

# Standard Terms and Conditions of Sale for Planning Services

## (1) Objective and validity

All our offers and orders for planning services provided to customers shall be governed solely by the following Standard Terms and Conditions of Sale for Planning Services ("Terms and Conditions").

All specific terms shall take precedence, in particular those of the order and the record of the negotiations, as well as the service specifications including preliminary remarks.

## (2) Definitions

Employees = representatives, legal representatives, vicarious agents of the Customer or the Contractor

## (3) VAT

The amounts specified below, in particular offer, order and mutually agreed or legally binding billing amounts, contractual penalties and security, refer to the respective net purchase value. If the Contractor is the tax debtor in accordance with section 13 b of the German VAT Act (*Umsatzsteuergesetz*, "UStG"), section 48 b of the German Income Tax Act (*Einkommenssteuergesetz*, "EStG"), the respective amount is exclusive of statutory VAT.

## § 1 Contract documents

- 1.1 Unless expressly agreed otherwise, the following documents shall form the basis of contract and apply in the following order of priority:
- 1.2 If available, record of the negotiations
- 1.3 The Contractor's offer
- 1.4 Standard Terms and Conditions of Sale for Planning Services
- 1.5 "Code of Ethics and Conduct" and the "Anti-Corruption Code of Conduct".
- 1.6 Acceptance of the offer by the Customer
- 1.7 Terms and conditions of the Customer that deviate from or supplement these Terms and Conditions shall not be binding on the Contractor, even if the Contractor does not object to their application or the Customer declares that it only wishes to fulfil the contract on its own terms and conditions.
- 1.8 Oral statements made by the Contractor's Employees are non-binding in any case.

- Oral ancillary agreements made at the time of contracting shall only be valid if they have been confirmed in writing by Contractor. This also applies to contractual amendments made after the date of contracting.
- 2.5 The Contractor shall be entitled to delegate the contracted services to subcontractors, unless the parties agree otherwise in one of the controlling contract documents. However, the Contractor remains the direct contact for the Customer in all cases. All communication relating to the contract or the provision of services must be made via the Contractor. Any agreements made directly between the subcontractors and the Customer shall entitle the Contractor to terminate the contract for good cause in accordance with §17. Where agreements (performance, deadlines, etc.) are made directly between the Customer and the subcontractor, the Contractor shall be exempt from any liability towards the Customer.

## § 2 Basis of offers and orders

- 2.1 The object of the service is the planning service specified in the offer. The offer has been prepared in accordance with the generally recognised rules of engineering at the time of its submission. The price does not include any deliveries and services not expressly listed in the offer/service specifications.
- 2.2 Documents and information are entrusted to the counterparty; they may only be used for the agreed purpose and may only be made accessible to third parties with the prior written consent of the Contractor.
- 2.3 Offers are binding for a maximum of 1 month from the date of the offer.
- 2.4 Orders and acceptance as well as amendments and supplements thereto must be executed in writing.

## § 3 Responsibilities, powers of attorney

- 3.1 The Contractor's project manager shall only have power of attorney vis-à-vis the Customer if its power of representation is expressly included in writing in the contract. However, the Contractor's project manager is in no case authorised to amend or delete wording or clauses in these Terms and Conditions or the record of the negotiations after the contract date. Any such amendments or deletions shall require the express consent of the Contractor's management.
- 3.2 Prior to execution of the services, the Customer shall appoint a supervisor and authorised agent who is authorised to represent the Customer in legal transactions and to receive all legally relevant declarations of the Contractor with effect for the Customer.

## § 4 Obligations of the Customer

- 4.1 The Customer is obliged to provide the information and documents necessary for the fulfilment of the order in a timely manner. The Contractor assumes no liability for errors based on the incorrect or incomplete presentation of the facts and/or incorrect or missing information/documents. If the Customer fails to fulfil its obligation to cooperate, the Contractor may request the Customer to cooperate and set a reasonable grace period for compliance. If the Customer nevertheless fails to fulfil its obligation to cooperate, the Contractor shall be entitled to terminate the contract in accordance with § 17 of these Terms and Conditions.

The documents provided by the Customer shall not be checked for completeness or correctness; a plausibility check shall only be carried out in the context of performing the order. The Customer shall be liable for missing or incorrect documents; the Contractor's liability in this regard is excluded.

- 4.2 The Customer shall refrain from taking any action that would or could operate to invalidate an existing contract under section 9 of the German Act on Temporary Agency Work (*Arbeitnehmerüberlassungsgesetz*, "AÜG") or that would or could cause an Employee of the Contractor to be deemed an employee within the meaning of section 611a of the German Civil Code (*Bürgerliches Gesetzbuch*, "BGB").

If the Customer culpably breaches the obligation in the above paragraph, it shall be obliged to indemnify the Contractor in full against all resulting claims by third parties or the relevant Employee, in particular against claims pursuant to section 10 AÜG, section 28e of the German Social Code (*Sozialgesetzbuch*, "SGB") Book IV, section 150 SGB Book VII.

This indemnification claim shall become time-barred in accordance with section 199 BGB.

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4.3 Subject to the condition precedent that an application for the opening of insolvency proceedings is filed against the Customer's assets, the Customer hereby assigns to the Contractor its present and future claims for performance and payment existing at the time the condition occurs, which the Customer has from any legal relationship with a third party, if and to the extent that the subject matter is such a claim, which is also to be regarded as performance in the legal relationship between the Contractor and the Customer.

## § 5 Changes and additions to the scope of delivery and performance

- 5.1 If the Customer requests a change to the agreed result to be achieved by the work or a change that is necessary to achieve the agreed result after the date of contracting, it shall be entitled to do so within the scope of section 650a *et seq.* BGB in accordance with section 650b to d BGB. The foregoing shall apply *mutatis mutandis* in the case of orders that are not covered by section 650a *et seq.* BGB, provided that a right of the Customer to order modified and/or additional services has been contractually agreed.
- 5.2 The Customer is obliged to instruct the change in writing. If no written instruction is given, the Contractor shall not be obliged to execute the change.
- 5.3 If the Contractor asserts internal processes within its operations as the reason for which the Contractor cannot reasonably be required to comply with the order pursuant to section 650b (1) sentence 1 no. 1 BGB, the secondary burden of proof will be incumbent on the Contractor.
- 5.4 The Contractor's claim to remuneration for increased expenditure also exists in the case of section 650b (1) sentence 1 no. 2 BGB.
- 5.5 The changes shall only be executed against appropriate remuneration. The Contractor shall record the changes in a supplementary offer and calculate the additional remuneration on the basis of this offer.
- 5.6 The Customer is obliged to review the supplementary offer within 7 days of receipt. If the supplementary offer is not reviewed in due time or is unjustifiably rejected, the Contractor shall be entitled to refuse further execution of the amended/additional services and to invoice the (partial) services already provided.

## § 6 Deadlines, dates

Deadlines are only binding contractual deadlines if they are expressly designated as

such in the contract. The deadline for the provision of a service shall be deemed to have been met if it has essentially been provided without any material defects by the time it expires.

## § 7 Contractual penalties:

- 7.1 If and insofar as a contractual penalty has been validly agreed, the following shall apply in addition:
- Notwithstanding the contractual provisions in other respects, the Customer shall grant the Contractor a grace period of 14 calendar days starting from the agreed date, i.e. during this period neither party shall be deemed responsible for any failure to meet the deadline.
  - The contractual penalty covers all claims of the Customer arising from loss or damage incurred as a result of default.
- 7.2 The right to impose a contractual penalty must be reserved at the time of acceptance. If partial acceptance is agreed, the right to impose contractual penalties shall be reserved at the time of the respective partial acceptance.

## § 8 Acceptance

- 8.1 Upon request, self-contained parts of the service shall be accepted separately (partial acceptance).
- 8.2 If the Customer does not accept the service for reasons for which the Contractor is not responsible within a period of 12 days from notification of readiness for acceptance/notification of completion, the service shall be deemed to have been accepted upon expiry of this period.
- 8.3 If the Customer uses the service before acceptance or makes it available to a third party for use/further work, the service shall be deemed accepted after a period of use of 6 days.
- 8.4 Section 640 BGB shall apply with the proviso that the Contractor's service shall also be deemed accepted if the Contractor has set the Customer a reasonable deadline for acceptance after completion of the service and the Customer has not refused acceptance within this deadline, stating at least one justified defect.
- 8.5 If acceptance is delayed due to circumstances beyond the control of the Contractor, the price and performance risk shall pass to the Customer from the day of completion of the service.
- 8.6 Acceptance must take place immediately after notification of

readiness for acceptance/completion. It may not be refused in the event of a non-material defect. A defect shall be deemed to be material if the intended use or function of the service owed by the Contractor is precluded or materially frustrated by the defect.

## § 9 Pricing and billing terms:

- 9.1 Unless otherwise stipulated in the contract, remuneration shall be based on the Contractor's time requirements and shall be invoiced on an hourly wage basis. The expenses incurred by the Contractor (ancillary costs of order fulfilment) shall be reimbursed by the Customer. Expenses, e.g. fees, travel expenses, etc. will be invoiced on the basis of documented receipts plus a 12% surcharge. All payments shall be made to the Contractor's bank account specified in the invoice.
- 9.2 The contract prices are fixed prices until the expected completion date, but no later than 12 months after the date of contracting, unless otherwise specified.
- 9.3 Once the fixed price period under § 9.2 has expired, the Contractor shall be entitled to adjust the prices. Unless otherwise agreed between the parties, the adjustment shall be made on the basis of the index for construction-related engineering services published by the German Federal Statistical Office (*Statistisches Bundesamt*). The prices shall be adjusted if the index has increased by more than 3% compared to the base value at the time the contract was entered into.
- 9.4 The Contractor is obliged to notify the Customer of any price changes in writing and to explain the calculation of the new prices in a transparent manner.
- 9.5 The statutory value added tax applicable at the time will be added to the prices.
- 9.6 The Customer shall only be entitled to withhold payments or services or to offset them against counterclaims to the extent that its claims are uncontested or have been declared final and binding by a court of law.
- 9.7 The Customer is not entitled to assign claims arising from this contract to third parties without the consent of the Contractor. The same applies to the transfer of the contract as a whole.

## § 10 Changes to remuneration

- 10.1 Prices are based on the wage and material costs applicable at the time of the offer.
- 10.2 Notwithstanding § 9, the Contractor may adjust the prices taking into account increases in the cost of

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equipment, materials, wages (in accordance with the changes in the basic wage of the locally and substantively applicable collective agreement) and other ancillary costs (section 315 BGB) if delays occur in the execution/performance of the order for which the Contractor is not responsible.

## § 11 Hourly wage labour

- 11.1 The Contractor shall be entitled to charge for hourly wage labour in contractually agreed cases and whenever the relevant service was not the subject of the order and differs in its cost factors from the services that were the subject of the order.
- 11.2 The Customer shall return time sheets that have been handed over to it no later than 6 working days after the execution of hourly paid work within 2 working days of receipt and in all other cases within 5 working days of receipt. It may raise objections on the time sheets or separately in writing. Time sheets that are not returned on time are deemed to be recognised.
- 11.3 The standard working week is 38.5 hours. Saturdays are not considered normal working days. Unless otherwise agreed, 70% of the value of the agreed hourly wage rates shall be used as the basis for calculating overtime pay.
- 11.4 The basis for the remuneration of hourly wage work is the actual working time. If no other billing increment has been agreed, work shall be billed in increments of 0.25 hours. Billing units commenced in accordance with the agreed increment are charged as full billing units.

## § 12 Billing

- 12.1 After completion of the overall service or, in the case of partial invoices, of the respective partial service, the Contractor shall document the services rendered in a service record.
- 12.2 The invoice is issued on the basis of the service record.
- 12.3 Invoices must be verified within 14 days of receipt of the invoice. Payments plus applicable VAT shall be made within 14 days of invoice verification, but at the latest within 28 days of receipt of the invoice, in full and free of charges to the Contractor's paying agent.

## § 13 Payment

- 13.1 If the parties have not made any other agreement in the record of the negotiations or otherwise, the

following terms of payment shall be deemed agreed:

- 13.2 The Contractor shall be entitled to claim a payment of 10% of the order value as a deposit after the contract has been concluded. In addition, the Contractor shall be entitled to monthly progress billing (for services rendered).
- 13.3 If the Customer allows a discount period to elapse for an instalment or advance payment, it shall forfeit the right to a discount for the remaining payments.
- 13.4 The place of performance for all payments shall be the Contractor's registered office.
- 13.5 Until all outstanding claims have been settled in full, the Contractor shall have a right of retention with regard to the documents to be handed over.

## § 14 Security

- 14.1 If the Contractor is obliged to provide security under the contract, the following shall apply:
- For the due and proper performance of all the main performance obligations of the Contractor under the contract to produce a work (*Werkvertrag*), with the exception of the warranty, 5% of the net order value.
  - 2 % of the net invoice amount for the performance of all warranty obligations incumbent on the Contractor under the contract to produce a work.
- 14.2 The Contractor is free to choose the form of security and may provide it in another form at any time.
- 14.3 If and insofar as the Contractor has not made a choice, the security shall be provided in the form of a cash retention. If a surety bond is provided to replace the security provided in another form, such other security must be surrendered without undue delay.
- 14.4 The Customer shall return any security for claims for defects no later than two years after acceptance of the service. It may only retain a reasonable part of the security due to unfulfilled claims for defects if it has already reported the legitimate defect during the warranty period.
- 14.5 In the event that security was provided in the form of a surety bond and the principal debt secured thereby is reduced, the beneficiary of the surety bond shall be obliged to return this surety bond concurrently against receipt of a surety bond issued for the corresponding part of the security and otherwise unchanged.

## § 15 Warranty

- 15.1 The Contractor's warranty period shall be 12 months from acceptance.
- 15.2 The Customer shall inspect all designs, drawings, parts lists and other documented services for defects, completeness, dimensions and function prior to production, execution and ordering. Calculations must be checked for plausibility. Failure to carry out an inspection shall be at the Customer's expense.
- 15.3 Defects must be reported to the Contractor in writing without undue delay after discovery. The Contractor shall be granted a reasonable period of time to cure performance. If acceptance is delayed for reasons for which the Contractor is not responsible, the warranty period shall commence no later than 12 days after notification of readiness for acceptance/notification of completion.
- 15.4 A notice of defect shall not operate to suspend the warranty period for the defects in question.

## § 16 Liability and insurance

- 16.1 The Contractor shall be liable to the Customer for negligent or grossly negligent conduct. The only exceptions to this are cases in which a different standard of liability is prescribed by law, in particular under the German Product Liability Act (*Produkthaftungsgesetz*, "ProdHaftG") or in the case of personal injury. Liability for consequential damage is excluded.
- 16.2 The Contractor shall be liable to the Customer in the event of a culpable breach of material contractual obligations (contractual obligations the breach of would seriously jeopardise the purpose of the contract and on whose fulfilment the Customer may legitimately rely, such as, in particular, compliance with the delivery period, the obligation to deliver goods that are free from defects in quality, and advisory duties, duties to protect and exercise proper care that enable the Customer to use the deliverable as contractually agreed or are intended to protect the Customer's property or the life or limb of the Customer's personnel from significant harm), without intentional or grossly negligent conduct, limited in amount to the damage foreseeable at the time of contracting and typical for the contract.
- 16.3 The Contractor's liability for ordinary negligence is otherwise excluded.
- 16.4 The Contractor warrants that it has taken out liability insurance in the amount of EUR 500,000 for personal injury and EUR 250,000 for other loss or damage and will maintain such

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insurance for the period of its performance until acceptance of its services, or undertakes to take out and maintain such insurance.

contract and claim immediate return of the deliverable.

19.2 The Customer undertakes to observe the principles of the UN Global Compact Initiative. These essentially concern the protection of international human rights, the right to collective bargaining, the abolition of forced labour and child labour, the elimination of discrimination in recruitment and employment, responsibility for the environment and the prevention of corruption. Further information on the UN Global Compact Initiative is available at [www.unglobalcompact.org](http://www.unglobalcompact.org). The "Code of Ethics and Conduct", the "Anti-Corruption Code of Conduct" and the "Guide on Human Rights" set out these principles and define specific obligations and rules of conduct. This applies equally to the obligations under the German Supply Chain Due Diligence Act (*Lieferkettensorgfaltspflichtgesetz*, "LkSG").

## § 17 Termination of contract

17.1 If a term has been contractually agreed, it shall apply.

17.2 In the event of termination by the Customer or termination/mutual rescission of the contract, unless the Customer has terminated the contract for good cause, section 648 BGB shall apply with the proviso that it shall be assumed that the Contractor is entitled to 15% of the agreed remuneration for the part of the work not yet performed.

17.3 The Contractor shall be entitled to terminate the contract if, alternatively

a. the Customer is in default (sections 280 *et seq.*, 293 *et seq.* BGB) of an act or omission incumbent upon it under the contract

b. the Customer is in default of payment

c. the Customer transfers or has transferred rights and/or obligations under the contract to a third party in full or partial discharge of its obligations

d. the Customer stops its payments, an application for the opening of insolvency proceedings is filed against its assets, insolvency proceedings are opened or discontinued due to a lack of assets, the Customer initiates or carries out the liquidation or passes a resolution to that effect

e. the Customer as a legal entity is by law to be dissolved or is dissolved or its existence is otherwise terminated or is to be terminated

f. the Contractor is entitled by substantive law to terminate, rescind or otherwise end the contract

g. in the case of section 314 BGB.

17.4 If the Contractor terminates or rescinds the contract in accordance with § 17.3, the Customer shall refund the remuneration for the work performed and the remuneration for the work not performed less any expenses saved. Further claims for damages by the Contractor remain unaffected. Exclusions of liability between the parties shall also not apply in this respect.

17.5 The application for the opening of insolvency proceedings by the Customer, the termination of the contract to produce a work or its termination in any other way shall entitle the Contractor to rescind the

## § 18 Force majeure

18.1 The parties are not liable in cases of force majeure. This includes all unforeseeable events as well as events which - insofar as they could have been foreseen - are outside the parties' sphere of control. These include, but are not limited to, the following events:

Natural disasters such as floods, storm surges, hurricanes and typhoons as well as other extreme weather conditions, earthquakes, lightning, avalanches and landslides, fire, plagues, pandemics, epidemics and infectious diseases (insofar as such has been declared by the WHO or a ministry or a risk level of at least "moderate" has been determined by the Robert Koch Institute), war or warlike conditions, riots, revolution, military or civilian coups, uprisings, blockades, official and government orders, strikes, lockouts.

18.2 A construction project whose time schedule in accordance with 20.1 falls under "force majeure" for the contractual planning services associated therewith.

18.3 If such an event of force majeure occurs, the affected party is obliged to inform the other party without undue delay, at the latest within 14 days of becoming aware of the occurrence of the event and the consequences of its impairment of performance in text form.

18.4 In this case, the party concerned shall be released from its obligation to perform for the duration of the event of force majeure. The Contractor shall not be in default for the period of the justified extension of the performance dates and deadlines.

18.5 If an interruption due to an event of force majeure lasts longer than three months, the affected party shall be entitled to terminate the contract in whole or in part, without the other party being able to derive any claims for compensation from this.

## § 19 Compliance with the principles of the United Nations Global Compact/ Compliance/ Supply Chain Due Diligence Act

19.1 Due to the shareholder of the Contractor joining the United Nations Global Compact, the Contractor and its customers are obliged to comply with the Global Compact.

The Contractor expressly draws attention to the "Code of Ethics and Conduct", the "Anti-Corruption Code of Conduct" and the "Guide on Human Rights" in force in its company.

19.3 The Customer undertakes to inform the Contractor immediately of any violations of the principles set out in paragraphs 1 and 2 occurring within its organisation.

19.4 If the Contractor becomes aware of violations of the conditions set out in paragraphs 1 to 3 on the part of the Customer, the Contractor reserves the right to conduct a corresponding compliance audit. Violations of paragraphs 1 to 3 constitute breaches of material contractual obligations and entitle the Contractor to terminate existing contracts for good cause or to rescind the contract for breach of duty.

## § 20 Confidentiality, copyrights and intellectual property rights, customer protection

20.1 The Customer is obliged to maintain confidentiality. It may not disclose information about the project and the Contractor to third parties not involved in the project without the Contractor's consent.

20.2 Publications about the project by the Customer, its counterparties or its Employees are only permitted with the Contractor's prior written consent. Publication for purposes of this clause includes in particular the description of the performance of the service, the disclosure of drawings, calculations and other documents, as well as publication in the form of photographs, video, radio and television recordings and publications on the Internet and in other media.

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20.3 The operating facilities, business transactions and working methods of a party to which the other party becomes privy in the course of performing the order may not be disclosed to third parties for a further five years after the contract has expired; the respective Employees must be made subject to corresponding obligations.

20.4 The Contractor shall hold and retain the intellectual property rights and copyrights in plans, drawings, ideas and other services that are the subject of the planning services. The Contractor reserves ownership rights and copyrights in offer documents, cost estimates and similar information, including in electronic form. The Contractor is a manufacturer within the meaning of the BGB. The unauthorised duplication of plans or the reproduction of developed building structures or components is prohibited. Only the unrestricted right of use shall be transferred to the Customer upon full payment of the remuneration.

20.5 Until the end of the project, the Customer may not conduct any "direct business" of any kind with the Contractor's vicarious agents or Employees without the Contractor's consent. Accordingly, it may not enter into business relations, either directly or indirectly, with the vicarious agents or Employees or their legal successors concerning the work in question and the associated additional or follow-up orders that are technically related to them.

The above obligation shall continue to apply beyond the end of the project for a period of 1 year after the contract ends (rescission, termination or acceptance). The Customer is generally prohibited from making direct ancillary agreements with the Contractor's vicarious agents or Employees. The Customer is liable in the event of non-compliance.

20.6 Neither party shall recruit employees of the other. A breach of this provision shall entitle the party concerned to terminate the contract without notice.

## § 21 Use of software

21.1 Insofar as the scope of delivery includes the provision of software, the Customer shall have a non-exclusive

licence to use the software supplied, including its documentation, for the purpose of setting up and using the work.

21.2 The Customer may make and use a backup copy of the software.

21.3 All other rights in the software and the documentation, including copies, shall vest in the Contractor, who shall also be deemed the manufacturer pursuant to section 950 BGB.

## § 22 Consumer conciliation body and dispute resolution

22.1 If the respective contract with the Customer has been concluded in its capacity as a consumer, the following applies: The Contractor participates in the dispute resolution procedure in accordance with the German Act on Alternative Dispute Resolution in Consumer Matters (*Verbraucherstreitbeilegungsgesetz*, "VSBG").

The competent consumer conciliation body for the resolution of disputes concerning the connection to the supply network, the supply of energy and the metering of energy is Schlichtungsstelle Energie, Friedrichstr. 133, 10117 Berlin, [www.schlichtungsstelle-energie.de](http://www.schlichtungsstelle-energie.de).

Otherwise, Allgemeine Verbraucherschlichtungsstelle des Zentrums für Schlichtung e. V., Straßburger Str. 8, 77694 Kehl, [www.verbraucher-schlichter.de](http://www.verbraucher-schlichter.de) is the competent consumer conciliation body.

22.2 If the respective contract with the Customer has not been concluded in its capacity as a consumer, the following shall apply: If the parties have agreed mediation or another form of out-of-court dispute resolution in the record of negotiations, the provisions specified therein must be observed.

## § 23 Representations and warranties / other agreements

23.1 An assignment or assignment of accounts receivable for collection or pledging of claims of the Customer against the Contractor arising from the contract to produce a work is only

permitted with the prior written consent of the Contractor.

23.2 The Contractor shall be entitled to set off claims of the Customer against the Contractor against claims of the Contractor or other companies affiliated with the Contractor within the meaning of section 15 of the German Stock Corporation Act (*Aktiengesetz*, "AktG") against the Customer. The Contractor is further entitled to set off its claims against the Customer against claims to which the Customer is entitled against one of the aforementioned affiliated companies.

## § 24 Miscellaneous

24.1 Amendments and supplements to the contract or these Terms and Conditions must be made in writing to be valid. This also applies to any waiver of the agreed written form.

24.2 Insofar as written form is specified in the contract or these Terms and Conditions, transmission by telecommunications shall suffice. The right to subsequently demand an original in accordance with section 127 (2) sentence 2 BGB remains unaffected.

24.3 Should any provision of these Terms and Conditions be or become invalid, the validity of the remaining provisions shall remain unaffected. The parties undertake to amend, supplement or replace invalid provisions in such a way that the economic intent of the provision is achieved as far as possible.

24.4 The invalid clause shall be replaced by a valid clause that most closely reflects the economic and legal intent of the original clause to the extent permitted by law.

24.5 The place of jurisdiction for all disputes arising from this contract is the registered office of the Contractor.

24.6 All rights and obligations under this contract are governed exclusively by German law, excluding its conflict of laws rules and the UN Convention on Contracts for the International Sale of Goods (CISG).