

## **1. Validity**

The subsequent terms and conditions of purchase shall apply exclusively in the respective version valid at contract conclusion, even if they are not referred to explicitly in the individual case. The General Terms and Conditions of the contractor shall not apply, even if RIEDL does not separately object against their application in the individual case. These shall only apply if they have been acknowledged by RIEDL explicitly and in written form. Individual agreements and statements in the order of RIEDL take precedence over the General Terms and Conditions of Purchase. Contradictions, regulatory gaps and discrepancies are to be solved primarily by interpretation of the contractual basis as a meaningful whole. In case a later interpretation is not possible or does not lead to a sufficiently clear result, the agreements in the relevant contracts shall take precedence over the agreements in these Terms and Conditions of Purchase and the agreements in these Terms and Conditions of Purchase shall take precedence over the other annexes. In case contradictions, regulatory gaps or discrepancies still remain, RIEDL shall have the right to specify the performance according to § 315 BGB (German Civil Law).

## **2. Construction Works**

For all construction works (among others carpenter's and joiner's works and interior fittings) including assembly the "Vergabe- und Vertragsordnung für Bauleistungen" (VOB/B) (German Construction Contract Procedures) shall apply additionally in the respective version valid at contract conclusion, as far as the order is placed with a contractor working in the construction trade.

## **3. Contract Conclusion**

Requests for proposals by RIEDL are to be understood as a non-binding request to the contractor to submit a proposal. RIEDL is free to accept or refuse the relevant proposal. The contractor shall bear the costs of his proposal irrespective of whether RIEDL accepts or refuses the proposal. In case the proposal is refused, the contractor is not entitled to assert claims for any legal reason against RIEDL. Unless otherwise agreed the contractor is bound by the proposal for a period of one month. The assignment of the contractor shall be in text form (contract conclusion). If the placement of the order deviates from the proposal, the contractor may refuse the assignment within one week after receipt at the contractor, otherwise the contract conclusion is considered to be accepted in the version of the deviating assignment.

## **4. Deliveries, Default, Contractual Penalty**

**4.1** Deliveries of the contractor have to be made by enclosing a delivery note in duplicate stating the contract number and the exact denomination of the delivery. If the delivery address deviates from the address of RIEDL, an adequate delivery note is to be sent to RIEDL in good time such that this delivery note is available to RIEDL on the day of delivery.

**4.2** The agreed performance and delivery times are binding. Early or late deliveries are only admissible after prior written agreement of RIEDL. RIEDL is entitled to return deliveries made prior to the agreed date at the contractor's risk and expense, to refuse acceptance or to charge storage costs.

**4.3** Deliveries are within the time limit if the contractually agreed deliveries are received on the delivery date during the usual business hours and/or according to the time frames given by RIEDL and at the delivery address stated in the relevant contract. If the contract includes installation and assembly, the performance is considered to be within the time limit if installation and assembly have been concluded on the date stated in the contract.

**4.4** If the contractor is in delay with the provision of the service, RIEDL is entitled to request a contractual penalty in the amount of 0.1 % of the net contract value, in case partial services have been agreed a contractual penalty in the amount of 0.1 % of the net contractual value of the relevant partial service to be provided up to the time agreed, for each workday of the delay, however at most in the amount of 5 % of the contract price.

The contractual penalties incurred for delays of individual partial services will be offset against contractual penalties for subsequent delays of further partial services of the same contract. Further claims due to a delay shall remain unaffected by this.

**4.5** The contractor is not entitled to partial services unless otherwise agreed in written form. If this is the case, partial services have to be marked accordingly.

**4.6** The unconditional acceptance of services or the payment of invoices is not to be taken as an acknowledgement that the service complies with the contract, nor as a waiver of contractual penalties or other claims of RIEDL.

**4.7** If the cancellation is due to a delay of the service, RIEDL is free to accept the delayed service, in this case the cancellation is regarded as not made.

## **5. Transport and Packaging**

For deliveries from preferential countries the contractor has to enclose the proof of preference in each delivery. The contractor has to pack the deliveries properly at his expense and if necessary mark them in such a way that they are protected against loss and damage and also no damage is caused to third parties.

## **6. Examination, Complaint by RIEDL**

Within an adequate time limit RIEDL shall examine the delivery in the course of the incoming goods inspection for deficiencies which are obvious by outside visual inspection (including delivery papers), e.g. examine deviations in quantity and quality or transport damage (incoming goods inspection). The piece numbers, masses, weights and quality features determined by RIEDL within the scope of the incoming goods inspection are relevant and the results based on this inspection with regard to the delivery as a whole. If an acceptance has been agreed, there is no inspection obligation. Apart from that it depends on whether an examination is expedient according to proper business procedures, taking into account the circumstances of the particular case. RIEDL's duty to notify deficiencies detected later shall remain unaffected. Without prejudice to RIEDL'S inspection obligation the complaint (notice of defects) is regarded as immediate and in time if sent within 10 workdays after detection and/or in case of obvious deficiencies right upon delivery.

## **7. Price and Payment Terms**

**7.1** The prices stated are agreed - unless clearly marked differently - in Euro, net, plus the relevant statutory VAT. The prices are quoted including installation and assembly (if agreed), including packing, loading, freight, possible insurance costs and expenses as well as duties and taxes to be paid. Escalation clauses for salary, material, device and material costs have not been agreed.

**7.2** Payments on account, payment plan and advance payments have to be agreed separately, otherwise they are explicitly not agreed.

**7.3** Invoices have to list at least the following information:

- Contract number, date, type of invoice (partial invoice, invoice for down payments, hourly wages invoice, final invoice), if appropriate delivery and employment certificates
- Type of delivery,
- Reference to amounts already invoiced and paid, stating the invoice number and dates,
- The invoice data prescribed by law (tax number, turnover tax number as well as the turnover tax identification number, invoice number, delivery time etc.)
- Declaration of exemption of the revenue office (if available).

**7.4** Invoices are to be sent in duplicate to the following address:

**RIEDL Objektbau GmbH  
Englmannstett 40  
83539 Pfaffing (DE)**

**7.5** Payments are due 30 calendar days after receipt of an auditable and proper invoice and after delivery as specified in the contract (including delivery note) or in case of contracts with components of a contract for work and services (if applicable including assembly, initial operation, documentation) upon acceptance at the earliest.

**7.6** Payments shall be made cashless. In case of transfer the day of submission or dispatch of the payment order to the financial institute shall be considered as the day of payment.

**7.7** Unless any deviating agreement has been made, the contractor shall grant 3 % discount for payments within 20 calendar days after receipt of the proper invoice at RIEDL.

## **8. Properties and Conditions**

**8.1** The services have to correspond to the contractually agreed technical specifications and if applicable to the drawings and documents transmitted by RIEDL and fulfill all functions and properties necessary for the intended use. In general only approved and new materials shall be used. The agreed specification of services as well as the properties of reference samples shall be considered as the contractually agreed quality. Previous services of the same type are considered to be a reference. If RIEDL first requests a reference sample, the contractor shall not start work before the contractor has explicitly agreed to it in written form.

**8.2** The parties agree that the property and condition of all services, including the relevant documentation shall meet the latest state of the art, the relevant legal regulations and the rules and guidelines of authorities, trade and professional associations as well as the agreed safety regulations and the agreed technical data and properties. The contractor shall constantly adapt the quality of the products to be supplied to the latest state of the art in science and technology and point out possible improvements as well as technical modifications.

## **9. Place of Fulfillment, Transfer of Risk, Reservation of Ownership**

**9.1** The delivery address and the agreed place of fulfillment are stated in the contract. If only one delivery address and no deviating place of fulfillment is given in the contract, the delivery address shall also be regarded as the agreed place of fulfillment.

**9.2** If the contractually agreed service includes installation and assembly, the risk of accidental loss shall pass to RIEDL only after complete installation and assembly as well as acceptance by RIEDL. The bearing of the risk as regards defective performance shall (again) pass to the contractor upon the notice of defects.

**9.3** If RIEDL has made a down payment or an advance payment or has provided material for processing, the ownership of the supplies ordered shall pass to RIEDL upon begin of its production. The transfer shall be replaced by the agreement that the supplies shall remain the property of the contractor until the agreed delivery date for processing and shall be stored for RIEDL. In all other cases the ownership of the delivery items in case of works or work results shall pass to RIEDL upon its construction, otherwise upon goods acceptance and/or further processing by RIEDL or third parties, unless otherwise contractually agreed.

**9.4** Reservations title of the contractor are excluded. The contractor commits to take care that there are no reservations of title by subcontractors.

## **10. Force Majeure**

**10.1** Neither RIEDL nor the contractor are liable to the relevant other party, if and insofar as their fulfillment of the contractual obligations is prevented by force majeure. Force majeure shall mean all not foreseeable and unavoidable circumstances at contract conclusion as well as circumstances which can only be prevented by unreasonable means, in particular natural disasters, riots, strikes, epidemics, war and lawful lockouts.

**10.2** In case of force majeure, the relevant party is obligated to inform the other party without delay, giving the following information:

- details of the case of force majeure,
- its effects on the fulfillment of the contractual obligations,
- an estimation of the expected duration of the impediment to performance,
- countermeasures taken,
- effects on the planned date of performance as well as
- making all reasonable efforts to reduce the effects of force majeure for the relevant other party to a minimum and to fulfill the contract obligations again as soon as possible.

**10.3** The contractor shall properly store the performance object for the duration of the disturbance at his expense and risk.

**10.4** If the performance of the contractor due to force majeure is prevented for more than three weeks, RIEDL is entitled to withdraw from the contract.

## **11. Rights of Use**

The transfer of all copyrighted usage rights, powers of alteration and exploitation is satisfied by the contractually agreed price. The contractor herewith grants to RIEDL an unlimited, irrevocable and exclusive right of use for all known usage types in all works created on the basis of the contract, in particular plans, documents, drafts, concepts, tables, lists, other work results etc. irrespective of whether these are present in tangible form or as EDP file. This right of use includes in particular the right to exploit, process, modify, copy, market and publish the services, in particular plans in whatever way required. RIEDL is entitled to transfer the above named usage rights to third parties. The contractor commits to take care that the rights of subcontractors are not in conflict with the above named usage rights of RIEDL.

## **12. Change Requests**

**12.1** Until acceptance of the service RIEDL is entitled to request changes in performance period, quality and quantity.

**12.2** If the change results in a price increase or a delay of service, the contractor shall inform RIEDL immediately, however at the latest within one week after receipt of the relevant change note of RIEDL and transmit a cost estimate and an amendment offer in a verifiable form after one more week at the latest.

**12.3** If the contractor does not meet his information obligation, the contractually agreed delivery period shall remain unchanged after expiry of the one week period.

**12.4** The amendment offer shall be calculated on the basis of the contract; here all contractual agreements shall apply accordingly. If the statutory regulations of the Construction Contract Law apply for the contractual performance, the amendment offer shall be prepared in accordance with the regulations in paragraph 15.1. The preparation of amendment offers is free of charge for RIEDL.

**12.5** Price increases or changed delivery periods have to be confirmed by RIEDL in text form to be valid. If RIEDL fails to respond to an amendment offer of the contractor within 30 calendar days after receipt, this is considered as a rejection of the amendment offer.

**12.6** The contractor is obligated to comply with the change request of RIEDL if

- the type, scope and costs have been laid down in advance in a written agreement between RIEDL and the contractor and/or RIEDL has commissioned the amendment offer in text form in accordance with the above provision, or
- RIEDL has ordered towards the contractor in text form that the service shall be rendered despite a missing amendment offer and/or a changed price agreement and/or a contract.

If no case according to § 650 section 1 no. 2 BGB (German Civil Code) is given, the changed service has in addition to be reasonable for the contractor. It is assumed that the provision of this service is reasonable if the contractor does not prove that the changed service is not reasonable for him. If the contractual service is subject to the Construction Contract Law of BGB, the time limit of § 650b section 2 BGB with the exceptions in the subsequent para. 15.1 are primarily to be met. If none of the above named cases is given, the contractor is not entitled to a price adjustment.

### **13. Termination for Good Cause**

The parties are entitled to a termination for good cause. A good cause for RIEDL is especially given if

- the contractor suspends payments, is over-indebted or insolvent, claims of the contractor are seized or an application to institute insolvency proceedings on the assets of the contractor has been made,
- the contractor infringes essential contract obligations,
- the contractor violates applicable law or authority instructions,
- the contractor commissions subcontractors without RIEDL's written consent
- the contractor deviates from quality specifications without RIEDL's prior written approval and/or does not inform RIEDL in detail on such a deviation and RIEDL does not give a subsequent written approval to the deviation.

The termination has to be in written form.

### **14. Claims for Defect Rectification, Rights of Recourse, Limitation Period**

**14.1** The works/services have to conform to the agreed property and condition, correspond to the state of the art and be free of material defects and defects in title.

**14.2** The contractor shall bear all costs required for supplementary performance, in particular also possibly accruing transport and ancillary costs (such as installation and disassembly costs). The contractor has to reimburse RIEDL the required expenses according to § 439 section 3 BGB. The contractor shall reimburse RIEDL the costs for a necessary cooperation in the supplementary performance as well as for measures in order to keep the disturbances for the client of RIEDL to a minimum, taking into account the operational requirements.

**14.3** During the supplementary performance the contractor is obligated to provide interim solutions at his expense, as far as this is required for the use of the service/works and for maintaining the operation and safety (mitigation of damages).

**14.4** For deficiencies arising from planning documents, performance specifications provided by RIEDL or other reasons which are due to RIEDL, the contractor shall be liable, unless the contractor has immediately expressed his reservations towards RIEDL concerning this matter.

**14.5** Apart from the legal regulations RIEDL is entitled to carry out the supplementary performance itself or have it performed by a third party after a fruitless expiry of the deadline or without expiry of a deadline if the deficiency is an immediate danger to life, limb or health or other legally protected interests according to § 823 BGB and waiting patiently for a supplementary performance by the contractor is not acceptable due to the imminent danger and RIEDL is entitled to request a reimbursement of the required expenses, unless this is only possible by disproportionate costs.

**14.6** The costs for RIEDL arising from legitimate notices of defects are generally at the expense of the contractor, even if spent uselessly and will be charged to the contractor additionally as a flat rate of EUR 150.00.

**14.7** Without prejudice to the legal and contractual liability for defects, the contractor shall indemnify RIEDL in case of deficiencies in title according to para. 16 below. In case of deficiencies in title the contractor is obligated to make possible RIEDL's legitimate use of the facilities, buildings etc. which make up the object of the contract by the acquisition of rights of use or by license payments to the copyright holders. If the acquisition of licenses is not possible the contractor is obligated at the request of RIEDL to exchange and to alter the object of performance such, e.g. by replacing or altering the plant components such that no property rights are infringed. If the above stated measures are not possible, the contractor at his expense has to - at RIEDL's option -

- change the object of performance such that no longer any property rights are violated, but all requirements laid down for the original object of performance shall continue to be met without any limitation, or
- replace the object of performance by another which does not violate any property rights and the replaced object of performance is equivalent, or
- take back the object of performance against reimbursement of the price and refund RIEDL all costs and damages incurred in conjunction with the violation of property rights.

**14.8** The statutory rights of recourse according to § 445a and § 445b BGB shall apply provided that the claims for reimbursement of expenses pursuant to § 445a section 1 BGB shall be subject to a limitation period of 3 years after delivery to RIEDL. The period of limitation pursuant to § 438 section 1 no. 3 BGB shall be prolonged to 3 years. The period of limitation shall start upon complete delivery and/or if agreed, upon the overall acceptance of the performance. § 438 section 1 no. 1 and no. 2 BGB shall remain unaffected.

**14.9** The contractor shall be to the same extent liable for supplementary performance as for the original performance. The contractually agreed period of limitation shall start anew for replacement deliveries. In case the contractor agrees on periods of limitations with his subcontractors exceeding the contractually agreed periods, the contractor herewith assigns these claims to RIEDL. The assignment shall become effective at the time of expiry of the limitation periods for claims for defect rectification agreed in the contract. RIEDL accepts this assignment.

**14.10** Subcontractors of the contractor are vicarious agents of the contractor.

## **15. Special Regulations for Works Contracts Including Construction Contracts**

### **15.1 Change Order and Price Adaptation for Construction Contracts**

**15.1.1** The time limit of § 650b section 2 BGB even starts if the contractor informs RIEDL that in his view additional or changed performances have to be carried out, without a prejudice being founded as to reason or amount.

**15.1.2** As far as RIEDL issues a change order pursuant to § 650b section 1 no. 1 or no. 2 BGB in text form, the contractor is obligated to comply with it even before the expiry of the time limit regulated in § 650 b section 2 BGB in order to reach a price agreement if

- this change cannot be delayed (urgency requirement) or
- RIEDL informs in the change order firmly and irrevocably that RIEDL wishes this change in any case, i.e. even if no price agreement can be reached within the 30 day time limit pursuant to § 650b section 2 BGB or if
- one of the parties informs of the failure to reach an agreement before expiry of the 30 day time limit pursuant to § 650b section 2 BGB and RIEDL nevertheless wishes the execution of the change.

However, the urgency requirement is always given if the expiry date would be affected due to an exhaustion of the 30 day time limit pursuant to § 650b section 2 BGB, the customer of RIEDL can request the immediate execution of this change, or if an imminent danger is given.

**15.1.3** In case of change orders the scope of the additional or reduced price depends on the actual additional or reduced work and expense plus an adequate surcharge for General Business Costs (overhead expenses) as well as risk and profit. These are to be set out and proven by the contractor. Only the additional expenses caused by reason of the change order can be charged additionally. The amount of the determined additional or reduced work and expense is to be calculated on the basis of the actually required costs, discounts granted are to be taken into account.

**15.1.4** RIEDL is free to prove that the costs presented and claimed do not correspond to the actual costs. RIEDL may provide this proof by presenting the offers of two external companies for these performances. The modification remuneration includes the costs for a possible extension of the construction period as well as acceleration measures. In case the contractor commissions subcontractors to carry out the change and makes or has made an agreement for the remuneration with the subcontractor, actually required additional or reduced costs in terms of § 650c BGB are only given if RIEDL was involved in the agreement on the remuneration or has agreed to the remuneration. In no case must the prices for changes exceed the local prices. A surcharge for General Business Costs, risk and profit in the amount of 5 % is adequate (§ 650f section 5 p. 3 BGB) and is herewith agreed.

**15.1.5** However, the right to payments on account for modifications pursuant to § 650 c section 3 BGB can in all cases only be requested by the contractor, if he is not responsible for the fact that still no agreement on the amount of his claim for additional costs has been reached. A responsibility of the contractor is assumed (and may be refuted by him) if the costs of his modification do not plausibly meet the requirements of the contract and therefore doubts as to the actual additional work and expense and consequently the costs asserted are given. The contractor is obligated to provide a security in accordance with para. 15.5.3 to RIEDL for all claims pursuant to § 650 c section 3 BGB prior to the payment by RIEDL. In case the payments made by RIEDL pursuant to § 650 c section 3 BGB exceed the owed additional remuneration, these have to be refunded to RIEDL after acceptance and upon receipt at the contractor interests of 9 percentage points above the basic interest rate have to be paid.

## **15.2** Claims for Performance and for Remedy of Defects

If the contractor does not properly fulfil or only partly fulfil the performances as specified in the contract (defect-free), RIEDL is entitled to request from the contractor prior to acceptance the proper fulfillment of the performance by fixing an adequate time limit. If the contractor does not meet this request for performance within the time limit fixed and a grace period, and if he does not state in written form that he will fulfil the request, however at a later time after the expiry of the time limits, it can be assumed that the contractor seriously and finally refuses the defect-free performance. This does not apply if the time limit fixed by RIEDL was not adequate. Then RIEDL is either entitled to a termination of this performance – independent of whether the performance objects are self-contained or functioning performance parts - or to a damage claim instead of the fulfillment claim, as regards the defective

performance. If RIEDL chooses damages, this is at the same to be regarded as refrainment from the claim for performance towards the contractor as regards the defective performance object. For the rest the fulfillment obligation of the contractor remains unaffected.

### **15.3 Acceptance**

**15.3.1** After final completion of the contractually agreed performance, the contractor shall be entitled to request acceptance. Exclusively a formal acceptance shall take place. The regulations of § 640 section 2 BGB shall only apply if the contractor has informed RIEDL together with the request for acceptance on the consequences of a not declared or refused acceptance without stating defects, the note has to be made in text form. The acceptance cannot be requested by the contractor, as long as more than minor defects exist or remaining works are outstanding or acceptance/documents of authorities are not on hand which the contractor has to provide up to or during acceptance or which are required for the begin of a safe use pursuant to the contract or for further works.

**15.3.2** The contractor has to make a written application for acceptance execution at least 14 calendar days in advance. Upon RIEDL's request also representatives of RIEDL's client and other persons named by RIEDL may take part in the inspection and acceptance. After termination of the inspection and when the readiness for acceptance is given, the formal acceptance has to be performed and an acceptance report has to be written. The contractor has to allow sufficient time for the inspection in his schedule.

**15.3.3** RIEDL shall be entitled, however not obligated to request partial acceptances, if these can be separated from the other performances, even if they do not constitute a self-contained part of the contractual performance.

**15.3.4** The acceptance shall be formal and an acceptance report is to be prepared in duplicate. The acceptance shall neither be replaced by the use or initial operation, nor by a notification of the contractor that the works are completed.

**15.3.5** Defects found during acceptance or remaining works still to be performed shall be remedied and/or performed by the contractor without delay, at the latest within the time limits stated in the acceptance report. All works performed after acceptance, such as the remedy of defects require another formal acceptance which has to be explicitly applied for in writing by the contractor. The time limit for follow-up acceptances shall in all cases be twelve workdays. Possible costs arising for RIEDL for follow-up acceptances e.g. by commissioning an expert, have to be borne by the contractor.

**15.3.6** The acceptance may be refused by RIEDL because of major defects. RIEDL must not refuse acceptance because of minor defects or minor still outstanding remaining works. However, the acceptance may be refused because of a multitude of minor defects or a multitude of minor, still outstanding remaining works, if these in its entirety exceed a minor defect.

**15.3.7** In case of an acceptance refusal the contractor may request a common assessment of the current condition (§ 650g section 1 BGB). The request of an assessment of the current condition has to be made in written form at least two weeks before the desired date. The date may be shifted by RIEDL for objective reasons. If RIEDL rejects the common assessment of the current condition without any reason, the contractor shall be entitled to have the performance works been assessed by an expert. The contractor has to give RIEDL the opportunity to take part in the expert inspection and he has to state the date with adequate advance notice.

### **15.4 Period of Limitation for Claims for Defect Rectification and Damage Claims**

Claims for defect rectification of RIEDL shall become time-barred uniformly after 5 years and 6 months. If commissioned, the period of limitation for the building envelope (roof, face, waterproof concrete tanking) shall be 10 years and 6 months. Unless otherwise agreed, the limitation period for claims for defect rectification for components of mechanical and electrical/electronic plants whose safety and functionality is influenced by maintenance shall be 2 years, if these plant components are not maintained. The contractor may only assert the short period

of limitation if he has explicitly stated when handing over the documentation prior to acceptance that the components concerned require maintenance. If the components are maintained, the period of limitation is 4 years, provided the maintenance works will be carried out by a specialized company (companies approved by the manufacturer). The period of limitation shall start upon complete acceptance of all contractual works.

## **15.5 Securities**

### **15.5.1 General**

The following agreements shall apply for all sureties:

The surety is irrevocable, unlimited, directly enforceable, unconditional and not on first demand, it expires upon return of the deed of suretyship. The surety shall be declared by waiving the defence of unexhausted remedies (§ 771 BGB). The exemption by depositing the amount of the surety is excluded in the surety, the drawdown from the surety shall only be possible upon the payment of money. The guarantor waives the plea of off-set, unless the counterclaim is undisputed or legally binding. In business with registered traders the place of jurisdiction for all disputes arising from the surety shall be Munich. The law of the Federal Republic of Germany shall apply to the exclusion of any conflicts of law and to the exclusion of the United Nations Convention on Contracts of the International Sale of Goods.

### **15.5.2 Security for Performance of the Contract and Other Claims**

**15.5.2.1** The contractor has to provide a security for the fulfillment of the legitimate claims of RIEDL as regards the performance of the works pursuant to the contract and the time limits, for overpayment as well as termination, for non-payment of social security and accident insurance contributions, as well as the observance of regulations of the employee assignment law and the minimum wage law as well as the contractual indemnity by the contractor in the amount of 10 % of the net contract amount. The following performance changes are covered by the security:

- provided the relevant net contract amount will thus not be increased by more than 10 %,
- the relevant net contract amount will not be changed or
- which result in a reduction of the relevant net contract amount.

**15.5.2.2** The contractor shall provide this security within 14 days after contract conclusion by submitting a surety of a financial institution or a credit insurance company in the European Union in compliance with the above agreements in para. 15.5.1. The return of the surety shall be to the extent that it has not yet been used, immediately after the final acceptance, unless any claims by RIEDL included in the security purpose, not covered by the security for claims for defect rectification, have not yet been satisfied. Then RIEDL may retain an adequate part of the security for these established claims, however possible retentions made because of defects or remaining works have to be taken into account such that no double security is given.

**15.5.2.3** If the contractor does not provide the surety within the time limit, RIEDL shall be entitled to the rights pursuant to § 281 BGB in case the contractor is in default, i.e. RIEDL may set an adequate deadline for the contractor to provide the surety and after fruitless expiry demand damages instead of performance. In case the contract is maintained, RIEDL shall alternatively be entitled to retain payments up to the security amount.

**15.5.2.4** In case of performance changes leading to an increase of the net contract amount by more than 10 %, the contractor is obligated to adequately increase the security, unless RIEDL expressly waives this requirement in the individual case. Until the increased security (security on the increased amount) or another surety is provided, the increase of the security can be effected by an adequate cash retention from payments on account. The payment and/or retention of the not yet used holdback shall be made pursuant to the above regulation for returning the surety.

**15.5.3 Security for Claims of Defect Rectification**

**15.5.3.1** The contractor shall provide a security in the amount of 5 % of the contractual net final invoice amount to cover the fulfillment of claims for defect rectification of RIEDL after acceptance including damages as well as other related claims pursuant to §§ 241, 280 BGB after the final contractually agreed acceptance involving performance changes. As long as the net final invoice amount has not been fixed jointly or determined by a final judgement, the net final invoice amount requested by the contractor is decisive and as long as the final invoice has not been made out, the net contract amount plus the agreed construction supplements, however without possible claims relating to construction time and minus the agreed performance reductions is decisive.

**15.5.3.2** The contractor shall provide this security after the final contractually agreed acceptance by submitting a surety of a financial institution or a credit insurance company in the European Union observing the above agreements in para. 15.5.1. The claims from the surety shall lapse within 5 years and 6 months after the contractually agreed acceptance of the contractual performances. The term of the period of limitation of the principal debt shall remain unaffected. The return of the surety shall be to the extent that it has not yet been used or drawn down, after expiry of the agreed periods of limitation for claims of defect rectification – taking into account possible inhibition and disruption facts. In this respect the contractor shall be entitled to a (partial) release/reduction of the surety when and insofar as there are no enforceable secured claims of RIEDL.

**15.5.3.3** Until delivery of the surety an adequate cash retention in the amount of the security shall be agreed which can be replaced by the surety. Upon the request of the contractor the security may alternatively be provided by depositing the amount of money in a financial institute to be agreed, on a blocked account which can only be disposed of jointly (“and” account). The payment of the not yet used retention and/or the deposited amount shall be made after expiry of the agreed periods of limitation for warranty claims - taking into account possible inhibition and disruption facts. In this respect the contractor has a claim for (partial) payment when and insofar as there are no enforceable secured claims of RIEDL.

**15.5.4 Security for Payments on Account Pursuant to § 650c section 3 BGB**

**15.5.4.1** In case of a payment on account according to § 650c section 3 BGB by RIEDL to the contractor, the contractor shall provide the following security: The contractor shall invoice the payment on account in accordance with the contractual provisions and he separately marks it as a payment on account according to § 650 c section 3 BGB with consecutive numbering. Before this invoice becomes due the contractor shall provide a payment on account surety of a financial institution or a credit insurance institution in the European Community, observing the above agreements in para. 15.5.1, on a sum in the amount of the payment on account (net) for securing the repayment claims of RIEDL from the payment on account made according to § 650c section 3 BGB to the contractor plus interests until the amicable agreement of a modified price between RIEDL and the contractor or a final court decision on a modified price and/or an additional remuneration.

**15.5.4.2** After a written agreement on a modified price between RIEDL and its contractor or a final court decision on a modified price and/or an additional remuneration or in case it has been drawn and the repayment of the payment on account made to the contractor is irrevocably received at RIEDL, the surety for the payment on account is to be returned according to § 650c section 3 phrase 3 BGB .

**15.6 Termination**

**15.6.1** RIEDL may terminate the contract at any time in whole or in part in written form towards the contractor. The contractor shall receive payments for the properly performed works up to this time, insofar as these are proven and invoiced in testable form.

**15.6.2** The right of termination for good reason pursuant to § 648a BGB for both parties shall remain unaffected. A good reason in terms of § 648a BGB for both parties is given in particular in the cases named in above para. 13. If RIEDL terminates for good reason, all works carried out so far shall be settled at the contractual prices only insofar as they can be used by RIEDL as intended. Settlement will be made on the basis of this contract.

**15.6.3** Insofar as the contractor terminates the contract prematurely for good reason for which RIEDL is responsible, the parties agree on a one-time payment as lump-sum damages in the amount of 5 % of the settlement value of the works no longer performed due to the termination. With this lump-sum approach all claims of the contractor which resulted or will result in future due to the premature termination of the contract are paid and settled. Instead of the one-time payment the parties are at liberty to prove higher or lower damage claims as regards the consequences of the termination. The damage suffered by RIEDL shall be taken into consideration when settling the accounts. RIEDL reserves the right to damage claims due to contract violation or non-performance of the contractor.

**15.6.4** Partial terminations by RIEDL are admissible in case of a free termination and in case of a termination for good reason, if they can be separated from the other works, even if they are no self-contained part of the contractual performance. A self-contained performance in this sense is given in particular if according to the usual transaction customs the performance parts to be terminated can be carried out separated from the other performance parts with regard to place, subject matter or geography and the accounts can also be settled separately.

**15.6.5** For the continuation of the performances according to the works contract RIEDL may use devices, scaffolding, equipment available on the construction site and supplied substances and construction components for an adequate fee.

**15.7** Architectural and Engineering Contract Law Pursuant to §§ 650p et seq. BGB

If RIEDL pursuant to § 650r BGB is entitled to an extraordinary termination after submission of the planning documents pursuant to § 650p section 2 BGB in case essential planning and monitoring targets have not yet been agreed, this right expires at the end of 4 weeks from the submission of the documents. A partial acceptance of architectural and engineering works after conclusion of the works of the construction companies shall not take place.

## **16. Liability of the Contractor, Indemnity, Product Liability**

**16.1** The contractor shall be liable according to the statutory provisions. The contractor is responsible and liable without restriction for his actions and omissions, for the observance of all statutory and official regulations as well as for the actions or omissions of the staff employed by him, his subcontractors or other agents. The contractor cannot plead that he has observed the ordinary care when choosing his helpers and when monitoring them.

**16.2** In case claims are raised against RIEDL by third parties (this includes social security funds and trade associations) due to a violation of a statutory or contractual provision for which the contractor or its subcontractors are responsible and/or insofar as a warranty of title of the contractor is given, the contractor shall indemnify RIEDL from all claims of third parties against RIEDL upon first request, i.e. claims which have been caused by the contractor or by third parties commissioned by him. However, this only applies if RIEDL is directly obliged to compensation towards these third parties. The contractor shall indemnify RIEDL from all claims of third parties as well as the costs involved upon first request which are raised against RIEDL on the basis of home and foreign product liability regulations or laws, caused by the defectiveness of the performance or by infringement of rights in the course of the provision of this performance. The indemnification includes all claims and costs of defense or prosecution caused for RIEDL, unless these are disproportionate.

**17. Insurances**

**17.1** The contractor is obliged to take out a business and product liability insurance sufficient for the scope and amount of coverage for the individual contract at his own expense including the extended product liability and environmental liability risk. The minimum coverage amount in case of damage shall be as follows, here the yearly aggregate for these minimum coverage amounts is considered to be double maximized:

- 3.0 million EUR for personal and property damage as well as
- 1.0 million EUR for other damage, in particular financial loss as a consequence of property damage, processing damage, environmental damage as well as for extended product liability damage.

The contractor is obligated to prove the existence of these liability insurances to RIEDL within 14 days after contract conclusion by submitting an insurance certificate.

**17.2** The contractor undertakes to include subcontractors commissioned by him in the insurance coverage. In case of damage the liability insurance of the contractor shall prevail among all other possibly existing liability insurances. The contractor is obligated to maintain the insurance during the overall contract term up to the expiry of the periods of limitation of claims for defect rectification and to prove the continued existence of the insurances at any time within two weeks upon RIEDL's request. A limitation of liability as to the damage covered by the insurance does not exist. The contractor undertakes to meet the obligations without delay, in particular the obligation of information incumbent upon him as the insured according to such insurance contracts.

**17.3** If the contractor also provides planning services, the contractor is obligated to take out also a planning liability insurance apart from the business and product liability insurance. Here the same provisions shall apply.

**17.4** If the contractor does not prove a sufficient insurance protection despite setting a period of grace, RIEDL shall be entitled to take out an appropriate insurance at the expense of the contractor.

**18. Consent to Subcontracting, Assignment, Offset, Retention**

**18.1** The contractor has to carry out the order by himself. The contractor shall not be entitled to subcontracting unless RIEDL has explicitly and in written form consented to the commissioning of a subcontractor.

**18.2** By way of security the contractor herewith assigns all claims and rights for performance, for rectification of defects, for reimbursement of expenses as well as overpayment against his subcontractors to RIEDL and this assignment is herewith accepted by RIEDL. Pending further notice by RIEDL the contractor is obligated to secure and exercise these claims and rights.

**18.3** Without prior written consent of RIEDL which must not be refused unreasonably, the contractor is not entitled to assign his claims against RIEDL or to have them collected by third parties.

**18.4** RIEDL is entitled to assign contractual claims including the securities received for them to third parties. RIEDL shall be entitled to set off all claims from this business relationship against the contractor.

**18.5** The contractor is not entitled to set off against a claim of RIEDL any counterclaim or to assert a retention right, unless his counterclaim or his retention right is undisputed and determined by a final court decision.

**18.6** After delivery and/or acceptance the contractor has to hand over immediately all documents prepared by the contractor and/or handed over to the contractor within the scope of the contract. The assertion of a retention right or another right to refuse performance by the contractor relating to the documents to be returned is excluded.

**19. Data Protection**

The parties mutually agree that the other party shall store the required personal data for the purpose of order processing by means of data processing devices by way of EDP and these data shall be processed and stored by RIEDL and the contractor for operational purposes taking into account the statutory provisions.

**20. Secrecy**

The contractor is obligated to treat as confidential all information and documents which become known to him during the business relationship with RIEDL directly or indirectly by RIEDL, not to make them accessible to third parties and to use them solely for the execution of the contract. The nondisclosure agreement shall not apply for such information which

- has been known to the contractor even before the business relationship with RIEDL started,
- is made available to the contractor by third parties without infringing the non-disclosure agreement,
- is publicly known or
- has to be passed on by the contractor due to statutory obligations or official instructions.

**21. Place of Jurisdiction, Applicable Law**

**21.1** The contracts are solely governed by the laws of the Federal Republic of Germany to the exclusion of any conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods. The application of CiSG (UN Purchase Right) is excluded.

**21.2** RIEDL is entitled to choose as place of jurisdiction for all disputes arising from the contract the Landgericht München (District Court Munich) insofar as the parties are merchants and no mandatory statutory provisions are precluding this.

**22. Final Provisions**

**22.1** In case individual provisions of these Terms and Conditions of Purchase or contracts are legally ineffective or unfeasible, the remaining provisions shall remain valid. The ineffective provision shall be replaced by a provision which comes closest to the intended purpose as far as legally admissible.

**22.2** Amendments or additions have to be in written form. This also applies to the change of the written form requirement. Oral side-agreements have not been made.

**22.3** In case of disputes the German wording of the Terms and Conditions of Purchase shall take precedence.