software within its group of companies in accordance with Article 5 of the EU Software Directive 2009/24/EC. Any grant of rights shall be only limited to a certain number of users if any limitation of users has been agreed on. The use of a Standard Software shall not be limited to a certain hardware or certain hardware capacity. TSO and its Affiliates shall be entitled to access the Standard Software via interfaces or bots from any third party software without an additional obligation to acquire licenses or pay for such use. TSO and its Affiliates may ask a third-party provider (outsourcing and cloud provider, BPO (Business Process Outsourcing) provider and/or provider of managed services) to host operate and/or use the Standard Software in favour of the TSO and/or its Affiliates.

### **6 LABOUR AND SOCIAL SECURITY LAWS**

The Contractor undertakes 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 recognised by the Parties as a material breach of the Contractor's obligations and entitles the TSO to terminate the Contract, pursuant to Article 12.1 of the GPC - SHORT VERSION. This applies in particular to the German Minimum Wage Act (Mindestlohngesetz - MiLoG) and the further duties under the MiLoG. Upon request of the TSO, the Contractor shall provide evidence of its compliance with applicable labour and social security law. The Contractor's obligation also applies to of its subcontractors' compliance with such provisions. The TSO cannot be held liable for the payment of fines or taxes if the Contractor does not comply with such obligations.

## **7 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 penalised 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 determined by a competent court or arbitral tribunal.

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

The penalties are not subject to the liability cap(s) in accordance with Article 13 of the GPC - SHORT VERSION.

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

## **8 PENALTIES FOR LATE PERFORMANCE**

The culpable exceedance 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 total 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 7 above.

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

The penalties for late performance are not subject to the liability cap(s) in accordance with Article 13 of the GPC - SHORT VERSION.

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.

## **9 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.