



Specific Purchasing Conditions for the supply [and installation] of Electrical Equipment – Germany

Contents

S1.	Field of application	3
S2.	Structure and Hierarchy	3
S3.	Definitions	3
S4.	Payment	3
S4.1	Invoicing	3
S4.1.1	Purchase-to-Pay process	3
S4.1.2	Conditions for payments and payment terms	3
S4.1.2.1	P2P process	3
S4.1.2.2	Exclusion of P2P process	4
S4.1.2.3	General	4
S4.1.3	Mandatory invoice content	4
S4.2	Due date interest and default	5
S4.3	Partial and final invoices	5
S4.4	Assignment of claims	5
S4.5	Offsetting and Rights of Retention	5
S5.	Labour and social security laws	5
S6.	Penalties for failure to perform	5
S7.	Penalties for Late Performance	6
S8.	Financial guarantees	6
S8.1	Performance Bond	6
S8.2	Defects Liability Bond	7
S9.	WaSTe and excess material removal	7
S10.	Governing law and jurisdiction	8

S1. FIELD OF APPLICATION

These Specific Purchasing Conditions Electrical Equipment Germany (also referred to as "**SPC EE GERMANY**") shall be incorporated in Contracts made by companies of the Elia Group and shall apply together with the Elia Group General Purchasing Conditions for the Supply [and Installation] of Electrical Equipment (also referred to as "**GPC ELECTRICAL EQUIPMENT**") in all cases where these SPC EE GERMANY are expressly incorporated, but also for all other Contracts made by the TSO as a purchaser which are governed or supposed to be governed by German law.

Where a Contract is made for the supply of goods and other Services such as installation services, the Contract shall be construed as a mixed-type contract containing elements of a purchase and supply contract (*Kaufvertrag*) and a contract for works (*Werkvertrag*).

S2. STRUCTURE AND HIERARCHY

Where applicable, these SPC EE GERMANY shall form an integral part of the terms and conditions provided in the GPC ELECTRICAL EQUIPMENT, and provisions of the GPC ELECTRICAL EQUIPMENT addressing the content of the document (such as rules of interpretation or a severability clause) shall also apply hereto. In case of contradiction between a particular clause in these SPC EE GERMANY and a particular clause in the GPC ELECTRICAL EQUIPMENT, the provision in these SPC EE GERMANY will prevail over the provision in the GPC ELECTRICAL EQUIPMENT.

S3. DEFINITIONS

Terms defined in the GPC ELECTRICAL EQUIPMENT, when used herein, shall have the same meaning as in the GPC ELECTRICAL EQUIPMENT, unless a definition of the relevant term is made in this document.

S4. PAYMENT

S4.1 Invoicing

S4.1.1 Purchase-to-Pay process

Unless otherwise agreed by the Parties, a P2P process is applying. The P2P process is outlined in detail as "50Hertz P2P-handbook supplier portal" ("*50Hertz P2P-Handbuch Lieferantenportal*"); this document is published online at www.50hertz.com under the menu path "50Hertz > Suppliers". To the extent that the use of the P2P process has been agreed between the Parties, the Contractor must complete the activity record electronically via the portal pursuant to the confirmed measurement/acceptance protocol/time sheet. The performance of the Services has to be documented in the appropriate form (e.g. by including measurement protocols, time sheets).

S4.1.2 Conditions for payments and payment terms

S4.1.2.1 P2P process

Unless the Parties agreed otherwise, the P2P process is applying. The payments owed by the TSO under the Contract are due 30 days after the proper online registration of the Services, but not earlier than 30 days after the completion of the Services.

If the Services are registered by 50Hertz, the payment will take place 30 days after the service registration or after the receipt of the Services was booked, but not earlier than 30 days after the completion of the Services.

The Parties may agree to apply the credit memo procedure.

S4.1.2.2 Exclusion of P2P process

If P2P process is excluded by the Parties, payments owed by the TSO under the Contract will fall due following the complete fulfilment of the Services (or partial Services, if agreed) by the Contractor (and any agreed provisional acceptance) or, where no provisional acceptance shall be required, after delivery, but not before 30 days after receipt of a proper invoice, provided that the Contractor has correctly followed the instructions of this Article, and not earlier than 30 days after the due date or deadline provided in the Contract.

Invoices must always satisfy the applicable legal requirements, above all those concerning VAT law.

S4.1.2.3 General

If the day that the payment is due is not a day where banks are usually open for business in Berlin and Frankfurt a.M., the payment will be due on the following bank working day.

Payment will be made by bank transfer, unless the Parties have agreed otherwise for a particular Contract.

S4.1.3 Mandatory invoice content

The invoice, and any correction of the invoice, will contain:

- a) complete name, complete address and VAT number of the TSO and the TSO's order number;
- b) The Contract reference;
- c) The PO number;
- d) The name of the administrative responsible of the PO;
- e) the Services performed and the date of Service performance as well as the bill of quantities if need be;
- f) complete name and complete address of the Contractor;
- g) the invoice date of issuance;
- h) the invoice number given by the Contractor;
- i) the fees broken down by tax rates and individual tax exemptions, and the gross amount;
- j) the separate identification of the relevant tax rates and the VAT amount applicable to the fee;
- k) the federal tax identification number or the VAT identification number of the Contractor;
- l) time sheets / records of materials / records of tools or other records if need be.

If the Contractor has his official address outside the Federal Republic of Germany the following information also need to be included in the invoice:

- a) the product description;
- b) the eight-digit serial number of the product indices for the export statistics;
- c) the statistical total product value free at the German border (without additional costs);
- d) the net weight in kg;
- e) the country of origin of the products;
- f) the IBAN (International Bank Account Number) as well as the Swift Code (BIC) of the TSO bank.

More details on the presentation of invoices are available under <https://www.50hertz.com/Partners/Suppliers> (document "*Rechnungsinhalte und mögliche Rücksendungsgründe*" (invoice content and potential reasons for its return)). However, these details are only for informational purposes and in no way guarantee the completeness and (tax) legal accuracy. Only the arrangements made in Contractual Documents are legally binding.

Incomplete or inaccurate invoices can be rejected by the TSO and shall not meet the conditions which need to be satisfied to trigger a due date.

S4.2 Due date interest and default

Neither Party shall be liable for payment of any interest on payments having fallen due, unless such Party is in payment default (*Zahlungsverzug*). Claims for payment of default interest, if any, shall remain unaffected.

The TSO shall not be in payment default before having received a payment reminder from the Contractor.

The TSO can refuse to pay default interest to the extent that the TSO can prove that the actual loss caused by the payment delay suffered by the Contractor was lower than the statutory interest.

S4.3 Partial and final invoices

Invoices should be marked as ongoing partial invoices or final invoice according to their purpose. Partial invoices should be presented by the Contractor so that they can be used as parts of the final invoice. Each partial invoice must include details about the scope and value of all the Services to date and the partial payments already received. The final invoice should itemize the Services according to the items in the contract and should cite the partial payments separately.

If it emerges after the presentation of a partial invoice that there will be no further partial invoices to come, on the request of the TSO the last partial invoice should be declared retrospectively by the Contractor in writing to be the final invoice.

Partial or complete payment by the TSO does not imply an acceptance and/or acknowledgement of the delivery of Services.

S4.4 Assignment of claims

The Contractor is not entitled to assign his claims against the TSO or have them collected by third parties without the TSO's written consent; sect. 354a of the German Commercial Code (HGB) remains unaffected. This does not apply if the Contractor has been granted an extended retention of title in the course of normal business.

S4.5 Offsetting and Rights of Retention

The Contractor shall only be entitled to exercise any right of set-off or retention with respect to undisputed claims or claims which have been finally confirmed by a court or other competent body.

S5. LABOUR AND SOCIAL SECURITY LAWS

The Contractor represents to comply with applicable labour and social security laws including documentation requirements and will provide the TSO with proper evidence on request. A default on its labour and social security obligations is recognized by the Parties as a serious breach of the Contractor's obligations and entitles the TSO to terminate the Contract, pursuant to Article 36.1 of the GPC ELECTRICAL EQUIPMENT. The TSO cannot be held liable for the payment of fines or taxes if the Contractor does not comply with such obligations. This will in particular apply to the German Minimum Wage Act (Mindestlohngesetz - MiLoG) and the further duties under the MiLoG will be adhered to. The Contractor shall safeguard and prove on request of TSO that this is taken care of for any of its subcontractors as well.

S6. PENALTIES FOR FAILURE TO PERFORM

For each single case of culpable (i.e. at least negligent) breach of an obligation of the Contractor having been agreed to be penalized in the Contract, the Contractor shall pay a contractual penalty. The amount of the penalties is set forth in the Contractual Documents which may stipulate different amounts, depending on the degree of severity and type of default. Otherwise, the Contractor shall owe an adequate penalty, which if disputed between the Parties, to be fixed by a competent court or arbitral tribunal.

If TSO is claiming further damages as a result of such breach of duty, the Contractor may deduct any contractual penalty paid for such breach of duty.

The penalties are not subject to the liability cap(s) in accordance with Article 37 of the GPC ELECTRICAL EQUIPMENT.

The TSO is not required to expressly reserve the right to claim a penalty at the time of taking delivery of any Services; the TSO may reserve the right to claim such penalties within a reasonable time period (of no more than three weeks) after receiving the final invoice of the Contractor.

S7. PENALTIES FOR LATE PERFORMANCE

The culpable exceeding of a deadline by the Contractor shall entitle the TSO to a penalty. Unless otherwise agreed between the Parties, this shall apply for the deadline for completion of the Services and other deadlines individually specified by the Parties in the Contract (for instance by adding the letter "P" or the remark "penalised" to the deadline)

Where the Parties have not agreed on individual rates or amounts elsewhere in the Contract, the penalties for late performance are equal to 0.2% of the amount of the Contract per Working Day of delay, up to a limit of 5% of the amount of the Contract (the total value of the framework agreement in case of framework agreement) for all penalties including those set out in Article S6 above.

If TSO is claiming further damages as a result of such breach of duty, the Contractor may deduct any contractual penalty paid for such breach of duty.

The penalties for late performance are not subject to the liability cap(s) in accordance with Article 37 of the GPC ELECTRICAL EQUIPMENT.

The TSO is not required to expressly reserve the right to claim a penalty at the time of taking delivery of any Services; the TSO may reserve the right to claim such penalties within a reasonable time period (of no more than three weeks) after receiving the final invoice of the Contractor.

S8. FINANCIAL GUARANTEES

This Article S8 shall apply only to the extent that there is no individual agreement in the Contracts on this subject matter.

S8.1 Performance Bond

Unless otherwise agreed by the Parties in writing, the Contractor shall provide collateral in the form of a performance security with an amount corresponding to 10% of the preliminary overall net order value plus VAT. This performance security shall secure all obligations arising from the contract, including invoicing, net amount of

the prepayment plus the legally payable VAT at the time of the prepayment due date remedy of defects before acceptance and damage claims as well as refund of overpayment including interest.

The performance security shall be provided in the form of an absolute bank guarantee (selbstschuldnerische Bankbürgschaft) and shall be issued by a first-rate credit institution approved in the EU (i.e. a credit institution that has been rated at least "A-" (Standard & Poor's and Fitch) or "A3" (Moody's) in the long term by a rating agency (Standard & Poor's, Moody's or Fitch) and a rating of at least "A-2" (Standard & Poor's) or "P-2" (Moody's) or "F2" (Fitch) in the short term by the same rating agency or better or in the form of a guarantee of an insurance company with an equal rating.

If the required rating is lost or reduced, the Contractor will notify this to the TSO without undue delay. The TSO reserves its rights to require the Contractor to provide a Performance Bond from a bank /insurance company that complies with the minimum rating requirements, within 20 (twenty) Business Days after the loss of the minimum required rating by the first bank/insurance company.

The guaranty shall not include an expiry date and the guarantor shall waive the defenses of failure to pursue remedies against the debtor (Vorausklage), voidability (Anfechtbarkeit) and set-off (Aufrechenbarkeit) and the right to deposit the guarantee amount (Hinterlegung).

The performance guarantee shall be handed over to the TSO within 14 Days of entering into the Contract. If the guarantee was not made available when the first invoice is received, the TSO shall have the right to withhold payments up to the amount of the agreed performance security.

S8.2 Defects Liability Bond

If not otherwise agreed upon by the Parties in writing, the TSO shall be entitled to withhold the amount of 5% of the net value of the Contract plus VAT from the final invoice as security for warranty claims.

The amount shall be released to the Contractor (when otherwise due) if the Contractor provides a warranty bond that meets the same requirements set out for the performance security set out in Clause 28.1. The warranty bond shall secure all warranty claims, including compensation claims and the refund of overpayments including interest.

S9. WASTE AND EXCESS MATERIAL REMOVAL

The Contractor shall check whether the responsible authorities, associations or others have any specific requests concerning the substances or objects to be disposed of.

Furthermore, the Contractor accepts liability for ensuring that all disposal measures undertaken on his behalf take into consideration:

- the generally recognised technical rules;
- the relevant laws, regulations and other requirements of occupational and environmental safety, accident prevention and the generally recognised rules of technical safety and occupational health;
- the general transport safety requirements as well as any conditions of building, commercial and traffic law that apply at the time the services are performed.

The Contractor guarantees to the TSO that during his utilisation, cleaning, closing or vacating of localities there has been no adverse alterations to soil in the meaning of the German Federal Soil Protection Act (BBodSchG) caused by his utilisation, or negative alterations of the water quality in the meaning of the German Water

Management Act (WHG). If, however, soil and/or water contamination should occur, this should be indicated to the TSO immediately and resolved in agreement with him at the Contractor's expense.

The substances or objects to be disposed of in the framework of the Service(s) are listed in a disposal policy. The planned means of disposal for every type of waste must be completed for the bid submission, and their reliability must be proven through relevant documents such as collective waste disposal order, transportation permit, notification in accordance with sect. 53 of the German Waste Management Act (KrWG), permission in accordance with sect. 54 KrWG, waste disposal operation certificate or waste disposal plant licence.

The waste disposal services only take place following the inspection of all planned means of disposal by the TSO and the relevant authorities.

The relevant waste managers of the TSO will approve the waste disposal concept in writing following its inspection. It will then become part of the contract and is binding for the Contractor. Modifications to the means of disposal must be communicated to the TSO in writing and require the TSO's renewed written approval.

The Contractor, in consultation with the TSO, is responsible for obtaining new waste disposal orders in good time. The necessary information and signatures of the TSO as waste producer are to be provided in conjunction with the responsible waste managers of the TSO.

The Parties agree that the confirmation of the transfer of waste by the waste transporter can also be provided after the transfer of waste by the waste transporter, but at the latest before the transfer to the waste disposer, since it partially cannot be signed at the TSO's facilities. The Contractor is obliged to agree this in the same way with the transporter.

The TSO must be provided at any time with comprehensive information about and insight into the supporting documents for the planned and completed waste disposal.

In the event of transportation of waste, which is subject to the hazardous goods law, the Contractor is obliged to only employ staff with sufficient knowledge about hazardous goods, training or permits and to prove this to the TSO on demand.

S10. GOVERNING LAW AND JURISDICTION

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by and construed in accordance with the law of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The Parties agree that the courts of Berlin shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims). In addition, the TSO is entitled to take legal action at the competent court at the domicile or place of principal establishment of the Contractor.