

SPECIAL TERMS OF CONTRACT

(As at: October 2020)

Federal Maritime and Hydrographic Agency, Hamburg



1. Risk assumption (force majeure)

- 1.1.** If the service becomes permanently or temporarily impossible, in full or in part, before acceptance due to force majeure, war, riots or other objectively unavoidable circumstances for which the Contractor is not responsible, the following provisions shall apply. Sections 275, 286, 313 and 642 German Civil Code (BGB) shall remain unaffected.
- 1.2.** In the event of an instance of force majeure or another impediment to its services, the Contractor must inform the Client about the details of the situation immediately in writing.
- 1.3.** Execution periods shall be extended if an impediment to the Contractor's service is caused:
 - a. by a circumstance for which the Client carries the risk,
 - b. by a strike or a lockout ordered by the Client's professional association at the Contractor's company or at a company that works directly for the Contractor,
 - c. by force majeure or other circumstances that are objectively unavoidable for the Contractor.
- 1.4.** The Contractor must do everything that can reasonably be expected of it to enable the work to continue. As soon as the impeding circumstances have ceased, it must resume the work immediately and without further ado and inform the Client of this.
- 1.5.** If the execution of the service is expected to be suspended for more than six months, without the service becoming permanently impossible, the Contractor shall be entitled, without a termination of the contract, to bill for the services that have been executed up to this time. It may also be reimbursed for the costs it has already incurred that are included in the contractual prices of the part of the service that has not been executed.
- 1.6.** If one Party is responsible for the impeding circumstances, the other Party shall be entitled to compensation for the verifiable damage or the loss of profit, but only in the event of wilful intent or gross negligence. In other respects, the Contractor's entitlement to appropriate compensation in accordance with Section 642 BGB shall be unaffected, provided that notice of the delay is provided or the situation is public knowledge in accordance with Clause 1.2.
- 1.7.** If a suspension lasts longer than three months, either Party may terminate the contract in writing. The billing shall be governed by clauses 1.5 and 1.6.

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2. Execution of the service (Section 4 German Contract Procedure for Services Part B (VOL/B))

- 2.1.** The Client shall have the right to monitor the contractual execution of the service. To this end, it shall have access to the workstations, workshops and storage areas, ships and other locations at which the contractual service or parts thereof are executed or the materials and components intended for this are stored. On request, the work drawings or other execution documents and the results of quality controls must be produced for inspection and the required information must be given, provided that no business and trade secrets are disclosed as a result of this. The Contractor must identify business and trade secrets as such in writing to the Client. The Client must treat business and trade secrets as confidential; the German Act to Protect Business Secrets (GeschGehG) shall remain unaffected.
- 2.2.** The Client is authorised, whilst respecting the Contractor's leadership authority (Section 4 No. 2 (1) VOL/B), to give instructions that are necessary for the contractual execution of the service. The instructions must only be issued to the Contractor or its representative appointed to manage the execution of the service, except in the case of imminent danger. The Client must be informed in writing of the name of the person who has been appointed to manage the execution of the service as a representative of the Contractor.
- 2.3.** If the Contractor considers the Client's instructions to be unjustified or impractical, it must raise its concerns, but execute the instructions on request, unless there are statutory provisions or official regulations to the contrary. If this gives rise to a complication that seriously changes the basis of the contract in terms of Section 313 BGB, the Client must bear the additional costs.
- 2.4.** If the Contractor has reservations about the intended manner of execution (including concerning the protection against accident risks), about the quality of the materials or components delivered by the Client or about the services of other contractors, it must inform the Client of these immediately in writing; however, the Client shall remain responsible for its information, instructions or deliveries.

3. Deliveries, Incoterms® 2020

- 3.1.** For sale and delivery services, the DDP clause of Incoterms® 2020 is agreed.
- 3.2.** Examination and reporting obligation

The Parties are agreed that an examination shall only be carried out when a complete delivery of related components has been performed and, if installation has been agreed, the installation has been completed.

4. Quality control (Section 12 VOL/B), approvals

If approval by the Client or an engaged third party is contractually required before the execution of the service, the Contractor must produce all the necessary documents and information in sufficient time before the execution to enable the Client to inspect the subject of the approval and/or the documents and information within an appropriate period. When it produces the

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documents and information, the Contractor must specify the period within which it intends to execute the associated service.

If the Contractor does not receive approval before the time that it specified for the planned execution of the service, the Contractor may, by way of an exception, start the execution without an approval.

By countersigning (approving) the service for execution, the Client or an engaged third party is only confirming that the Contractor has, within the framework of its duty to cooperate in terms of Section 311 and Section 241 (2) BGB, provided the Client or the engaged third party with the opportunity to inspect the subject of the approval and/or the documents and to express any reservations.

In spite of the approval, the Contractor shall remain responsible for its equipment, test rigs, information and plans, as well as the work result of the service or the fitness for purpose of the delivery; approvals shall not lead to amendments to the contract. The rights of the Client – especially arising from Section 14 VOL/B –, including with regard to specifications made by the Contractor in its plans, shall remain unaffected.

5. Equipment

Equipment in terms of the present contract also means all kinds of water craft, manned and unmanned (including ships, platforms, pontoons etc.).

6. Invoices

6.1. Invoice recipient

Federal Maritime and Hydrographic Agency
Bernhard Nocht Strasse 78
20359 Hamburg

6.2. Form

When drawing up the invoices, the following provisions must be fulfilled:

- a. The requirements of Section 14 German Turnover Tax Act (UStG) or Section 14a UStG;
- b. Invoices must be sent in the contractual written form or, provided that the requirements of Section 3 (Binding force of the electronic form) of the German E-invoicing Regulation (ERechV) are met, as an e-invoice via <https://xrechnung.bund.de/prod/authenticate.do>.
- c. The invoice must specify the
 - route ID: 991-01889-13 and
 - order number: 45000XXX (the specific order number shall be announced after the conclusion of the contract).
- d. Invoicing must take place on the basis of the items in the schedule of services.

6.3. The requirements for invoices arising from Section 15 VOL/B or Section 14 VOB/B (General Construction Contract Procedures Part B) shall remain unaffected.

7. Payment (Section 17 VOL/B, Section 16 VOB/B)

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7.1. Instalments

If instalments are agreed, the following shall apply unless more specific provisions have been stipulated:

- a. On request, instalments must be provided in the shortest possible time intervals or at the agreed times and to the amount of the value of the verified contractual services, including the stated applicable VAT. The services must be verified by a checkable list, which must allow a fast and reliable evaluation of the services. Services in this context shall also be deemed to include the parts manufactured and provided specifically for the required services, as well as the materials and parts delivered to the final destination if, at the Client's discretion, title to these has been transferred to the Client or an appropriate security has been provided.
- b. Counterclaims can be deducted. Other deductions shall only be permissible in the cases provided for in the contract and in the statutory provisions.
- c. Claims for instalments shall be due with 21 days of the receipt of the instalment invoice.
- d. The instalments shall have no influence on the Contractor's liability; they shall not be regarded as an acceptance of parts of the service.

7.2. Advance payments

- a. Advance payments can only be agreed after the conclusion of the contract; sufficient security must be provided for this upon the request of the Client. Unless otherwise agreed, interest shall be paid on these advance payments at 3 % above the basic interest rate of Section 247 BGB.
- b. Advance payments must be credited against the next due payment(s), provided that this payment is to cover services for which the advance payments have been granted.

7.3. Receipt of the invoice and due date

Invoices that do not meet the requirements of Clause 6.2 b, and especially those that have not been issued electronically in the event of requirements to this effect, shall be deemed not to have been received in terms of Section 286 (3) German Civil Code and Section 17 VOL/B or Section 16 VOB/B.

8. Publication, handling of information, data and documents

8.1. Requirement for the Client's consent

The Contractor may only pass

- information and documents that are made available to it,
- information about services and
- results arising from these and
- data collected by the Contractor within the framework of the contract

on to third parties and publish this information or data with the prior written consent of the Client.

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8.2. Use by the Client

If the services or parts of the service consist in delivering reports, data, analyses, documents and information, these shall, in compliance with the statutory provisions regarding the protection of personal data by the Client and in addition to their use for the contractual purpose as a whole and parts thereof,

- be published within the framework of Section 12 a German E-Government Act or the German Act Governing Access to Information held by the Federal Government and the German Environmental Information Act and within the framework of official works;
- be used for the Client's research projects and for other tasks of the Client and the federal states of the Federal Republic of Germany, and further processed and revised if applicable;

9. Description of ancillary services (German Construction Contract Procedures Part C (VOB/C), the General Technical Specifications in Construction Contracts (ATV), DIN 18299 and DIN 18301 etc.)

If the provisions of the special contractual conditions, the documentation guideline (DoRili) and the performance specification contain service requirements that are already principal or ancillary services in terms of VOB/C (ATV) or on the basis of other standards, the mention of these services shall only be repeated there for editorial reasons. Principal or ancillary services in terms of VOB/C (ATV) or on the basis of other standards that are not repeated in another place shall remain principal or ancillary services that are owed.

10. Timetable, adaptation of the process and the specifications

10.1. Timetable

If the Contractor has to create a timetable, this must be handed over at the agreed time. The timetable must be suitable for verifying and monitoring compliance with the contractual periods and other time limits. The timetable for the contractual services must be updated.

In the event of time delays or considerable deviations from other specifications, which may lead to changes in the individual periods/contractual periods, the timetable must be revised by the Contractor immediately and the revised version must be handed over no later than ten working days after the communication of the revision requirement.

Section 5 VOL/B, Section 6 VOB/B and Section 642 BGB shall remain unaffected.

10.2. Conceptual and technical adjustments

In the event of discrepancies between the Client's performance specification and the Contractor's quotation and/or documents, the Contractor's performance obligations arising from the performance specification shall prevail, unless the Contractor provides evidence of the equivalence of the changes.

If the Contractor does not comply with the requirements from the performance specification with the documents that it produces when submitting its quotation, it must revise the

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documents within ten working days upon the request of the Client and communicate to the Client that the requirements of the performance specification are met.

If changes by the Contractor with regard to the intended equipment and processes are necessary for good reason, the Client must be notified of this immediately and evidence must be provided of their equivalence. The Client can reject the changes within two weeks of their announcement if evidence cannot be provided of the equivalence. The changes must then be marked in the documents by the Contractor.

11. Employees and management personnel

11.1. Qualifications

The work must be executed by professionally qualified personnel. The contractual minimum requirements for the professional qualification shall stem from Clause III.1.3) "Technical and professional capacity" of the contract notice (in terms of Article 49 of the directive 2014/24/EU) and/or any separate written agreements in the negotiation procedure.

11.2. Continuity of personnel

The Contractor must endeavour to ensure that personnel that it has designated for the service who have project knowledge, especially management and skilled personnel, are employed for the whole term of the contract.

11.3. Change of personnel

The Contractor shall be entitled to exchange the staff designated under Clause 11.2 for good reason. If such a change of personnel is necessary for good reason, the Contractor must provide the Client with evidence of the qualifications of the new staff. The Client can reject the personnel selected by the Contractor if they do not at least have the qualifications specified in Clause 11.1. The Client can reject the personnel within one week of the announcement of the personnel and their qualifications.

12. Representation of the Client

The Client shall be represented exclusively by the personnel of the Federal Maritime and Hydrographic Agency. Any third party commissioned by the Client shall, within the framework of its monitoring obligations, be entitled and obligated to encourage the executing companies to execute their services in accordance with the contract and give them the instructions that are necessary for the contractual execution of their services.

Any commissioned third parties shall not be authorised to give an instruction that may justify additional or altered claims for remuneration on the part of the executing companies, unless the Client has previously given its consent in writing; the authority of any commissioned third parties to issue instructions with regard to the perpetuation of proper performance shall remain unaffected by this.

13. Communication

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The language of correspondence shall be German if nothing more specific has been specified. The personnel designated for communication with the Contractor must have be business fluent in both spoken and written German.

14. Place of performance

Unless otherwise agreed, the Client's registered place of business in Hamburg shall be the place of performance.

15. Customs

The Contractor shall be responsible for taking care of all the necessary customs formalities, especially applying for import licences in good time, including the associated fees, costs etc. The Client shall be responsible for the required customs formalities for items of equipment belonging to the Client and the latter's agents.

16. General terms and conditions of the Contractor

The contractual provisions that have been made the subject of the award procedure shall apply exclusively. General terms and conditions of the Contractor that may be submitted with the quotation shall have no relevance and shall therefore not become part of the contract.

17. Applicable law

17.1. Choice of law pursuant to Art. 3 of Regulation (EC) No. 593/2008 (Rome I) and Art. 14 of Regulation (EC) No. 864/2007 (ROME II):

Unless otherwise mandatorily prescribed by law, the contractual and non-contractual relationship of the Parties shall be governed exclusively by the law of the Federal Republic of Germany.

17.2. Prevailing minimum standards

For the execution of the services taken on by the Contractor, it is agreed as an essential contractual obligation that

the public-law regulations of the Federal Republic of Germany,

a. the minimum requirements under labour law of the national provisions of the law applicable to the respective employment relationship, at the very least, however, those of the following conventions and EU directives:

- the Maritime Labour Convention of the International Labour Organisation, 2006
- Directive 89/655/EEC Minimum requirements for occupational health and safety
- Directive 89/391/EEC Occupational safety and health directive
- Directive 89/654/EEC Workplace directive
- Directive 89/548/EEC Handling and labelling of hazardous substances
- Regulation (EC) 336/2006

the provisions for the minimum wage that are applicable in the Federal Republic of Germany, shall be contractually agreed minimum requirements for the execution, insofar

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as they do not already apply by law.

Ships that are to be used must meet the other requirements of the "List of required certificates for foreign flagged vessels on coastal voyages in German waters" of the Ship Safety Division.

On the request of the Client, the Contractor must provide evidence of compliance with the minimum requirements.

18. Place of jurisdiction (Section 19 VOL/B, Section 18 (1) VOB/B)

The exclusive international place of jurisdiction for all disputes that arise between the Parties as a result of or in connection with the present contract shall be Germany, unless otherwise mandatorily prescribed by law. The seat of the body responsible for the legal representation of the Client in terms of Section 19 No. 2 VOL/B or Section 18 (1) VOB/B shall be Hamburg.