

# **GENERAL TERMS AND CONDITIONS**

## **of Acquisition for MuseumsQuartier Errichtungs- und BetriebsgesmbH**

Last revised October 2022

### **1. GENERAL PROVISIONS**

These General Terms and Conditions of MuseumsQuartier Errichtungs- und BetriebsgesmbH (hereinafter also referred to as "Client") are valid for an indefinite term. These General Terms and Conditions (hereinafter also referred to as "GTC") form the basis and apply to all contracts, agreements, orders, and other legal declarations between MQ E+B GesmbH as the Client and the respective contractor (hereinafter also referred to as "Contractor") in connection with services commissioned by the Client, in particular construction services and with materials or compounds ordered by the Contractor in connection with the performance of the services and/or provided by the Contractor in connection with the performance of services. These General Terms and Conditions comprise an integral part of each and every contractual relationship entered into between the Client and the Contractor within the scope of the foregoing.

As fundamental matter, the Client concludes the contractual relationships referred to above solely on the basis and subject to these GTC and informs the Contractor of validity of these GTC both before and after contract conclusion.

By confirming an order, or concluding a contract with the Client, the Contractor confirms that it has read, understood, and accepted these GTC. By concluding the contract, the Contractor accepts these GTC as an integral part of the contract and these GTC thus become legally binding for the parties.

Any GTCs that may have been submitted by the respective Contractor are not accepted, are expressly rejected, have no validity,

and will likewise be rejected in the event of any deviations from these GTC and are not valid on the basis of the Client's objection. They are deemed to be objected to on the part of the Client, even if such an objection is not expressly stated in any specific case. This principle applies likewise in the event of any contrary provisions contained in the Contractor's general terms and conditions.

Furthermore, these GTC shall also apply to all additional agreements, supplements, additions, or amendments made after conclusion of the contract. The version of the Client's GTC valid at the time of the conclusion of the contract shall be definitive.

Amendments to these GTC, or subsidiary agreements to these GTC, require the express written confirmation of the Client in order to be valid. If deviations from or subsidiary agreements to these GTC are expressly agreed in writing in any specific case, such deviations shall only apply to the specific transaction for which such express written agreement was made. These GTC of the Client shall continue to apply to all additional transactions with the respective contractual partner.

The Client reserves the right to change these GTC in future. The contractual partner will be informed of any such changes in writing including a statement that the Client will only perform contractually based on the new GTC and that such changes will be deemed to have been implicitly and expressly accepted by the Contractor upon conclusion of an additional contract. Accordingly, the amended GTC shall apply concurrently with the first contract concluded between the Contractor and the Client after the Client informed the Contractor of such changes.

## **2. PRIORITY OF CONTRACTUAL ELEMENTS**

The content of the contractual elements listed below shall be binding in the event of discrepancies or contradictions between individual contractual documents that, a whole, comprise the basis of the contractual relationship between the Client and the Contractor.

The contractual provisions shall apply in the following order or priority:

1. The Client written order(s);
2. These GTC;
3. Any agreed schedule;
4. The general part of any tender documents;
5. Any specifications;
6. All additional provisions of any tender documents including attachments;
7. The offer by the Contractor prepared on the basis of the Client's specifications along with any statutory, other legal requirements or regulatory requirements (e.g. building code, notices, etc.) subject to the inclusion of any modifications undertaken jointly with the Client;
8. All relevant ÖNORMEN of a technical nature included in the schedule of ÖNORMEN. The corresponding Euronorm shall apply if there is no ÖNORM for a specific field. The corresponding DIN shall apply in the absence of either of the foregoing. Standards in place upon contract conclusion shall apply;
9. All relevant standards included in the schedule of ÖNORMEN that have pre-standard contract elements for specific fields, as well as the work, or parts of the work (individual items) that relate to such fields.

The Client is entitled to modify the order of priority for applicable contractual provisions in writing prior to contract conclusion.

## **3. GENERAL PROVISIONS**

The subject matter of the order comprises the work described in the specifications and in any tender documents along with any other contractual documentation.

The Contractor shall perform all work in

accordance with generally recognised rules of technology and applicable statutory provisions (building codes, ÖNORMEN, etc.).

## **4. REVIEW AND WARNING OBLIGATION**

The Contractor is obliged to review all documents, data, information, or instructions provided by the Client without undue delay and with due care, in particular for correctness, feasibility, suitability for the intended purpose and completeness. The Contractor shall notify the Client in writing and submit appropriate alternative solutions as needed.

The Contractor is obliged to provide the Contractor with all documents, data, information, or instructions required for the performance of the services as soon as possible.

The Contractor is obliged, in accordance with its duty to warn and inform the Client, to inform the Client of all risks associated with the performance of the service.

The Contractor states that the Client has provided all documents required for the performance of the service to the Contractor and has informed it of all circumstances relevant to the order and that such documents or information have been reviewed by qualified personnel and professionals.

If the Contractor has concerns about the Client's instructions or materials provided by the Client (e.g. materials, objects, designs, etc.), it shall notify the Client of such concerns without undue delay and on a timely basis in writing and shall submit appropriate suggestions for improvement at the same time.

Before commencing the provision of services, the Contractor shall satisfy itself of the appropriate condition of the basis of its performance on site (e.g. any preliminary work that has already been done) subject to the application of due care.

The Contractor shall provide timely written notice of any deficiencies in this regard which the Contractor believes may have a detrimental influence on the conditions required by the Contractor before starting

performance.

The Contractor expressly declares that it has familiarised itself with the conditions on site where services are to be provided, and that it has reviewed all documents from the Client or any entity issuing the call for tender, prior to submitting its offer.

The Contractor expressly waives any increase in the standard price, reduction of warranty, extension of construction deadlines or additional claims of any kind due to a lack of knowledge of the local conditions or the documents made available for inspection to the extent that it is at fault for any such lack of knowledge.

If the Contractor fails to comply with its obligation to warn and provide notice, or insufficiently complies with such obligation, it is liable for the consequences of its lapse to the degree liability is established by an expert.

## **5. SCHEDULE/DATES**

The Contractor shall strictly adhere to the agreed schedule for performance or agreed completion dates. Any damage incurred by the Client or a third party as a result of non-compliance with the respective schedule shall be borne in full by the Contractor.

If preliminary work cannot be performed on time, the Contractor must inform the Client accordingly in writing without undue delay.

The Contractor shall notify the Client in writing without undue delay if the start of the performance is delayed, or if interruptions occur during the course of performance, for reasons that are outside of the Contractor's control (such as force majeure events, etc.).

The Contractor may only rely upon such an interruption for which it is not responsible from the time of its written notification to the Client. In such cases, agreed dates shall be postponed accordingly for the duration of the respective delay or interruption that is not within the Contractor's control.

The contracting parties are deemed to have

agreed to a contractual penalty in the amount of 2% of the total contract price per calendar day or part thereof in the event of a failure to comply with agreed delivery dates. Such penalty applies irrespective of fault and may not be reduced by the courts. The total amount of the penalty is capped at 10% of the total contract amount. This is without prejudice to any additional claims for damages on the part of the Client.

If the Contractor is more than 2 weeks in default of performance, the Client is entitled, subject to written threat of substitute performance and subject to grant of a two-week grace period, to have the work performed or undertaken by a third party of its choice at the Contractor's expense.

If defects are remedied by means of substitute performance, the Client is not obliged to obtain multiple bids in order to verify that any quoted price is reasonable. In cases of imminent risk of harm, the Client is immediately entitled to carry out a substitute performance at the Contractor's expense if the Contractor does not act without undue delay.

## **6. MATERIALS**

Unless expressly stated otherwise in the specifications, all services described therein shall also include the delivery of the associated materials and products, including unloading, storage and conveying (carriage) to the work site.

In the absence of any express contractual agreement to the contrary, the Contractor is responsible for the storage of materials and components. The Contractor shall first obtain the express consent of the Client in the event the Contractor intends to store materials, component, and other equipment on the Client's premises.

Any components and materials delivered to the site shall be stored properly and the Contractor is obliged to ensure public safety by undertaking appropriate safety measures. The associated liability shall be borne exclusively by the Contractor and the Contractor shall indemnify and hold the Client

completely harmless to such an extent. The respective storage site must be coordinated with the Client in advance.

## **7. ON-SITE CONDITIONS**

To the extent that the Client has sufficient connection points for the supply of electricity and water available, it shall make them available to the Contractor for purpose of providing the agreed upon services.

The Contractor is required to prepare any necessary connections, lines, etc. itself and shall ensure that adequate safety precautions have been taken.

The Contractor is responsible for work site lighting and required distribution throughout the construction site from the connection points at its own expense.

The respective unit prices include the erection, maintenance and removal of any necessary scaffolding, platforms, bracing and other auxiliary structures, including the provision of the materials required for any such structures, as well as their transport to and from the site. All scaffolding and other on-site equipment must comply with applicable safety regulations.

The Contractor shall provide timely notice, in any event no less than seven days in advance, of the intended assembly and dismantling, and/or erection of scaffolding, platforms, bracing and other auxiliary structures, including the provision of materials required for any of the foregoing, as well as their transport to and from the site, and shall require the prior express approval of the Client. The Client will undertake any necessary coordination with other users and/or tenants.

Properties or buildings not owned by the Client may only be used or entered if the Contractor enters into appropriate agreements with the owners concerned. Any such arrangements not give rise to any costs or any liability for the Client and the Contractor shall fully indemnify and hold the Client harmless with regard to all such arrangements.

The Contractor and its employees shall pay particular attention and care to the furnishings, equipment, and facilities of the Client and those of other tenants/users on the site. They must be appropriately protected against damage for the duration of the work and the Contractor shall be liable for any damage occurring in the course of performance.

The Contractor shall observe and comply with business hours and access policies (e.g. registration with the security service) in effect on the site.

Options for accessing the site must be coordinated with the Client in advance. Additional information about access options may be found under the <https://elpass.mqw.at/>.

A fire alarm system is in place in the Client's building or on-site as applicable. The Contractor shall provide the Client timely written notice prior to the commencement of work in the event that disabling the fire alarm system is required in order to perform work and/or to render a service. The Contractor shall bear any associated costs incurred in this connection and shall fully indemnify and hold the Client harmless to such an extent should a false alarm be triggered as a result of the Contractor's failure to comply with the preceding reporting obligation.

The Contractor is expressly prohibited from any advertising or marketing activities on the Client's premises, in particular from attaching advertising media such as posters, logos, etc.

## **8. PERFORMANCE**

The Contractor is exclusively responsible for setting up and operating the construction site as well as all precautionary measures associated with the performance of work and securing the construction site. The Contractor shall fully indemnify and hold the Client harmless in relation to all third party claims associated with the foregoing duties.

The Contractor is solely responsible for undertaking all measures required for the safety of its work in accordance with

applicable statutory, regulatory, and other accident prevention regulations and occupational safety ordinances. The Contractor shall indemnify the Client in relation to all claims resulting from the failure to undertake such measures and any resulting consequences.

Existing protective measures (covers, etc.) must not be removed under any circumstances. Should this nevertheless be required for the performance of work in certain areas, the Contractor is obliged to put other suitable precautions into place during the performance of the respective work in order to maintain the adequate safety on site.

The Contractor shall properly dispose of all construction waste and waste materials created during the performance of the contract in accordance with the Waste Management Act ("Abfallwirtschaftsgesetz") and Waste Control Ordinance ("Abfallnachweisverordnung"), as amended, its own expense. The Contractor shall provide all required documentation thereof to the Client.

The Contractor shall prepare any waste management and disposal plan required by the authorities and submit it to the Client; such plans are included in the standard price.

Any soiling, contamination or damage caused by the Contractor's work shall be removed or remedied by the Contractor on a daily basis.

The Contractor shall keep the construction site clean at all times and, in any event, must clean the construction site once daily (clean-swept). In the event of excessive soiling, as well as the accumulation of debris and packaging material, the Client is entitled to arrange for disposal itself following expiry of a grace period it has granted without result, and to charge any associated cost to the Contractor.

The Contractor shall be liable for any materials delivered to the site and all work performed until the time of contractual acceptance. The Contractor is free to obtain

insurance against fire, theft, glass breakage, etc. in general or specifically for the performance of services agreed with the Client, or to have the construction site guarded. Any and all expenses incurred in this regard shall be borne by the Contractor.

Even conclusion of the contract, the Client is entitled, if necessary, to request additional services from the Contractor that are not included in the Contractor's scope of services and thus, in particular, to revise the scope of the services and, in specific cases, the type of services as well. The Contractor undertakes to perform such additional services if the additional performance of services may reasonably be expected of the Contractor, the Contractor is adequately remunerated by the Client and the schedule, if any, is revised appropriately.

## **9. DOCUMENTATION**

The Contractor shall compile installation-specific documentation in the form of corresponding plans (floor plans, elevation plans, attestations, circuit diagrams, circuit diagrams, descriptions, notes, calculations, expert opinions, etc.), all findings or confirmations of execution in accordance with the consensus and the documentation for all materials used, etc., for all installations in order to ensure proper operation in accordance with the intended contractual purpose and in order to ensure proper maintenance in accordance with applicable ÖNORMEN.

Functional and programme specifications are to be prepared for each installation and shall be submitted to the Client.

## **10. PERSONNEL**

The Client shall be informed of the names of executive employees of the Contractor tasked with the performance of construction work any may not be removed from their duties absent prior notice to the Client. A senior employee or worker (overseer, foreman or technician) must be present on the construction site at all times as the Contractor's representative during working hours, or must be available by telephone, for the entire time work is being

performed. An authorised replacement who has necessary expertise must be designated in the event they are temporarily unavailable. The Client is entitled to reject any persons who do not appear appropriate, or demand their replacement, subject to indicating the grounds therefore.

## **11. PRICES**

Prices included in the offer are deemed to represent fixed remuneration for the relevant order and are deemed to remunerate all supplies of goods and services provided by the Contractor based on the respective order. The foregoing does not apply to offers in which invoicing services at cost was expressly and obviously offered and the Client accepted the offered concerned (e.g. cost-plus services).

The offer price remains binding for the Contractor if work is temporarily interrupted due to difficulties in the procurement of materials, unfavourable weather conditions or due to unforeseen delays - with the exception of force majeure events.

All specifications and requirements regarding the manner of performance shall be deemed to have been expressly agreed between the Client and the Contractor and shall be included in the prices for the respective items.

If the respective items (or surcharge items) are not listed separately in the specifications, the prices apply to all services without regard to floors and room heights. If the corresponding items (or surcharge items) are not listed separately in the specifications, all obstructions over 4 m in height and difficulties due to inclinations (including greater than 5%) are to be included in the prices.

To the extent not listed separately in the specifications, all required lifting equipment and scaffolding such as scaffolding platforms, ladders, roof protection screens, work and lifting platforms, work, and protective scaffolding, as well as safety measures provided in the Occupational Safety

Ordinance (“Arbeitnehmerschutzverordnung”), for the entire scope of work are included in the calculation of standard prices. The Contractor shall protect the underlying ground accordingly when using lifting gear or scaffolding.

Agreed prices shall also cover all ancillary services that are necessary or appropriate for (i) the complete proper and professional performance of contractual work in accordance with the state of the art, the relevant standards, and legal provisions and for (ii) ensuring the unrestricted functionality of the work to the extent directly connected to the performance of the services.

Ancillary claims, such as wage and salary bonuses within the meaning of ÖNORM B 2110, may therefore not be invoiced separately, but rather the associated costs are deemed to have been included in cost calculations for the offer. The offer shall also include compensation for preparing plans and documentation for which the Contractor is responsible.

## **12. COOPERATION**

In the event that work from other contractors should be necessary in the course of performance by the Contractor, the Contractor shall consult with such other contractor's site manager or contact person prior to the start of work and during the work itself. Difficulties (e.g. consultation, coordination, etc.) experienced by the Contractor in the course thereof may not be charged to the Client.

## **13. ACCEPTANCE**

Acceptance applies to the quality of the work. Only work that has been performed without defect in every regard and in accordance with the contract will be accepted.

If major defects or deficiencies are found in materials or workmanship, acceptance will not be undertaken until they have been remedied and any time elapsed as a result will be deemed to be in excess of the completion date.

Acceptance shall be documented by means of a written record and any deadlines contained therein for the cure of any defects shall be complied with by the Contractor.

Acceptance of completed work will only be undertaken if all work in accordance with the specifications has been concluded successfully and any previously discovered defects have been remedied.

The Contractor shall submit complete documentation to the Client no later than 4 weeks prior to acceptance. The Contractor and the Client are free to set another deadline by mutual agreement.

In addition, the presentation of all acceptance certificates, test certificates, trial operation, training of the operating personnel including training documentation, performance of all measurements, adjustments, necessary approvals by authorities, etc., required for the unrestricted use of the work performed by the Contractor in accordance with the intended purpose, is required for acceptance.

Acceptance shall be undertaken within one month of notice by the Contractor provided that all requirements have been satisfied.

#### **14. PASSAGE OF RISK**

In any event, risk, in particular the risk of damage or loss, of unforeseeable circumstances or other changes in building components or the building, respectively, passes from the Contractor to the Client upon acceptance by the Client.

#### **15. WARRANTY/LIABILITY**

The Contractor is liable for the condition and quality in accordance with the contract of supplies of goods and services provided by it, its suppliers, and subcontractors from the date of provision until formal acceptance and, starting from acceptance, for the duration of the liability and warranty period.

However, this shall be without prejudice to periods provided for under general laws of damages.

The warranty period shall be at least three

years. This shall be without prejudice to any longer warranty periods contractually agreed in a specific case.

The warranty period shall commence on the day of acceptance of the respective building component or building in conformance with the contract and, in any event, following the complete cure of any defects according to the acceptance certificate. The beginning and end of the warranty period shall be mutually agreed in writing between the Client and the Contractor.

The Contractor warrants that its work conforms to contractually agreed and/or customary quality requirements and conforms to generally accepted rules of science, technology, and craftsmanship. The warranty for material defects and defects of title covers both supplies of goods and services in total and all processed materials.

Any obligation of the Client to give notice of defects pursuant to section 377 of the Austrian Enterprise Code ("UGB") is expressly waived.

Notwithstanding ÖNORM B2110 and section 924 of the Austrian Civil Code ("ABGB"), the parties agree that any defect discovered during the warranty period will be deemed to have been present at the time of acceptance and therefore the Contractor shall bear the burden of proof with regard to any such defect during the entire warranty period.

If the Contractor fails to remedy the defect (within two weeks of written notice of defect, e.g. including by fax or email) or does not properly remedy the defect, the Client is entitled, after written warning of substitute performance and subject to the grant of an additional two-week grace period, to have the defects remedied by a third party of its choice at the expense of the defaulting Contractor.

If defects are remedied by means of substitute performance, the Client is not obliged to obtain multiple bids in order to verify that any quoted price is reasonable. In cases of

imminent risk of harm, the Client is immediately entitled to carry out a substitute performance at the Contractor's expense if the Contractor does not act without undue delay.

The Contractor and the Client shall jointly inspect the building or inspect the work, respectively, prior to the expiry of the Contractor's warranty period. All building components or buildings, respectively, shall be closely inspected and the Contractor shall remedy any and all defects and damage that resulted from non-performance or deficient performance of the offer. A reasonable grace period shall be granted in order to cure any defects. The agreed liability retention shall only be released upon the complete cure of any defects and a determination that the all work is free of defects. If any defect cannot be properly remedied, the Client reserves the right to impose price reductions based on defects in quality.

The Contractor shall have unlimited liability for the professional and proper execution of its work. This shall also apply if the specifications or the representations of building plans should prove to be deficient or the plans to not entirely conform to the requirements of the specifications. In such cases, the Contractor is obliged provide written notice of the respective defect on a timely basis prior to job acceptance and to submit potential improvements along with an estimate of the related costs.

The Contractor shall be liable for compliance with all relevant provisions and ÖNORMEN, insofar as they are binding by law or as result of requirements in any notices of approval, and shall indemnify and hold the Client harmless to such an extent.

The Contractor shall be liable for any and all damages and other detriments caused by its, its personnel, by other vicarious agents such as subcontractors or as a result of operations, irrespective of the nature of any damages or other detriments suffered by the Client or thirds parties as a result. In particular, the Contractor shall also compensate the Client for indirect damages, consequential damages, pure financial

losses, and lost profits. The Contractor shall be liable for damage culpably caused by its subcontractors or suppliers to the same extent it would be liable therefor itself. In such cases, the Contractor bears the burden of proving that it is not at fault for the breach of the contractual or statutory obligation concerned.

The Contractor shall fully indemnify and hold the Client harmless in the event any claims are asserted against the Client by third parties in connection with property damage, personal injury, or financial loss of any kind as a result of the Contractor's performance.

If, within the scope of the order or the contractual relationship, several Contractors are employed on a construction site and the party responsible for damage can no longer be determined, the respective Contractors shall be liable on a pro rata basis according to the contract amount.

The Contractor shall notify the Client of any damage to work performed by the Contractor without undue delay. An entry shall be made in the construction diary maintained by the on-site construction manager in such cases. The Contractor who caused such damage, and its subcontractors and vicarious agents, shall be jointly and severally liable for any destruction of or damage to the property of the Client or third parties.

The Contractor shall be liable for the fulfilment of all obligations incumbent upon it under applicable statutory provisions or official requirements in connection with the performance of services and shall indemnify and hold the Client fully harmless to such an extent.

The Client accepts no liability for damage to the assets of the Contractor; the Contractor may not derive any claims for damages against the Client to such an extent. The foregoing does not apply to damages incurred by the Contractor that result from wilful acts or gross negligence on the part of the Client.

In the event of any required construction



interruptions, the Contractor shall ensure that any building components or the building, respectively, are properly secured and all elements are protected against damage. The Contractor shall repair, or have repaired, any and all damage suffered by building components or the building, respectively, during a construction interruption at its own expense.

The Contractor shall protect its own work and/or finished components and/or buildings appropriately against damage, contamination, theft, and the effects of the weather until acceptance. Any associated costs shall be included in the cost calculation for the offer and shall not be remunerated separately.

Site security shall not be provided by the Client and the Contractor shall be responsible for the security of all items and materials.

## **16. EARLY TERMINATION**

The Client is entitled to terminate the contractual relationship with immediate effect in the event that the Contractor

- discontinues performance in whole or in part or assigns performance to third parties not referred to in the offer without the express consent of the Client;
- culpably takes or refrains from actions if such conduct is contrary to the legitimate interests or objectives of the AG;
- is insolvent or overindebted or insolvency proceedings are commenced with regard to its assets or a petition for the opening of insolvency proceedings is rejected for lack of cost recovery or execution has been unsuccessfully attempted against it;
- fails to comply with material provisions of the respective order or contractual relationship, fails to meet its contractual obligations or its inability to do so or unreliability becomes apparent;
- fails to comply with applicable administrative, commercial, or other legal or official requirements or conditions associated with the performance of services;
- fails to meet agreed upon deadlines associated with the commencement

and/or completion of the work despite the grant of a one-time grace period of 14 days. The foregoing does not apply to delays if and to the extent they are not within the Contractor's control (e.g. force majeure);

- does not immediately comply with the instructions of the Client despite being reminded accordingly;
- directly or indirectly offers or grants benefits to a person involved in the conclusion or execution of the contract on the part of the Client;
- acts or refrains from acting in order to harm the Client, in particular in the cases in which it enters into agreements with other entrepreneurs that are contrary to the interests of the Client, contrary to accepted principles of morality and are anti-competitive.

In addition, the Client is entitled to terminate the contractual relationship with immediate effect if legal and/or official requirements or conditions, or other circumstances, render contractual and proper performance, or the intended use, no longer possible.

The Contractor is entitled to terminate the contractual relationship with immediate effect if the Client fails to make any payments that are due following a reminder and expiry of a grace period of 30 days without indicating valid grounds.

The Contractor shall only be entitled to remuneration for work that has already been completely performed and concluded.

In the event of the early termination of the contractual relationship, the Contractor is only entitled to compensation for expenses incurred and/or partial performance that the Contractor has verifiably incurred or performed, respectively, that relate to work that has not yet been performed in full in the event that the grounds for early termination of the contract is not within the Contractor's control.

In any event, the Contractor is not entitled to remuneration for partial performance that is of no value to the Client in light of the early

termination of the contract.

If the grounds for premature termination of the contractual relationship are within the Contractor's control, the Contractor shall compensate the Client for any damages resulting from its non-performance.

All services to be provided by the Contractor that are included within the scope of the order placed with the Contractor by the Client, and the associated contractual relationship between the Contractor and the Client, comprise a unit and cannot be exploited economically separate from each other. Accordingly, the Contractor cannot partially termination specific services included within the contractual relationship.

## **17. INVOICING AND DUE DATES**

The Contractor shall submit all (partial) invoices, including all attachments necessary and appropriate for purposes of verification, in proper form and in accordance with the contract. In particular, the Contractor shall state the correct company name, the order number, and the performance period in the invoice. In addition, the invoice must also include the VAT number of the company providing the respective goods and services along with that of the recipient. In the case of domestic transactions, invoices must be submitted stating the VAT percentage and the VAT amount or a corresponding VAT memorandum must be stated.

The period for substantive review of proper invoices (review period) first commences following submission of a verifiable invoice in proper form in conformance with the contract, along with all required documents, by the Contractor. The review period is 14 days for all interim invoices and 21 days for the final invoice.

The Contractor's invoices are due for payment within 14 days of completion of the Client's review.

If the Contractor submits deficient or incomplete invoicing documentation and the Client demands that any such

deficiencies be remedied within the review period, the review and payment periods shall be extended in accordingly until submission of the requested documents.

A final invoice shall be issued by the Contractor for each individual order or each individual contract and such invoice must include the complete scope of work in all cases.

The Contractor is only entitled to issue the final invoice after completion of all work, including ancillary services, and after acceptance thereof by the Client. The final invoice must be issued within 60 days of completion of the work and is subject to acceptance without objection. Partial and final invoices are to be issued cumulatively. All payments demanded by the Contractor shall be conclusively included in the final invoice.

The final invoice must be accompanied by all relevant attachments. No interest is calculated for liability and coverage retentions. Cost-plus services are generally to be invoiced on a monthly basis.

Payments made by the Client do not constitute an acknowledgement that services have been provided free of defects and have no influence on the Contractor's liability and warranty. Similarly, payments made by the Client do not constitute acceptance of performance or partial performance.

The requirements for invoices set out above apply both to cost-plus services as well as all additions.

## **18. SECURITIES**

As agreed, the retention amount equals 10% of the contract amount per written order or contract respectively. The retention discount is to be deducted from respective interim invoices issued by the Contractor.

The parties agree that the retention is also intended as security for any loss resulting from withdrawal in the event of insolvency or the filing of a petition to commence insolvency or composition proceedings on the part of the

Contractor.

The Contractor may replace the security retention by means of an abstract bank guarantee from an Austrian bank. Before issuing the abstract bank guarantee, the Contractor shall agree to the correct amount and period of the bank guarantee with the Client in writing.

The security retention is to be replaced by the liability retention when the final invoice is due for each written order or contract. All invoices for cost-plus services are to be included in the sum of the liability retention per written order or contract.

In addition, the parties are deemed to have agreed to a liability retention in the amount of 5% of the contract account per written order or contract. The Contractor may provide the liability retention by means of an abstract bank guarantee issued by an Austrian bank with a term of at least 3 months beyond the warranty period. Before issuing the abstract bank guarantee, the Contractor shall agree to the correct amount and period of the bank guarantee with the Client in writing.

After expiry of the warranty period, all guarantee certificates previously submitted must be returned to the issuing bank or to the Contractor if they have not been used. within 14 days.

## **19. LEGAL REQUIREMENTS AND AUTHORITIES**

During performance of the contract, the Contractor shall ensure compliance with applicable labour regulations, in particular wage law provisions of collective agreements, statutes, minimum wage tariffs, etc. applicable to its business. The general conditions applicable to workers in the same profession or trade who are in similar circumstances shall apply in the absence of such legal requirements.

The aforementioned labour law related obligations shall be imposed upon third parties in the event that parts of an order are assigned to them.

The Contractor is also obliged to comply with the Act on Electrical Engineering ("ETG") and any special terms and conditions of the relevant electric, water, gas, or district heating supply company, to comply with any regulations of the post office, public transportation providers and applicable traffic regulations and to provide suitable verification on request.

All official permits required for the performance of services shall be obtained by the Contractor and the Contractor shall bear all costs and fees itself. The Contractor undertakes to comply strictly with all official requirements.

The Contractor hereby declares that it or its subcontractor(s), if any, has its own business licence appropriate for the management and fulfilment of the respective order and it is obliged to verify the existence of such business licence to the Client at any time upon request without undue delay.

The Contractor is obliged to comply with all relevant legal requirements when providing services. Any requirements and conditions contained in any official permits comprise part of the contract and shall be adhered to by the Contractor.

## **20. INSURANCE**

The Contractor undertakes to insure against all relevant insurable risks (public liability, product liability insurance, business interruption insurance, storage, transport, assembly, disassembly, etc.) by obtaining appropriate liability insurance for personal injury and property damage as well as financial losses of any kind.

The Contractor is obliged to submit a copy of the relevant insurance policies to the Client without undue delay upon first request and to provide verification of premium payment at the request of the Client without undue delay at any time by submitting a coverage letter with a valid term and a sum insured sufficient for the respective contract amount.

## **21. ASSIGNMENT OF RIGHTS AND**

## **OBLIGATIONS**

The Client is entitled to assign its rights and obligations arising under the contractual relationship to third parties. This applies in particular to the assignment of rights and obligations to third parties within the Client's organisation and to companies and associations directly or indirectly affiliated with it.

The Contractor is entitled to assign its rights and obligations arising under the contractual relationship, or any parts thereof, to a third party without the prior written consent of the Client. The Contractor is obliged to inform the Client accordingly before any subcontractor is engaged on a timely basis. This information shall include, in particular, the scope of the subcontract relationship, the specific services covered by the subcontract and any information necessary and appropriate for evaluating the technical and economic capacity of the subcontractor concerned. The Contractor may only engage a subcontractor with the Client's prior written consent.

The Contractor shall be liable for work performed by the subcontractor as if it had performed such work itself. Any potential choice or exchange of a subcontractor shall, in any event, have no effect on agreed price(s).

## **22. COPYRIGHT**

The Contractor shall assign to the Client all rights of exploitation and use within the meaning of the Copyright Act (Urheberrechtsgesetz), in particular sections 14 to 18a of the Copyright Act, and thus all rights of exploitation and use in the work performed by the Contractor. As part of such assignment, the Contractor shall assign to the Client, in particular, the right to use, complete, modify and/or expand, to have used, completed, modified and/or expanded by a third party, the intellectual output of the Contractor associated with this contractual relationship as well as any building, structure, or other object resulting from its efforts without the consent of the Contractor.

## **23. DATA PROTECTION AND CONFIDENTIALITY**

The Contractor expressly agrees that the Client may collect, automatically process, and use all contractual and personal data disclosed to the Client by the Contractor in the course of performance of the contract to the extent permitted within the scope of the Data Protection Act.

Data related to the contract shall only be retained for as long as is strictly necessary for the purposes for which they were collected or processed. In addition, the Client is entitled to disclose such data retained by it to authorities, public bodies, contractual partners, and parties' legal representatives.

The contracting parties mutually undertake to treat as strictly confidential all business secrets and confidential information of the other contracting party of which they become aware, directly, or indirectly, in the course of performance of the contract and shall not disclose such information to third parties, exploit such information or use such information without the prior written consent of the party concerned. This applies to all business secrets and confidential information of the other contracting party, in particular information concerning managing directors or other executives, concerning employees, concerning sources of supply, customers and other contractual partners, concerning contract conclusions and conditions, concerning economic, technical, operational, fiscal, and personal data/master data, concerning business papers and business plans of all kinds as well as concerning internal operational matters.

The preceding duty of confidentiality shall also extend to automatically processed data and their transmission within the meaning of section 6 of the Data Protection Act as amended.

The preceding duty of confidentiality shall not apply if (i) the confidential information has been previously disclosed without the other party's involvement, the other party has consented to the disclosure expressly and in writing or (ii) there is an obligation to

disclose the confidential information and/or the trade secret by order of a court, order of a governmental authority or applicable law. The contracting parties shall take all reasonable and appropriate precautions to ensure confidentiality. Confidential information will only be disclosed to those employees or other third parties who are required to receive it by virtue of their duties related to the performance of the contract.

The preceding non-disclosure obligations of the contractual partners shall survive the termination of the contractual relationship. The contractual partners are therefore obliged to maintain the confidentiality of the aforementioned business and trade secrets even after the performance and termination of the contractual relationship.

## **24. FINAL PROVISIONS**

Disputes concerning performance shall not entitle the Contractor to discontinue the provision of the services for which it is obliged. This is without prejudice to provisions related to the early termination of the contract.

There are no verbal ancillary agreements to this contract. Amendments and supplements to the contract must be made in writing. This also applies to any waiver of this written form requirement.

The invalidity or ineffectiveness of any specific contractual provision shall not affect the validity of the contract as a whole. Void or ineffective contractual provisions shall be replaced by lawful and effective contractual provisions that come as close as possible to achieving the purpose and economic substance of the invalid contractual provisions concerned. The same applies accordingly to the supplementary interpretation of the contract due to any unintentional loopholes in the contract between MQ E+B GesmbH and the contractual partner including these General Terms and Conditions.

The parties have agreed to the exclusive jurisdiction of the competent court for 1070 Vienna for all disputes arising under and in connection with this contract.

These General Terms and Conditions are subject to Austrian law to the exclusion of conflicts of laws principles that refer to foreign law and the United Nations Convention on Contracts for the International Sale of Goods.