

Additional Terms of Contract for the Execution of Services

(ZVL)

Edition 04/2016

- A. General form (April 2016)
(drawn up by the Federal
Ministry of Transport and Digital
Infrastructure (BMVI))
- B. Supplementary conditions for the federal waterways
(April 2016) (drawn up by the BMVI)

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A Standard form

Note

The references to sections relate to the General Terms of Contract for the Execution of Services (VOL/B) in the agreed version.

1 Amendments to the contract

1.1 Any amendment to the contract must be in writing.

1.2 Services that have not been agreed but are required for the execution of the contractual service must also be executed by the Contractor upon the request of the Client, unless the Contractor's business is not set up for such services.

2 Terms and conditions of the Contractor

Terms and conditions of the Contractor – especially terms of payment and delivery and information regarding the place of performance and the place of jurisdiction – shall only apply if they are expressly accepted in writing by the Client.

3 Optional items, contingency items

If the list of services provides for optional items (alternative items) for the optional execution of a service or contingency items for the execution of a service that is only required if necessary, the Contractor is obligated to execute the services described in these items upon request by the Client. The Client shall generally make the decision regarding the execution of optional items when placing the order, and regarding the execution of contingency items after the order has been placed.

4 Prices

4.1 The offered prices shall be fixed prices.

4.2 The agreed prices for delivery services shall also include the costs of packaging, loading, carriage to the delivery or receiving point and unloading, unless otherwise specified in the performance description.

4.3 Any rights of use, patent fees and licence fees that are required and owed in accordance with Section 11 shall be covered by the price for the service.

4.3.1 Remuneration for the concession of rights of use

- a) The payment of the remuneration to the Contractor shall settle all of the Contractor's claims for remuneration against the Client for the concession of rights of use. This shall also apply in the event of extensions of the statutory protection period by the legislator.
- b) The Contractor shall indemnify the Client from any claims for remuneration that authors or other third parties make on any legal basis according to German or foreign law. In particular, the Contractor shall indemnify the Client from claims for remuneration in accordance with Section 32 German Copyright Act (UrhG) that authors could make in connection with Section 34 (4) UrhG). The indemnification shall also apply to claims of authors arising from Section 32a UrhG. Indemnification for claims of authors arising from Section 32c UrhG shall also apply. Finally, the indemnification shall also cover possible claims for remuneration on account of an extension of the statutory protection period by the legislator. Any legal costs incurred by the Client on account of the assertion of third-party claims for remuneration shall be borne by the Contractor. The above provisions shall not apply if the Contractor is the author itself.

4.3.2 Copyrights, rights of use

- a) The Client may make full use of the services that are to be provided within the framework of the present contract, e.g. documents that are to be delivered, planning results and/or the executed work, including by making changes. To this end, the Contractor shall grant the Client rights of use. This concession of rights of use shall take place for the purpose of allowing the Client to make full use of the services – including of parts thereof – without the involvement of the Contractor. The rights of use shall cover the following uses in particular, including without the involvement of the Contractor:
- (1) use for the measure specified in the contract, including an identical or modified execution of the work, a subsequent modification of the executed work and a repeated (including a modified) execution; and/or
 - (2) use for measures other than those specified in the contract that are directly or indirectly connected to the construction and/or the operation by any public authorities or private persons of federal waterways and/or bodies of water owned by the federal government, including with modification. Such a use is in particular conceivable if the services to be provided, e.g. the documents for the measure specified in the contract, can also be used for other measures; in this respect, the use of the services for other measures can range from a one-off use to a regular use on account of standardisation; and/or
 - (3) use for the maintenance of the existing building stock by any authorities or private persons in direct or indirect connection with federal waterways and/or bodies of water owned by the federal government; and/or
 - (4) use for all other purposes that become relevant now or in the future during the management of federal waterways and/or bodies of water owned by the federal government, for example in any form of public relations work, training, testing, continuing training, internal information, archiving.
- b) The Contractor shall grant the Client the rights of use until the end of the currently applicable copyright period. Any extensions of protection periods by the legislator shall benefit the Client.
- c) The rights of use shall be granted in a simple (non-exclusive) form.
- d) Geographically, the rights of use shall be granted for Germany (including cross-border measures in states that are immediate neighbours of Germany). Insofar as a use for public relations work is permissible, worldwide rights of use shall be granted.
- e) All of the granted rights of use may also be used without the involvement of the Contractor. They may optionally be passed on to third parties (transfer and/or concession of further rights of use), which in turn may optionally pass them on.
- f) In terms of content, the concession of the rights of use shall extend to the full use or just a partial use and to the reproduction, distribution and/or public disclosure (e.g. a talk, a demonstration, making works available to the public from the place and at the time of the user's choice, broadcasting including retransmission, communication by video or audio recordings, communication of broadcasts and of works made available to public) in any form, and in particular to the following types of use:
- (1) an execution of the measure specified in the contract as frequently as desired, including a re-execution as frequently as desired.
 - (2) use for measures other than those specified in the contract that are directly or indirectly connected to the construction and/or the operation by public authorities or private persons of federal waterways and/or bodies of water owned by the federal government, e.g. on account of repeated execution up to regular execution due to standardisation.
 - (3) use within the framework of public or private award procedures of any kind that are directly or indirectly connected to the construction and/or the operation by public authorities or private persons of federal waterways and/or bodies of water owned by the federal government, especially of measures in accordance with (1) above. This shall also include award procedures that result in the copyright protection of the services that are to be provided being completely or partially lost, e.g. because they become an official work through inclusion in the award/contract documents (Section 5 UrhG).

- (4) use within the framework of public or private award procedures of any kind that are directly or indirectly connected to the construction and/or the operation by public authorities or private persons of federal waterways and/or bodies of water owned by the federal government, especially of measures in accordance with (2) above. This shall also include award procedures that result in the copyright protection of the services that are to be provided being completely or partially lost, e.g. because they become an official work within the framework of a public tender/an open procedure.
 - (5) use in any media for any form of public relations work that is directly or indirectly relevant to the management of federal waterways and/or bodies of water owned by the federal government. In addition to the public relations work for the management of the waterways and/or bodies of water itself, this shall also include publications by any third parties with regard to any waterways of bodies of water. Examples shall include printed and electronic media of all kinds with texts, drawings, audio and audio visual contents and/or moving images and in particular brochures, books, newspapers, magazines, postcards, greetings cards, admission tickets, the internet, apps and other interactive applications, databases, films, games, audio books, three-dimensional animations and models, as well as construction signs, information boards and exhibitions.
 - (6) use for any form of maintenance of the existing building stock, information and archiving and/or for any kind of training, testing or advanced training, especially the right of inclusion in an archive, a database and/or a collection in a printed or electronic format and the internal and public use of such archives, databases and collections (e.g. distribution, public communication), irrespective of the edition (e.g. continuous or after time intervals, e.g. annual additions) and irrespective of the form of retrieval or distribution, especially paper archives, folders, internet archives and data bases, any kind of offline data media, electronic document delivery services, apps and other interactive applications.
 - (7) the types of use that are unknown when the order is placed.
- g) With respect to all the aforementioned rights of use, the following shall also be allowed:
- (1) the right to edit or otherwise remodel the services, especially the documents and/or the measure specified in the contract. This right shall include edits that are necessary for the contractual use and preserve the intellectual character of the contribution, and the use thereof.
 - (2) an edit and the use thereof by way of a measure repeated once up to the regular repetition of the measure in the event of standardisation, and also
 - (3) an edit and the use thereof by way of public relations work, information, archiving, training, testing or advanced training. Consequently, the Client shall be free to edit the services to be provided, e.g. the documents and/or the measure specified in the contract, again later itself or to have them edited by third parties, as frequently as desired, without involving the Contractor. The Parties assume that such an edit does not conflict with any moral rights because the services to be provided do not have a special intellectual character. If, contrary to expectations, this assumption is not correct and the edited services, e.g. documents and/or measures specified in the contract, do have a special intellectual character, the Contractor shall endeavour to obtain the retrospective consent of the authors to their use in return for an appropriate fee.
- h) The Client is obligated to retain the mention of the Contractor used by the Contractor on the documents and any additional mention of the author on the documents. This obligation shall only apply if the mention is usual in the respective type of use. In the event of an edit or other remodelling, the Client shall be entitled to adjust the mention appropriately, e.g. 'on the basis of the documents of [mention of the Contractor and a possible additional mention of the author] for the measure [specification of the measure]'. The Client shall be obligated to impose the aforementioned mentioning obligations on third parties to whom it passes on the contractual rights of use. The Contractor warrants

that the author shall make no claims to a mention unless the Contractor has named the author as such in the usual way on the documents.

- i) The Contractor reserves the right to apply for, register and/or extend any industrial property rights, especially patents, utility models, designs and/or trademarks in any form, worldwide for the services to be provided, e.g. documents and/or the measure specified in the contract. Insofar as the Contractor, and/or a third party with the consent of the Contractor, is entitled to such industrial property rights now or in the future, the Contractor shall grant the Client permission to use the services to the extent of the permission to use the services under copyright law in accordance with the above provisions.
- j) The use of the services to be provided, e.g. the documents to be delivered and/or the executed work, to the extent described in the above provisions may take place even without acceptance, e.g. in the event that they are defective, provided that the Contractor has been remunerated.

4.4 The unit price shall be the relevant contractual price, even if the total amount for an ordinal number (item) in the quotation does not correspond to the result of the multiplication of the estimated quantity and the unit price.

4.5 The agreement on prices for this order shall be subject to the provisions of the applicable version of Pricing Regulation No. 30/53 on the Prices for Public Contracts and, if applicable, a price check. The prices agreed in this order shall be regarded as market prices in terms of the aforementioned Regulation, unless another price type is expressly indicated in the order.

5 Price calculation

5.1 On request, the Contractor must hand over the price calculation for the contractual service (original calculation) to the Client, sealed, for storage. It shall not become part of the contract.

5.2 The Client may open and inspect the price calculation when new prices are agreed or to check other contractual claims after informing the Contractor in good time and giving the latter the option of being present at the inspection. The price calculation shall be sealed again afterwards.

5.3 Clauses 5.1 and 5.2 shall also apply to services of subcontractors, whereby the right to be present shall relate to the relevant subcontractor in this case.

6 Changes to the service (Section 2)

6.1 If prices have to be agreed in accordance with Section 2 No. 2, 3 and/or 4, final sentence, the Contractor must produce its price calculations for these prices, including the breakdown of unit prices (estimation of time and all partial estimations of costs) with the supplementary quotation and the latest and provide the necessary information. This shall also apply to subcontractor services. The Contractor must provide evidence of additional and lower costs that are caused by the change to the service.

6.2 If the Contractor claims an increased remuneration on the basis of Section 2 No. 3, it must inform the Client of this immediately in writing – if possible before the execution of services and if possible specifying the amount.

7 Announcement of additional costs (Section 2)

If it is apparent to the Contractor that additional costs are incurred when the estimated quantity is exceeded, which may lead to a higher unit price by way of exception, it must inform the Client of this immediately in writing. If it culpably neglects to inform the Client, it must compensate the Client for the resulting costs.

8 Change in the estimated quantities in the case of work done for hourly rates (Section 2)

In the case of work done for hourly rates, the agreed rates shall apply irrespective of the number of hours worked.

9 Execution documents (Section 3)

9.1 Only documents that are marked by the Client as designated for the execution shall be taken as a basis for the execution.

9.2 In the context of its duty to cooperate, the Contractor must request the documents that must be provided by the Client in accordance with the contract sufficiently early for them to be handed over by the Client in good time.

10 Publications (Section 3)

The Contractor may only publish anything about the service with the prior consent of the Client. The description of the service and its execution and the release of drawings, calculations or other documents, as well as photographs, film footage, and radio and television recordings, shall be regarded as a publication in this sense.

11 Copyrights/rights of use (Section 3)

11.1 The Client may reproduce, modify and use the documents for the services specified in the contract without the involvement of the Contractor. The same shall also apply to the executed work. The Client shall – as far as reasonable – listen to the Contractor before significant modifications are made to a work protected by copyright; the Client shall weigh up its interest in using the work against the vested interest of the copyright owner and strive to cause as little damage as possible to the work.

11.2 The Client shall have the right to release publications mentioning the Contractor's name. The publication of a work modified by the Client in accordance with Clause 11.1 shall only be possible with the prior consent of the Contractor.

12 Execution of the service (Section 4)

12.1 If it does not execute the service itself, the Contractor must commission an expert and reliable representative with the management of the execution of the service. This person must be named to the Client in writing before the start of the provision of the service. The Contractor must ensure that messages from the Client can reach it or its representative at all times.

12.11a The Contractor must inform the Client of the subcontractors and their subcontractors without being prompted to do so, no later than the start of the subcontractor's service, specifying their names, legal representatives and contact details. Upon the request of the Client, the Contractor must produce declarations and evidence regarding the suitability of its subcontractors and their subcontractors. If the Client has made this request, services of subcontractors that have been proven to be suitable shall be regarded as such pursuant to Section 4 No. 4 Sentence 1.

12.2 The Client shall be entitled to be informed about the contractual execution of the service.

12.3 Operating and user manuals and similar must be included with the service that is to be provided, even without specific agreements to this effect.

12.4 Construction products or types of construction for which technical regulations have been released and which deviate from these or for which there are no technical building regulations or generally recognised codes of practice must have a general building approval or a general building test certificate or consent in the individual case from the respective competent highest building supervisory authority for the intended use.

12.5 Technical codes specified in the contractual documents shall be supplementary conditions in terms of Section 1 No. 2 c).

12.6 The DIN standards specified in the contractual documents shall – unless otherwise specified in the contractual documents – be definitive in the version that was valid three months before the submission deadline.

12.7 In the event of deliveries, the Contractor shall be responsible for obtaining the necessary approvals in good time for the transport of goods in accordance with the German Foreign Trade and Payments Act (AWG) and in accordance with the ordinance for the implementation of the Foreign Trade and Payments Act (Foreign Trade and Payments Ordinance - AWV).

12.8 The Contractor must inform the Client in good time if parts of the service are withdrawn from the testing and verification due to the further execution.

13 Traffic safety and traffic control (Section 4)

13.1 In the event of deliveries, the Contractor must perform all the measures that are necessary for traffic safety in the area of the provision of the service or of the construction site and its auxiliary facilities or of the points of delivery (e.g. storage locations, workplaces, access roads) under its own responsibility. In doing so, it must observe the instructions of the Client and shall also be subject to the traffic regulations in the event of the provision of services in the area of traffic infrastructure.

13.2 The Contractor must provide its employees – newcomers before they start work in each case – about all the regulations relating to traffic, insofar as they must be observed in connection with the service, and repeat this briefing at appropriate time intervals.

13.3 The Contractor must inform the Client immediately of accidents in which personal injuries or damage to property are incurred (within the framework of the provision of the service).

14 Provision by the Client

14.1 The Contractor must ensure that the materials, components or documents that are handed over by the Client are handled and stored correctly and used economically. The Client must be provided with evidence of their use.

14.2 The Contractor must request the materials or documents that are to be provided by the Client in good time, stating the required quantities and delivery dates.

15 Subcontractors (Section 4 No. 4)

15.1 The Contractor may only transfer services to subcontractors who are proficient, capable and reliable; this also means that they have complied with their statutory obligations to pay taxes and social security contributions and meet the requirements under trade law.

15.2 When requesting a quotation, it must inform the subcontractors that this is a public contract.

15.3 Before the intended transfer, the Contractor must inform the Client in text form of the nature and scope of the services and the name, address and employers' liability insurance association (including membership number) of the envisaged subcontractor.

15.4 If services that are transferred to subcontractors are passed on, the Contractor shall inform the Client of this in text form before the intended transfer; clauses 15.1 and 15.3 shall apply accordingly.

16 Packaging

16.1 Packaging must be avoided or made of environmentally friendly and recyclable materials.

16.2 Waste from packaging must be avoided by

- restricting the volume and weight of the packaging to what is necessary to protect the contents,
- procuring packaging that can be reused as far as this is technically possible and feasible and compatible with the regulations relating to the contents,
- recycling the packaging if the conditions for reusability are not met.

16.3 The Contractor is obligated, even if this is not expressly provided for in the performance specification, to take back the packaging after use and to reuse or recycle it outside the public waste disposal system. The Contractor guarantees an environmentally friendly disposal.

16.4 If the Client expressly waives its right to return the packaging to the Contractor, the packaging shall – unless otherwise agreed – be transferred to the ownership of the Client without entitling the Contractor to special remuneration.

16.5 If it has been agreed that packaging materials shall not be transferred to the ownership of the Client because their value is not covered by the price for the service, they shall be sent back without a guarantee of their condition, e.g. free to the railway station, free to the post office or free to the ship loading point of the place of production or dispatch. The Contractor's interests shall be taken into consideration as far as possible in the process.

16.6 If delivery takes place in hired containers, the Contractor – unless otherwise agreed – shall have no entitlement to a special reimbursement of the rental fees.

17 Wood products

17.1 Wood products as an element of the service must be certified according to FSC/PEFC or equivalent or meet the criteria of FSC or PEFC that are applicable to the respective country of origin individually.

17.2 The Contractor must provide evidence of the requirements from Clause 17.1 upon delivery at the construction site by presenting an FSC or PEFC certificate or proof of equivalence or through itemisation.

17.3 The proof of equivalence – i.e. compliance of the certificate with the FSC or PEFC standards that apply to the respective country of origin – or the proof that the FSC or PEFC criteria that apply in the respective country of origin are met individually must be provided through an inspection by the Johann Heinrich von Thünen Institute in Hamburg or the Federal Agency for Nature Conservation (BfN) in Bonn.

17.4 The current valid FSC and PEFC standards can currently be retrieved on the following webpages:

- Information on the international standards

- <https://ic.fsc.org>
- <http://www.pefc.org>

- Information on the German standards

- <http://www.fsc-deutschland.de>
- <https://pefc.de>

18 Restrictions of competition (Section 8 No.2) - anti-corruption clause

18.1 Impermissible restrictions of competition (Section 1 of the Act against Restraints of Competition - GWB) shall in particular include negotiations and or agreements with other candidates/tenderers about:

- the submission or non-submission of quotations,
- the prices to be demanded,
- commitments to other fees,
- profit surcharges,
- manufacturing margins and other price components,

- terms of payment, terms of delivery and other terms and conditions, insofar as they have a direct or indirect influence on the prices,
- payment of cancellation fees or compensation payments,
- profit sharing or other charges and recommendations, unless they are permissible in accordance with
Section 38 (2) GWB.

Such actions on the part of the Contractor itself shall be equivalent to actions of persons who are commissioned by the Contractor or act for the latter.

18.2 If the Contractor, on the occasion of the contract being awarded, has verifiably made an agreement that constitutes an impermissible restraint on competition, it must pay 15 % of the order value to the Client, unless evidence is provided of damages amounting to a different total. This shall apply even if the Client withdraws from the contract, the contract is terminated or the contract has already been executed.

18.3 Irrespective of other rights of termination and withdrawal, the Client shall, in accordance with Section 314 German Civil Code (BGB), in particular be entitled to terminate the contract without notice or to withdraw from it. The right of termination shall in particular exist if

a) the Contractor or its employees, on the occasion of the contract being awarded, have verifiably made an agreement that constitutes an impermissible restraint on competition.

b) the Contractor directly or indirectly offers, promises or grants the Client or the latter's employees or third parties commissioned by the Client who are entrusted with the preparation, conclusion or execution of the contract, or persons associated with them gifts, other gratuities or other benefits.

c) the Contractor commits or abets punishable acts against the Client, the latter's employees or commissioned third parties that fall under Section 298 German Criminal Code (StGB) (Collusive tendering), Section 299 StGB (Taking and giving bribes in commercial practice), Section 333 StGB (Granting benefits), Section 334 StGB (Giving bribes), Section 17 Act against Unfair Competition (UWG) (Disclosure of trade and industrial secrets) or Section 18 UWG (Use of models).

d) the Contractor has made incorrect declarations in the quotation through gross negligence or wilful intent.

18.4 In the case of verified actions in accordance with Clause 18.3 b) or c), the Contractor is obligated to pay a contractual penalty of 5 % of the billing amount.

18.5 Other contractual or statutory claims of the Client, especially those arising from Section 8 No. 2 VOL/B shall remain unaffected.

19 Termination of the contract by the Client (Section 8 No. 3)

In the event of a termination or withdrawal, the Client and the Contractor are obligated to provide one another with the information that is necessary for assessing the respective claims.

20 Duty to exercise proper care (Section 10)

20.1 The place of performance and fulfilment shall be – unless otherwise agreed – the location of the Client's entity that is responsible for entering into contracts (receiving entity).

20.2 Delivery deadlines must be agreed with the Client in good time.

20.3 The risk shall – unless otherwise agreed – be transferred to the Client

- in the case of deliveries, when they are accepted at the delivery point,
- in the case of assembly work, when it is accepted.

21 Quality control (Section 12)

Checks in accordance with Section 12 No. 2 a) must be requested by the Contractor in good time and performed together.

22 Acceptance (Section 13)

22.1 The service shall be formally accepted unless otherwise agreed in the Special Terms of Contract.

22.2 Deliveries shall be accepted at the delivery point, assembly services at the construction site after completion. Claims can be made for defects discovered during the acceptance process irrespective of prior quality controls. This shall also apply if services have already been transferred to the Client before acceptance or the risk has been transferred to the Client on the basis of an agreement.

23 Claims for defects (Section 14)

The limitation period for claims for defects shall begin with the acceptance of the service.

24 Billing (Section 15 No. 1)

24.1 The assessments that are necessary for billing shall always be performed together. The Contractor must request them in good time.

24.2 On the basis of accounting drawings or other measurement documents, all the measurements that are necessary to check an invoice must be indicated directly.

24.3 The originals of the measurement sheets, weighing slips and similar billing documents shall be retained by the Client, the carbon copies by the Contractor.

24.4 During measuring and billing, lengths and areas must be indicated to two decimal places, volumes and masses to three decimal places.

25 Discount (Section 15)

Unless expressly agreed otherwise, a discount offered as a percentage shall be deducted during billing and the payments (instalment/advance/partial final /final payment) from the unit and lump sum prices, including from those of the supplementary orders, whose prices must be formed on the basis of the price calculation for the contractual service.

Change records in the event of a wage escalation clause and reimbursement amounts in the event of an agreed material price escalation clause shall not be reduced by the discount.

26 Invoice (Section 15)

26.1 Invoices must be marked as an instalment invoice, a partial final invoice or a final invoice depending on their purpose; the instalment and partial final invoices must be numbered consecutively.

26.2 The invoice must, separately for each order, be issued to the receiving entity.

26.3 The invoice must, unless otherwise agreed, be submitted in two copies.

26.4 In each invoice, the part services must be listed in the same order as in the list of services, with the ordinal number (item) and the description – abbreviated if applicable. The invoice must also contain the same information as the delivery note.

26.5 The invoices must be drawn up with the contractual prices without VAT (net prices); the VAT amount must be added at the end of the invoice with the tax rate (see section on VAT).

26.6 Costs for carriage and transport services must be listed separately in the invoice.

26.7 Each invoice must specify the scope and value of all the previous services and the payments that have already been received, with a separate indication of the VAT amounts contained therein.

26.8 If services are executed, in accordance with the agreement, as independent part services within the framework of a larger order, the invoices for these must be numbered consistently with the delivery notes and the shipping notes and marked as partial invoices. The final partial invoice must be marked as a partial invoice and a final invoice. The part services executed within the framework of the order should not, however, be repeated in the partial invoices – as in instalment invoices.

27 VAT

27.1 The VAT amount must be inserted at the end of the invoice with the tax rate that is applicable at the time at which the tax is incurred (Section 13 German Turnover Tax Act (UStG)), which is at the time at which the service is effected in the case of final invoices.

27.2 If the tax rate is changed by law in the period between the expiry of the deadline for the submission of quotations and the tax being incurred, and if there are reduced tax charges in this context due to the alteration of other taxes, these must be taken into consideration when calculating the VAT amount.

27.3 If the conditions for the VAT relief are not met or are not met to the level indicated by the Contractor, the Contractor is obligated to reimburse the Client for the amount that the Client could have expected as VAT relief according to the information provided by the Contractor.

27.4 The invoices must be drawn up with the contractual prices without VAT (net prices).

27.5 If the Contractor is responsible for contractual periods being exceeded, the difference between the current VAT amount and the VAT amount that was decisive at the time of the expiry of the period shall not be reimbursed.

28 Services on the basis of hourly rates (Section 16)

28.1 The Contractor must submit time sheets in duplicate for services executed on the basis of hourly rates (time work) every working day. Apart from the information according to Section 16 No. 2 VOL/B, these must include

- the date,
- the description of the service location,
- the precise description of the place of execution within the service location,
- the type of service,
- the names of the workers and their occupational groups, wage brackets or pay grades,
- the hours worked by each worker, if applicable broken down according to overtime, night work, Sunday and public holiday work, as well as obstacles not included in the rate, and
- if applicable the device parameters.

28.2 If the supervisor who is active during the time work also supervises other contractual services at the same time, only the hours of supervision that arise from the ratio of the employees employed at an hourly rate to the total number of employees to be supervised shall be remunerated as time work.

28.3 Invoices for services on the basis of hourly rates must be broken down according to the time sheets.

28.4 The originals of the time sheets shall be retained by the Client, the Contractor shall receive the certified carbon copies.

29 Payment (Section 17)

29.1 Payments shall be made in euros by bank transfer.

29.2 In the event of a transfer from an account, the date on which the owed amount is credited to the creditor's account shall be regarded as the state of payment.

29.3 In the case of consortia, payments shall be made to the representative of the consortium who is authorised to execute the contract or according a written instruction from the latter, with a debt-discharging effect for the Client. This shall also apply after the consortium is dissolved.

30 Overpayments

30.1 In the event of claims for restitution on the part of the Client that arise from overpayments (Section 812 et seq. BGB), the Contractor may not invoke a cessation of enrichment (Section 818 (3) BGB).

30.2 In the event of overpayment, the Contractor must reimburse the overpaid amount. If it does not do this within 14 calendar days of the receipt of the letter claiming restitution, it shall be in default with its payment obligation from this point and must pay default interest pursuant to Section 247 and Section 288 (2) BGB and a lump sum pursuant to Section 288 (5). The Contractor may not invoke a cessation of enrichment.

31 Provision of a security (Section 18)

31.1 A security for the performance of the contract of 5 % of the gross order value (without additions) must be provided in the event of an order of more than 50,000 euros (without VAT) awarded in an open procedure or in a public tender.

31.2 After acceptance, the security for the performance of the contract must be exchanged for a security for claims for defects of 3 % of the gross billing sum. If discovered defects are still to be removed, the security shall be increased by double the amount of the expected expenditure for removing the defects.

31.3 A security that is not used shall be returned if the limitation periods for the claims for defects have expired.

32 Surety (Section 18)

32.1 If a security is provided through a surety, the Client's forms must be used or the contents of the declaration of surety must correspond in full to the Client's forms.

32.2 The surety must be provided by a bank or credit insurer that is licensed

- in the European Community or
- in a state of the parties to the Agreement on the European Economic Area or
- in a state of the parties to the WTO Agreement on Government Procurement.

32.3 The deeds of suretyship shall only contain the following declaration of the guarantor:

- "The guarantor shall provide the absolute surety for the Contractor under German law.
- The defences of voidability and set off and the defence of unexhausted remedies pursuant to sections 770 and 771 BGB shall be waived. The waiver of the defence of voidability shall not apply to undisputed or legally established counter claims of the principal debtor.
- The surety shall be unlimited; it shall expire when this deed of suretyship is returned.
- The surety claim shall not become time-barred before the secured principal claim. Agreements made between the Client and the Contractor regarding the limitation period for the principal claim after the conclusion of the surety contract shall only be binding for the guarantor if it has agreed to this in writing.
- The place of jurisdiction shall be the registered place of business of the entity responsible for the legal representation of the Client."

32.4 The surety must be provided for the whole amount of the security in just one deed.

32.5 The deed regarding the surety for instalment payments shall be returned when the materials and components for which the security has been provided are installed.

32.6 The deed regarding the surety for advance payments shall be returned when the advance payment has been credited against due payments.

32.7 A security for the performance of the contract that is not utilised shall be returned on the agreed date, at the latest after the acceptance and the provision of the security for claims for defects, unless claims of the Client that are not covered by the security provided for claims for defects have not yet been satisfied. In this case, a corresponding part of the security shall be retained for these claims for the performance of the contract.

33 Contracts with foreign contractors/language

33.1 When interpreting the contract, only the wording of the contract drafted in the German language shall be binding. Declarations and negotiations shall take place in German.

33.2 Written remarks of third parties in a foreign language (e.g. certificates and other documents from public authorities and private individuals) must be submitted with a German translation. The translation of official certificates must be certified by the consulate.

33.3 The law of the Federal Republic of Germany shall apply exclusively to the regulation of the contractual and non-contractual relationships between the Parties. The procedural law of the Federal Republic of Germany shall apply to any court proceedings.

34 Liability insurance

34.1 In the case of services, the Contractor must provide evidence of a professional indemnity insurance if this is required in the performance specification. It must guarantee that insurance cover to the amount of the sum insured specified in the performance specification exists to cover damage arising from the contract. It must provide evidence that the maximisation of the compensation amounts to at least double the sum insured.

34.2 Before providing evidence of the insurance cover, the Contractor shall not be entitled to payments from the Client. The Client may make payments dependent upon evidence of the continued existence of the insurance cover.

34.3 The Contractor is obliged to notify the Client immediately in writing if and insofar as cover to the agreed amount no longer exists.

35 Employers' liability insurance association

As long as the contract has not been executed, the Contractor shall inform the Client immediately of any change in its membership of an employers' liability insurance association. On the request of the Client, it must produce its membership certificate for the employers' liability insurance association and a certificate from the employers' liability insurance association to the effect that it has complied with its obligation to pay dues and advance payments.

B Supplementary conditions for the waterways

Note

The references to sections relate to the General Terms of Contract for the Execution of Services (VOL/B) in the agreed version, the references to clauses to the provisions of the Additional Terms of Contract - Part A.

100 Daily reports

The Contractor must, if this is required in the performance specification, keep daily reports and hand them over to the Client as agreed. They must contain all the information that may be of significance for the execution and billing of the order.

Depending on the type of the service, this may include in particular:

- the number and type of workers employed,
- the number and type of large machines used and the acquisition and disposal of these,
- the delivery of the materials,
- the nature, scope and location of the work done with the important information about the progress (start and end of services on a larger scale and similar),
- obstacles to and interruption of the execution,
- the cessation of the service, stating the reasons,
- accidents and other important incidents.

101 Execution documents (Section 3) and Clause 9

101.1 If the execution documents contain deviations from the contract, the Contractor must explicitly advise the Client of the deviations in writing when presenting these documents.

101.2 The execution documents shall – where relevant from a building supervision perspective – be approved for execution by the Client within the framework of its competence. Even after the building approval has been granted, the Contractor shall remain responsible for the accuracy of the documents.

101.3 A building approval of the execution documents shall not constitute an order in accordance with VOB/B.

101.4 The Contractor's liability for the correctness and completeness of its services that are owed according to the contract shall also not be restricted by the contractual countersigning (approval) of the execution documents by the Client.

101.5 By contractually countersigning (approving) the documents as designated for execution, the Client is only confirming that the Contractor has given it the opportunity, within the framework of its duty to cooperate pursuant to Section 4 No. 2 (1) VOL/B in conjunction with Section 311 and Section 241 (2) BGB, to inspect the documents and to express any reservations.

102 Shared use of facilities and equipment (Section 4)

102.1 The Contractor must permit third parties who are entrusted with the performance of works by third parties to use its access roads, scaffolding and equipment in exchange for an appropriate fee, provided that its services are not significantly impeded by this. For its part, the Client shall ensure that the Contractor can use the access roads, scaffolding and equipment of other companies employed on the construction site on the basis of the same principles.

102.2 If the Contractor intends to use facilities of the Waterways and Shipping Administration during the execution of its services, it must obtain the consent of the competent Water and Shipping Authority, unless otherwise specified.

103 Traffic safety and traffic control (Section 4 and Clause 13)

103.1 The Contractor must observe the Client's instructions on traffic safety in the area of the construction site and its auxiliary facilities and shall also be subject to waterway, shipping and harbour police regulations in the event of work by or in the water. Traffic controls in the area of the construction site and its auxiliary facilities must, however, only be carried out by the Contractor in the area of the waterway if these are controls by navigation signs on the instruction of the Client.

103.2 The Contractor must carry out all the measures for the safety and control of the road traffic within the construction site that are necessary on account of the works executed by the Contractor, including outside working hours. Unless otherwise agreed, it must present the Client with a traffic sign plan for approval, irrespective of its obligations in accordance with Section 45 (6) German Road Traffic Regulations (StVO). It must execute traffic measures in accordance with the orders of the competent authorities.

103.3 The Contractor must appoint a person responsible for these obligations that are incumbent upon it and a deputy for this person and give the Client their names. One of the responsible people must be accessible at all times.

104 Safety measures in the area of traffic infrastructure (Section 4)

If the works affect facilities of Deutsche Bahn AG or facilities of other railway or road companies, the Contractor must observe the regulations and orders of the competent body. In particular, it must take all the measures that are necessary to protect the company and its employees against the dangers of operation; these shall not include the safety measures executed by traffic companies (e.g. railway look-outs).

105 Construction site/construction area and facilities in the construction area (Section 4)

105.1 The terms "construction site" and "construction area" shall be used with the following meanings:

105.2 Construction site: areas that are made available to the Client for the execution of the service, for the construction site equipment and for the temporary storage of materials and components, plus the areas that the Client uses in addition to these.

105.3 Construction area: construction site and the surrounding area, which may be compromised by the execution of the construction works.

105.4 If facilities that are not to be expected in accordance with the performance specification are found in the construction area, the Client must be informed immediately.

106 Environmental protection (Section 4)

106.1 To protect the environment, the landscape and the bodies of water, the Contract must limit damage caused by its works to the unavoidable level.

106.2 The Contractor must inform the Client immediately of official orders or third-party claims on account of the impact of the works.

107 Advertising

Advertising on the construction site shall only be permissible with the prior consent of the Client.

108 Construction site clearance (Section 4)

108.1 The construction site must be cleared as soon as possible after the service has been provided on request. If the Contractor does not comply with a request to this effect within a reasonable period, the Client can have the construction site cleared at the Contractor's expense.

108.2 Storage locations, workplaces and access roads provided by the Client must be restored to their former condition if the Contractor is responsible for the change in their condition.

109 Billing

109.1 The following information must be provided in the measurement sheets that are to be used for the joint assessments:

- Contractor,
- Client,
- number of the measurement sheet,
- description of the service,
- brief description of the part service or ordinal number.

Directly above the signatures and the date, the measurement sheet must contain the text: "Drawn up by:".

109.2 Each estimate of the quantity calculation must have a direct relationship with the assessments, drawings and other documents that are used as a basis for the billing. Only the reference to earlier calculations shall not be permissible.

109.3 For billing on the basis of drawings, only execution drawings that have a contractual countersignature (approval) may be used.

109.4 If changes occur compared with the contractually countersigned (approved documents), the corrected documents that have been countersigned again must be taken as a basis for the billing.

109.5 Billing drawings must contain clear references to particular items.

109.6 Quantity calculations with the associated assessments, drawings and other documents must, just like the invoices, be arranged in the order of the ordinal numbers (items).

110 Verification of the masses (Section 15 and Clause 24)

110.1 If no other arrangement is made in the contract for the billing of materials by masses, usage must be verified on an ongoing basis by presenting the weighing slips from a calibrated set of scales with a printing mechanism (generally vehicle scales).

The weighing slips must contain the following information printed on them:

- supplier plant,
- indication of the place of use,
- description of the weighed goods,
- number of the weighing slip,
- date and time of the weighing,
- tare mass (T), no stored average tare value (PT),
- gross mass (B),
- net mass (N),
- vehicle identification (company's own description/official registration number),
- Name of the weigher.

The weighing slips must be initialled by the Contractor upon arrival at the delivery site and handed over to the Client in duplicate immediately.

The Client shall retain the originals of the weighing slips; the Contractor shall receive the confirmed carbon copies back.

The weight-based billing of the materials delivered by water shall be performed in accordance with a draught survey.

In the case of pourable goods that do not tend to stick, e.g. sand, gravel, reprocessed (recycling) materials, the masses can be verified by weighing slips from calibrated shovel loader or conveyor belt scales.

110.2 In the event of a delivery by land-based vehicles, additional conditions shall apply:

- The Client can randomly check the masses of individual deliveries by reweighing the loaded and empty vehicle on public scales or, in exceptional cases, on the same scales (checkweighing).
- If a shortfall of more than 1 % is discovered during a checkweighing, a corresponding deduction shall take place with regard to the last 10 weighing slip, unless evidence can be provided of a smaller deviation. The Contractor shall not be remunerated for checkweighings that lead to complaints. Other checkweighings shall be remunerated by the Client.
- All the costs incurred directly (transport costs, weighing fees etc.) and indirectly (reduction in the value of the load, influence on construction site operations etc.) as a result of the checkweighing, but not the costs for the supervision of the checkweighing by the agent of the Client, shall be added to the costs of the checkweighing. If the costs under (2) are to be remunerated separately, they must be verified in detail.
- In the case of materials that may significantly lose mass during weighing on account of their character, the possible loss of mass between the original weighing and the checkweighing must be taken into consideration.

110.3 In the event of a delivery by water vehicles, additional conditions shall apply:

- The calibration shall generally be carried out at the place of unloading, unless otherwise stipulated below.
- Only the space between the empty level entered in the calibration certificate and the upper calibration level shall be taken into consideration.
- Loads without a valid calibration certificate shall be rejected.
- The calibration must be countersigned by the skipper; he shall receive a duplicate of the invoice.
- The unloading shall only begin after the acceptance of the material and the ship calibration.
- In coastal areas, a calibration at the place of loading can also be recognised if
 - a proper calibration is not possible at the place of unloading and
 - the calibration at the place of loading has been carried out by an official calibrator and
 - the bill of lading weight is indicated and
 - random check calibrations are conducted in a nearby place that is suitable for a check calibration.
- The costs for the check calibrations in a nearby place shall be reimbursed separately.
- The costs of check calibrations whose result deviates by more than 5 % from the mass indicated on the calibration certificate shall not be reimbursed.
- If a shortfall of more than 3 % is discovered during a check calibration, a corresponding deduction shall take place with regard to the last 10 calibrations, unless evidence can be provided of a smaller deviation.

110.4 When shovel loader or conveyor belt scales are used, additional conditions shall apply:

- The weighing slip must contain a declaration that it is a calibrated set of scales.
- The printout of the tare and gross weight shall be replaced by the net total weight of the load plus, in the case of shovel loader scales, the number of loaded shovels (loading operations).
- The weighing slips must be signed by the operator of the shovel loader or conveyor belt scales.
- The Client shall be entitled to have checkweighings performed continuously over the period of the deliveries, for 10 % of the deliveries.
- In the event of a shortfall of more than 1 %, a corresponding deduction shall be made for all deliveries since the last checkweighing. The costs of this checkweighing shall be borne by the Contractor. Costs for checkweighings without complaints shall be borne by the Contractor and the Client, half each.

111 Disputes, place of jurisdiction (Section 19)

- In the event of disputes arising from the contract, the Contractor shall initially call the authority that is immediately superior to the commissioning entity.
- The place of jurisdiction shall be Bonn.