

# Purchasing Conditions for General Work and Services

01.04.2019

## 1. Scope, Constituent Parts of the Order

- 1.1 The following purchasing conditions for general works and services shall apply to all work and service orders of INEOS Hygienics Manufacturing Germany GmbH (the Client) and/or its associated Companies within the meaning of § 15 AktG. (Joint Stock Companies Law) together with their subsidiary companies.
- 1.2 Any deviating conditions of the Supplier will only become a constituent part of the contract if the Client acknowledges these expressly in writing.
- 1.3 The following shall become constituent parts of the order and in the event of inconsistencies apply with subsequent ranking after these:
  - 1.3.1 The provisions of the letter conveying the order together with the description of the service (specifications) including any additional preliminary technical remarks plus the associated drawings and if applicable the record of the proceedings.
  - 1.3.2 The "Purchasing conditions for general work and services"
  - 1.3.3 The safety provisions in force in each case for the place of the execution of the order in their latest version.

## 2. Offers, Placing of orders

- 2.1 Offers, including all necessary preliminary work are – unless agreed otherwise – free of charge to the Client. Any deviations from the text of the enquiry are to be indicated as a separate item. Alternative proposals are to be submitted separately.
- 2.2 It is the responsibility of the Supplier prior to the submission of the offer and the start of the work to provide information on the spot concerning the given conditions. For deliveries and services, net prices excluding turnover tax are to be offered. The additional work and resources not listed separately in the specification, but necessary for the full completion of the order, are, with the exception of deliveries and installation of materials, to be included in the prices.
- 2.3 The placing of the order together with any modification and expansion of this are required to be in written form, delivery through a computer fax or email without a signature is sufficient here.

## 3. Prices

- 3.1 The agreed prices are fixed prices for the period of the execution of the order and are understood to be plus the statutory turnover tax valid in each case. With the payment all expenditure (e.g. travel expenses), services and rights of the Client are settled.
- 3.2 If the payment is not made at an all-in fixed price, but with agreed hourly and/or daily rates, the Supplier has to prepare a detailed invoice. Using the Supplier's notes which in each case he has agreed prior to this with the Client, he has in particular to give evidence of the content of the services, hours worked daily and the total number of hours. Unless any other agreement has been reached, invoicing will be made monthly.
- 3.3 Additional services over and beyond the order placed are only paid if these are ordered by the Client in writing prior to execution. The unit rates must correspond to the pricing of the main order.
- 3.4 If the Client is called upon to clear up or eliminate defective work caused by a failure in the service of the Supplier, the Client can demand that his expenses (e.g. his own salary costs) be paid.

## 4. Supplier Services

- 4.1 The Supplier has to provide the agreed services using his own qualified staff with the necessary care and taking into consideration the principle of economic efficiency.
- 4.2 If the Supplier perceives in the provision of the contractual services that further modifications or improvements to the content and/or scope of the services appear necessary or expedient, the Supplier must inform the Client immediately in writing, providing any possible changes in cost and obtain the decision as to whether the order is to continue to be executed in the modified or improved form. The Client is obliged to provide a decision immediately.
- 4.3 The Supplier shall be responsible for the planning of the work. The Client can request from the Supplier status reports corresponding to the progress of the work. The Client is entitled to request at any time information on the status of the work and check the progress of the work.
- 4.4 If the work carried out is deemed unsatisfactory, the Client can intervene to rectify the project. The agreed deadlines and the exclusive responsibility of the Supplier for the proper fulfilment of the order remain unaffected by this, unless an intervention on the part of the Client is the cause of the delay to the deadline or a defect.

## 5. Changes to the Service / Premature termination

- 5.1 The Client shall be entitled to request modifications to the services agreed with the Supplier. Should the modification to a service affect contractual arrangements, e.g. payment and/or completion date, the Supplier will communicate this immediately to the Client. The contracting parties will thereupon agree immediately in writing the adjustment to the contract resulting from the modification taking into consideration any increase or reduction in expenditure arising.
- 5.2 The Client shall be entitled to terminate the contract at any time with a notice period of 14 days. In this case, fair and reasonable payment is to be made for the service carried out to this date. The Supplier is entitled to make a claim only after all results of the work existing to that point have been handed over.

In the event of terminations by the Client for an important reason, the statutory provisions shall apply.

## 6. Execution documents

- 6.1 It is the responsibility of the Offerer and/or the Supplier to request in good time from the Client the documents necessary for the execution of the orders and/or the preparation of the offer.
- 6.2 In the event of inconsistencies between the description of the service and the execution drawing, it is always the service arising from the execution drawing that is to be offered and executed.
- 6.3 All plans, drawings and other documents handed over to the Offerer and/or the Supplier shall remain the property of the Client and, once the contract has been executed (or if an order is not placed), these are to be returned immediately and without question. The content of such documents is to be treated as a trade secret and is not to be made available or known to third parties, nor is it to be used by the Offerer or Supplier for his own purposes. Photographing, filming and preparation of project drawings is only allowed with permission.
- 6.4 Any further Supplier execution drawings necessary are to be submitted in good time to the Client for approval prior to execution; the Supplier is in no way released from his warranty obligation by the Client's authorisation.

## 7. Granting of usage rights to work results

- 7.1 For the work results arising from the provision of service by the Supplier (including work results that are the object of ownership rights, copyrights, commercial protected rights or other economic usage rights), from the time of their creation, the Supplier cedes the irrevocable, non-exclusive, transferable usage rights to the Client for the comprehensive usage of these work results for all of the Client's company purposes without time, space and contextual limitations for all types of usage. The granting of rights is covered by the agreed upon remuneration.
- 7.2 The previous granting of rights also includes the authorisation to edit the work results or have these edited, changed, translated, connected with other services and works from the Client and third parties or to be designed in any other way and to use the works/services and edits created in this manner as the original editions of the work results without the Supplier's consent.
- 7.3 If the provision of service by the Supplier includes (a) the creation of databases in accordance with §§ 87a ff. UrhG, the rights to these databases are in the relationship to the contractor solely given to the Client as database creator in terms of § 87a section 2 UrhG, (b) the creation of source code from computer programs and/or edits of such source code, the Supplier is obligated to give the Client this source code.

## 8. Supplier Representatives

- 8.1 The Supplier has to nominate in agreement with the Client a qualified person as a responsible representative who can demand from the Client or arrange for the necessary collaborative services. In the event that they are unable to perform these duties, a correspondingly suitable and qualified substitute is to be appointed.
- 8.2 The Client can request for the Supplier representative and/or collaborator to be replaced if the latter prove to be unqualified and/or unacceptable to the Client.

## 9. Sub-contractors

- 9.1 The Supplier may only allow the order to be carried out in whole or in part by a suitable and reliable sub-contractor with the prior written agreement of the Client. The agreement of the Client shall limit neither the obligations of the Supplier nor shall it constitute any rights for the sub-contractor.
- 9.2 The Supplier has to impose on the subcontractor all obligations without restriction. In particular the insurance protection cover specified in Item 15.1 must also apply to the subcontractor.
- 9.3 The Supplier shall be obliged to make good all damages and to bear all costs resulting from the infringement of these obligations.

## 10. Safety at Work, Rules of Conduct, Supplier Damage Compensation Claims

- 10.1 The Supplier is – even with regard to the subcontractor employed by him – responsible for adhering to all provisions relating to industrial safety, and in particular the conditions referred to in Item 10.1 of the official instructions/additional provisions and any internal safety provisions of the Client. In addition to this, the Supplier is obliged to guarantee compliance with the General Equality of Treatment Act (AGG) by its employees together with any subcontractors employed.  
The Supplier is obligated to guarantee that both they and their subcontractors comply with the guidelines from the Posted Workers Directive (AEntG) and the Minimum Wage Act (MiLoG). In the event of significant violations, the Client is entitled to immediately terminate the contract. Furthermore, the Supplier must compensate for any damage that arises through a violation of this obligation and must release the client of all claims due to the MiLoG or the AEntG.

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10.2. Before beginning work, the Supplier is obligated to receive instructions from the works manager about the required behaviour rules for the premises, Client rooms and offices and must inform their assistants of this.

### 10.3. INEOS Live Saving Rules

The following INEOS Life Saving Rules apply at any of Client's sites:

1. No consumption or being under the influence of alcohol or drugs at the site.
2. No smoking outside dedicated smoking areas.
3. No work on live equipment/machines to commence without authorization.
4. Safety critical devices/interlocks must not be disabled or overridden without authorization.
5. Persons working at height must use proper fall protection.
6. No entry to confined space without authorization and gas test.
7. Lifting & hoisting: no unauthorized person to enter the defined danger zone where objects can fall.

In addition to and in precedence of any of the existing rights and obligations as set out in the respective Contract, in each event of any breach of the INEOS Life Saving Rules by the employees of the Supplier or subcontractor working for the Supplier the following shall apply:

- (a) The individual who breached any of the INEOS Life Saving Rules shall be immediately removed from the Site by the Supplier on request of Client and the breach shall be reported to Client. The individual shall then not be allowed to return to the site or any other Client site for subsequent 12 months and only then if adequate evidence of suitable training to prevent re-occurrence can be provided, and
- (b) the Supplier shall pay per infringement of INEOS Life Saving Rules as liquidated damages an amount equal to 2.0% of the site turnover of the previous calendar year, and in case of a new Supplier the Year-to-Day (YTD) site turnover, based on paid invoices. This will be capped to a 4% malus in any 12 months period.

Should there be a 2nd breach of the INEOS Life Saving Rules within 12 months by the employees of the Supplier or subcontractor working for the Supplier then such breach of the INEOS Life Saving Rules shall be considered as a material breach under the respective Contract and, in addition to the measures above, Client reserves the right to reduce the contract scope or even terminate the contract without notice. Upon such termination the Supplier shall be entitled to payment for any work/services completed up to the date of termination, but shall not be entitled to reimbursement for any costs resulting directly or indirectly from such termination. The Supplier shall hand over to Client the results of the work which have been produced up to the time of termination (materials, documentation etc.) and grant unlimited and unrestricted use of such.

For the use of the sum INEOS Hygienics has determined the following procedure:

1. the sum of the annual turnover of the previous year corresponding to 2.5% is used for security initiatives / training by the contracting party
2. The initiative / training must be comprehensible and have a clear connection to the Life Saving Rules
3. Ineos representatives will be informed about the planned initiative / training, if necessary Ineos representatives will participate in the action(s)

10.4. If the Supplier, his subcontractors, one of his employees or anyone else employed suffers any damages of whatever nature and for whatever reason on the Client's site or in the Client's areas and/or the areas of operation, then the Client is only liable if they acted with gross negligence or intention or claims against them arise due to a loss of life, bodily injury or health problems or it deals with product liability claims or they have violated a significant contract obligation, this means a typical and basic obligation for the contract, and damages have occurred that are typically predictable through the contract. The Supplier must immediately inform the Client of any accidents that occur

10.5. The aforementioned limitation of liability applies to the same extent to the vicarious agents and officers of the Client.

### 10.6. IT and automation security:

It is generally prohibited to connect foreign IT systems or devices to INEOS IT-systems or networks. Likewise no work on/ with INEOS IT-systems must be executed without proper authority. Each operation requires suitable authority by the client of INEOS Köln, who has assigned and is responsible for the work to be carried out.

### 11. Security of Product/Supply

11.1. The Supplier shall guarantee that all items of the order supplied and manufactured by him correspond with the statutory provisions, the generally acknowledged rules of technology, the industrial safety and the accident prevention provisions, together with the provisions relating to technical equipment, are provided with the necessary means of protection and instructions for use and, in as much as is possible according to the latest technological developments, are in such a condition that any user or third party is protected against any hazards of any kind when they use them in accordance with the provisions, and in particular that any risks of accidents and occupational diseases are ruled out.

11.2. The Supplier shall ensure that all communications which are stored on EDP data carriers and are intended for the Client are free from harmful programmes. The Supplier is obliged to protect against viruses, check pro-

grammes and data before these are transmitted electronically to the Client using an anti-virus software which corresponds in each case to the most up-to-date developments in virus protection and therefore corresponds to the Client's level of security.

Irrespective of any on-going claims, the Client is entitled to hold the Supplier responsible for any damages and costs arising through the non-observance of the above obligations.

### 12. Data Protection

12.1. The Client has the right to process data relating to the Supplier or his vicarious agents connected with the business relationship, within the meaning of the Federal Data Protection Act.

12.2. The Supplier shall undertake to observe the provisions of the Federal Data Protection Act (BDSG) in force together with the provisions relating to Social Secrecy (§ 35 SGB I), in particular – to treat as confidential personal data coming to his knowledge together with any industrial or commercial secrets and only process these within the framework of the execution of the contract, - only to employ personnel who were under obligation verbally and with reference made to the criminal consequences of an infringement of duty to keep data secret in accordance with § 53 BDSG, - to adhere to the guidelines and instructions related to data protection and data security issued by the Client (§ 71 BDSG).

12.3. The order may not be used for publicity purposes.

### 13. Intellectual property rights

13.1. The Supplier has to exempt the Client from all claims arising from an infringement of the intellectual property rights or provisions of others resulting from the acceptance or use of the work and, if applicable, procure the necessary licences at his expense.

13.2. If the fulfilment of the order affects the Supplier's own intellectual property rights, the Client shall grant the Supplier at the same time as the execution of the order the irrevocable right to use the intellectual property rights concerned without restriction and free of charge with the work.

### 14. Documentation, Purchase, Contractual Penalty

14.1. The Client can demand that an essential component of the result of the work, and therefore a prerequisite for the acceptance, is the drawing up of a complete set of documentation by the Supplier. The scope and content are determined according to the Client's guidelines.

14.2. The Supplier shall hand over the results of the work due under the contract in the agreed form at the times specified in the contract.

14.3. If an acceptance is agreed, this is done by means of a written confirmation on the part of the Client following the handover and proof of the impeccable condition of the fully documented results of the work by the Supplier.

14.4. If defects are established during acceptance, the Supplier has to eliminate the defects immediately free of charge and submit the results of the work to the Client for a fresh acceptance.

14.5. If part services are agreed, for each part service a separate acceptance takes place. The interaction of all parts is the object of the acceptance inspection in the case of the last part delivery.

14.6. An agreed contractual penalty can also be requested until the final payment is made, even if a reservation has not been made in accordance with § 341 Para. 3 BGB or § 11 Item 4 VOB Part B on acceptance of the performance.

### 15. Warranty, Liability, Product Liability

15.1. The Supplier shall undertake a guarantee that the product supplied by him or the service performed by him is free of fault and that it is in the condition agreed in the contract.

15.2. In addition to this, the Supplier shall guarantee that the product/service, including any additional services, correspond to the generally acknowledged rules of technology for the type of use intended and do not infringe public-law provisions. This shall also apply in favour of third parties who, with the approval of the Client, come into contact with the delivery/service.

15.3. For the limitation of the warranty claims, the statutory provisions of § 13 Item 5 VOB Part B shall apply unless any other agreement has been reached. For supplies and services provided within the scope of the warranty, the warranty period shall start to run afresh.

15.4. In the event of a defective delivery/service, the Client has the option of requesting that the defect be remedied or a new product/service or new work be provided. The Supplier shall bear all costs arising in connection with the defect, e.g. for the detection of defects, tasks, development, transport and installation. In urgent cases or after a subsequent performance period fixed by the Client has expired, the latter shall be entitled to appoint another company to perform the task subsequently at the Supplier's expense. The Client shall reserve the right to claim further statutory rights.

15.5. The application of §§ 377, 379 HGB is ruled out unless it is a case of an obvious defect. A notification of defect is made immediately if this is done 2 weeks at the latest after the defect is discovered.

15.6. In so far as the Supplier has produced or supplied a delivery/service which is defective within the meaning of the product liability law, he releases the Client to this extent from all third party claims

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### **16. Third Party Liability Insurance**

- 16.1 To cover any claims for damages which may arise in connection with the execution of the order, the Supplier has to take out and maintain a third party

liability insurance to include custody and activity damages within the meaning of § 4 I 6 a and b of the General Third Party Liability Insurance Conditions (AHB) with an appropriate level of cover according to the nature and scope of the order, which must amount to at least 2 million EURO for personal and material damages for each individual loss. If the order is to be executed at refineries, fuel storage facilities or fuel stations, the Supplier has to take out addition insurance for the risk of water and environmental damage with a minimum level of cover amounting to EURO 2.5 Million.

- 16.2 A limitation of liability is not agreed as a result of Item 15.1.

### **17. Invoicing, Payment, Offsetting**

- 17.1 Invoices are to be submitted, giving the order number together with the individual delivery date and/or performance period, to the billing address given in the order. Checkable documents (such as site measurements, site measurement drawings, measurement calculations, etc. – cf. VOB) are to be enclosed in triplicate. For deliveries and services the net prices and the turnover tax are to be indicated separately in the invoices.
- 17.2 The Client is entitled to send back incomplete invoices (Item 17.1) for completion and/or correction.
- 17.3 Payment terms shall start from the day on which the invoice complying with the placing of the order, including the checkable documents, reaches the Client. In the event of the invoice being returned for a reason which cannot be justified by the Client, payment terms shall not start before the amended invoice has been received.
- 17.4 Payments are made – unless agreed otherwise - net within 30 days after receipt of the invoice and the contractual execution of the service
- 17.5 (Part) payments made shall not include the acceptance of the (part) services paid for. At the Client's request, the Supplier has in addition to this in each case at the end of year, and in the case of relatively long interruptions to the work, to submit an interim invoice to which the checkable documents are to be attached.
- 17.6 A separate agreement is to be reached over a warranty retention and the redemption of this.
- 17.7 The Client is entitled to offset against his claims or retain funds because of such claims.

### **18. Place of Jurisdiction, Applicable Law**

- 18.1 The exclusive place of jurisdiction shall be Bochum. For orders which are placed by companies associated with INEOS Hygienics Manufacturing Germany GmbH within the meaning of § 15 AktG, the exclusive place of jurisdiction shall be the registered office of the associated company concerned.
- 18.2 The Law of the Federal Republic of Germany shall apply to the exclusion of German private international law; in particular the UN Convention on Contracts for the International Sales of Goods of 11.04.1980 shall not apply.

### **19. Partial Invalidity**

- 19.1 Should parts of these conditions be or become in full or in part legally invalid, this shall not affect the validity of the remaining provisions together with any other contract concluded.