

**General Terms and Conditions
for the execution of work performances by Subcontractors**

(AVB-NU)

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§ 1 – Subject Matter of Contract

The principal mandates the agent, on the basis of these Terms and Conditions, with the performances and works, described more substantially in the offer. This AVB-NU applies, as far as the parties do not stipulate otherwise, also for additional performances as per § 1 subs 4 Sentence 2 German Construction Contract Procedure.

§ 2 – Integral Parts of the Contract

1. Integral Parts of the Contract are:
 - 1.1. the agent's offer including the attachments listed there
 - 1.2. these General Terms and Conditions (AVB-NU)
 - 1.3. the Terms and Conditions of the German Construction Contract Procedure Part B (VOB/B) in the version of 2009
2. On contradiction, the integral parts apply in the above-mentioned order.

§ 3 – Scope of Services

1. The performances to be done comply with the integral parts of the contract as per § 2.
2. Furthermore the agent is obliged to hand over the plans of executed drawings and revision plans as well as the manual and maintenance documents of all technical equipment and the premises required to be maintained and the maintenance guide in triplicate. These documents have to be handed over by the final inspection at the latest.
3. The agent has to procure punctually all licenses, permissions and authorizations, etc which are necessary for the execution of his performances with the exception of the construction permit.
4. The provision of water, power supply as well as the waste disposal are agent's ancillary services for which he will bear the costs and the responsibility if nothing else is stipulated in the contract.
5. The agent is obliged to dispose the waste which results from his works every day on his own.

§ 4 – Execution

1. The agent is obliged to provide a German speaking, skilled technical supervisor for the time of his work on site which accords to the scale and way of his scope.
2. The responsible construction manager and respectively his representative have to be mentioned by name and present on site during the regular working hours. Out of regular working hours he has to be available telephonically. The principal is authorized to demand exchange of single workers of the technical supervision if good causes are shown.
3. The agent is obliged to tell adjustments which are necessary for the execution of his works to the principal only to him.
4. The agent has to compile a detailed schedule on the basis of the agreed execution deadlines within 2 weeks after placing of order at the latest. The schedule as well as the payment schedule is binding with the assent of the principal. The agent is obliged to update and to adapt the schedule to the actual process.
5. The agent is obliged to write daily reports and to hand a copy over to the principal. These reports must contain all the details which are relevant for the fulfilment of the contract and the settlement as e.g. construction progress, weather, number and type of the employed workers on site, the number and type of the used equipment, begin and end of the performances of substantial scale, inspections, interruptions of work with indication of the reasons, accidents, official rulings and other special incidents.
6. The supervision of the principal is responsible to fix a date and to arrange a weekly meeting if necessary also more frequently. The agent is obliged to participate in these regular meetings with enough skilled members of the technical supervision.
7. The parties agree that there will be a sampling inspection regarding the units and materials to be installed. The sampling inspections take place on the basis of a sampling list which has to be adjusted by both parties. The sampling list has to contain also the schedule and date of the sampling inspection. All samples are to be presented in time so that no delays in the construction progress can emerge, taking into account the testing period of 5 working days for the principal. In general, sampling inspections have to be made with several cost neutral versions (at least 3 versions). To grant a better evaluation only connected sectors have to be put together in the sampling inspection.
8. The goods, designated for delivery to the principal, are to be packed professionally and properly by the agent. If goods are to be packed and piled up on pallets, the

agent has to grant an appropriate fastening on the pallet (e.g. fastening by tension belts)

9. For the provision by the principal applies that the provided goods have to be used.
10. Before the execution of the assembling the delivered material has to be checked on eventual damages in transit or missing goods by the agent. If goods are missing or damaged he has to take pictures, note it on the bill of lading and report it to the principal.
11. The assemblers are obliged to wear the vest and the t-shirts provided by the principal on site at the assembling.
12. If work is paid by the hour, the agent has to hand over daily the time reports in triplicate to the site management for signature and to submit it to the project manager. Additionally to the information as per § 15 subs 3 / German Construction Contract Procedure Part B, these time reports have to contain the following information: date, name of the site, the exact name of the place of execution within the site, the type of work, the names of the workers and their occupational or wage group or their brackets, the working time per worker, if necessary divided into additional, night, Sunday and holiday work, as well as difficulties which are not stated in the cost rate and the parameter of the equipment.
13. The signature of time reports is only an acknowledgement for the type and scope of the performances. The principal is allowed to check if the performances are hourly wage or contractual works.

§ 5 – Alteration of Services

1. Instructions concerning alterations of services are to be made out of arguments in writing and only by people who are authorized to alter as per the conditions of this contract.
2. The agent is obliged to submit an additional offer to the principal in which the extra or reduced costs for the alteration as per the contract award estimate are listed. Furthermore the impacts of the alterations on the construction progress are to be stated. If the agent does not communicate the eventual delays caused by the alteration until the submission of the order at the latest, an extension of the contracted time of execution due to the alteration can be excluded, except if it is apparently necessary.
3. The agent is also on claims as per §§ 1 subs 3, 2 subs 5 German Construction Contract Procedure obliged to communicate immediately the extra costs in writing.
4. The agent has to hand over a contract award estimate in a closed envelope to the principal on placing the order at the latest. The principal is obliged to open the estimate to check the additional offers in the presence of the agent after a short notice.
5. If not agreed otherwise, the discounts on the order sum given are considered also if new prices are quoted for additional costs.

§ 6 – Times of Performances

1. The binding times of performances (contractual terms) as well as eventual further terms arise from the order / from the General Terms and Conditions for Subcontractors with the agent.
2. The principal can make instructions concerning the construction time and progress, especially take measures of quickening if the agent's working team can keep up with it and the measures are not unacceptable, taking into account the interests of both parties. The remuneration of such performances comply with § 5 of this contract.

§ 7 – Contract Penalty

1. The fixed execution dates as well as other dates and terms result from the order or from the contract for subcontractors..
2. For the culpable exceeding of the agreed interim dates the agent has to pay a contract penalty for every working day of the exceeding of 0,2 % on the net order sum of the partial performance. The contract penalties which are due to exceeding of interim dates are credited to contract penalties of the following interim dates or dates of completion.
3. For the culpable exceeding of the agreed dates of completion the agent has to pay a contract penalty for every working day of the exceeding of 0,2 % on the net order sum of the performance.
4. The contract penalty is limited to a total percentage of 5% on the net order value.
5. The assertion of claim for damages besides the contract penalty remains unaffected. But a forfeited contract penalty is credited to such claims for damages.
6. The contract penalty can be held back until the final invoice.
7. If contract terms are postponed or rescheduled due to eventual justifiable claim for construction time extensions of the agent, the preceding contract penalty regulations

are linked to the new terms without the necessity of a new agreement regarding the contract penalty regulations.

§ 8 – Remuneration

1. Payment is effected excluding the current VAT. If the principal as recipient of benefits is a delinquent tax payer as per § 13b Turnover Tax Law, payment is effected net. The agreed unit price and lump-sums are fixed prices and include the remuneration for supplementary performances.
2. Automatic adjustment clauses for labour -, material - and equipment costs are not agreed.

§ 9 – Settlement and Payment

Prices stated in the offer and in the contract apply for the completed performance including the delivery, unloading, unpacking, storing on site if nothing else is agreed in the building contract.

1. Payments on account are effected as per instalment plan or on demand of the agent.
2. The issuing of the final invoice requires the completion of the work on site as well as a final acceptance and the removal of all damages discovered at the final acceptance which are significant or influence the use.

§ 10 – Acceptance

1. The agent's performances are formally accepted after completion. Partial acceptance as well as the acceptance of works to remove damages as per § 13 subs 5 no. 1 German Construction Contract Procedure are made formally.
2. Partial performances which are not apparent or accessible until the acceptance are to be checked together with the principal after completion which has to be communicated to the principal in writing. The check is not a partial acceptance but it leads to a reversal of the burden of proof if the principal does not complain about the performance. A written protocol has to be compiled about the acceptance and check.
3. The principal can remove defects also before the acceptance at the expense of the agent if the agent does not meet the principal's demand to remove the defects within a time given by the principal. A termination of the contract is not required.

§ 11 – Claims for Defects

1. Warranty claims from § 13 subs 4 no. 1 and 2 German Construction Contract Procedure shall be time-bared after five years plus six weeks from the acceptance of the performances stated in the contract.
2. The parties agree that the law of contracts for works and services also applies on the agent's performances which contain the delivery of goods to be produced. Warranty claims shall be time-bared after five years plus six weeks from the acceptance

§ 12 – Securities and Hold Backs

1. Suretyship of performance
 - 1.1. As security for the fulfilment of the contract the agent hands over an unlimited, absolute and directly enforceable suretyship of a credit institute which meets the requirements as per § 17 subs 2 German Construction Contract Procedure to the principal within two weeks after conclusion of the contract. Until the hand-over of the suretyship of performance, the principal is entitled to hold back the due payments on account up to the amount of the suretyship.
 - 1.2. The suretyship has to amount to 5% of the net order value or of the net flat price.
 - 1.3. The suretyship of performance applies on the fulfilment of all agents' obligations out of this contract especially on the contractual execution of the performances including settlement, claims for defects and indemnification including the interests as well as claims on payment of contract penalties.
 - 1.4. For the certificate of bond applies furthermore:
 - 1.4.1. In the suretyship, pleas as per §§ 770 up to 772 Civil Code are to be waived. The right to setoff has only to be waived as far as the counter claim is disputed or legally determined.
 - 1.4.2. The suretyship does not have to contain a security deposit clause.
 - 1.4.3. The extent of the security has to comply with § 12 subs 1.3 of this contract.
 - 1.4.4. The suretyship has to contain that the claims from it do not become time-bared before the secured claims.
 - 1.4.5. The suretyship has to contain that the law of the Federal Republic of Germany applies on disputes concerning the suretyship.
 - 1.4.6. The suretyship has to contain that the place of jurisdiction for disputes concerning the suretyship is Waldkirch.
2. Suretyship for warranty:
 - 2.1. For the suretyship for warranty the principal deducts 5% of the examined final invoice amount. This deduction can be revoked with the maturity of the final invoice at the earliest and only against the handover of an unlimited, absolute and directly enforceable suretyship for warranty of a credit institute which meets the requirements as per § 17 subs 2 German Construction Contract Procedure.
 - 2.2. The suretyship for warranty applies on the fulfilment of claims for defects including indemnification as well as the reimbursement of overpayment including interests.
 - 2.3. The return of the suretyship comply with the measure that a return is only possible after the expiration of the lapse of time as per § 17 subs 8 no. 2 German Construction Contract Procedure. § 17 subs 8 no. 2 Sentence 2 German Construction Contract Procedure remains unaffected.
 - 2.4. For the certificate of bond applies furthermore:

- 2.4.1. In the suretyship, pleas as per §§ 770 up to 772 Civil Code are to be waived. The right to setoff has only to be waived as far as the counter claim is disputed or legally determined.
- 2.4.2. The suretyship does not have to contain a security deposit clause.
- 2.4.3. The suretyship of the security has to comply with § 12 subs 2.2 of this contract.
- 2.4.4. The suretyship has to contain that the claims from it do not become time-bared before the secured claims
- 2.4.5. The suretyship has to contain that the law of the Federal Republic of Germany applies on disputes concerning the suretyship.
- 2.4.6. The suretyship has to contain that the place of jurisdiction for disputes concerning the suretyship is Waldkirch.
3. The principal is not obliged to pay the hold backs provided in § 12 of this contract to a blocked account as per § 17 German Construction Contract Procedure.

§ 13 – Termination of Contract

1. The termination of the contract is possible under condition of §§ 8 and 9 German Construction Contract Procedure
2. Furthermore both parties have the right of termination of the contract due to an important reason as e.g. culpable acting or neglect of both parties concerning and endangering the fulfilment of the contract and makes the collaboration for one party unacceptable. An important reason for a termination by the principal is especially if the agent
 - 2.1. interrupts or does not take up work without an appropriate reason,
 - 2.2. works so slowly that a fulfilment of contract in time seems to be impossible,
 - 2.3. restricts to attend the principal's orders,
 - 2.4. violates the law to combat illegal employment, the law of concerning the posting of the employees abroad and / or the Social Security Code,
 and the principal has written a warning containing the objectionable circumstances and the agents does not immediately after receipt of the warning correct the deficiencies.

In the case of a termination or other endings of the contract the agent has to finish his work without difficulties and to leave work for another agent properly.

§ 14 – Liability and Insurance

1. The agent has to hand over the closing of an CGL insurance to the principal unrequested before beginning of the performance at the latest by sending a confirmation of the insurer. Payments to the agent are only effected after presentation of the confirmation.
2. The agent has the obligation to safeguard all the areas occupied against hazards until the complete clearance of the site. An earlier retransfer of the above-mentioned obligation for areas and surfaces where the works are already finished is possible, provided that both parties have agreed that the obligation is transferred to the principal or a third party and that the surfaces are cleared.
3. The agent releases the principal from all claims which assert third parties in relation with the execution of the performances against him.

§ 16 – Subcontractor

The agent has the right to engage subcontractors for the manufacture of the work only with the principal's agreement in writing.

§ 17 – Minimum Wage, Certificates

1. The agent has to demonstrate six weeks after begin of his works that all his employees carry the statutory minimum wage. The principal can request the demonstration of the wage payment at any time.
2. If he cannot demonstrate payment of the statutory minimum wage until issuing of the final invoice or if he has not paid the minimum wage, the agent has to pay a contract penalty of 0,1 percent of the total net order value per employee but not more than 2,5 percent of the total net order value. If anyone puts in a claim on the principal for payment of the statutory minimum wage, the contract penalty is credited to the principal's right of recourse against the agent.
3. Within two weeks after conclusion of contract, the agent has to hand over to the following documents to the principal:
 - Certificate of Entry in the Skilled Trade Register
 - Copy of identity card of social insurance and, if requested, his work permit and those of his employees within three working days after start of execution
 - Certificate of social insurer that there are no delays in payment contribution (health insurance, employer's liability insurance)
 - Copy of central register of trade and industrial offences (not older than four weeks).

If the agent does not fulfil this obligation in time, the principal is allowed to terminate the contract extraordinarily.

§ 18 – Avoidance of Right of Retention and Right to Refuse to Perform

1. If one party makes use of the above-mentioned rights, he is obliged to tell the amount because of which he wants to assert the right. If the other party denies the entitlement of the assertion of the rights, he is allowed to avert the assertion by security deposits at the amount of the told amount.
2. Securities for avoidance of the right of retention and the right to refuse to perform as per § 18 of this contract can be made by deposit of an unlimited, absolute and directly enforceable suretyship of a credit institute or at a credit insurer as per § 17 subs 2 of German Construction Contract Procedures.

3. The costs for the securities are to be born by both parties proportionately on how far the right of retention and the right to refuse to perform were justifiable or not. The above-mentioned regulations apply in the case that the agent threatens to stop production as per § 16 subs 5 no. 5 German Construction Contract Procedures or wants to terminate the contract due to the denied delay in payment.

§ 19 – Assignment of Claims, Set – off

1. The principal has to consent the assignment of claims, irrespectively what it contains. Assignments made without the consent are not valid. The principal will only refuse if, after examination in single cases, his interests in keeping the claim predominate the interests of the other party in assignment of claim.
2. A set-off of principal's counter claims are only valid if these claims are not denied by the principal or if they are legally determined.

§ 20 – Confidentiality

1. Confidential information in accordance with this agreement is all the company and business secrets of GANTER and of his clients as well as all the other information about which the agent comes to know, irrespectively whether in writing, orally, in electronic or visual format, during a briefing or at another time in relation with the above-mentioned project.
Information which is well-known before is no confidential information.
2. The agent is obliged to keep all the information secretly and confidential towards third parties and not to publish them. The agent is also obliged to keep the confidential information save that third parties cannot inspect them. The use of the information for other purposes than the quotation or the eventual service provision for GANTER is strictly forbidden. These duties are applicable for an indefinite time. However, the non-disclosure agreement ends when the confidential information gets known without any effort of the agent's part or when the principal agreed to the forwarding of single confidential information.
3. The agent is obliged not to contact the principals clients for the time of the collaboration and the duration of the current project which the principal need his service for, also not via intermediary.
4. The agent has to access the confidential information only to those employees who are responsible for submitting the corresponding offer and for performing the services for the principal and who are sworn to secrecy for an indefinite time. The agent is responsible for the compliance with the regulations of the employees.
5. All the data media, documents and samples which are released to the agent remain the principals property. They have to be returned to the principal immediately on request. Stored confidential data, copies of confidential information as well as records kept by the agent have to be destroyed on the principals request but after the collaboration at the latest.
6. If the agent has to disclose the confidential information to a public authority or a public court of law, he has to announce it to the principal in writing and in time.
7. The provision of information or access to the contract or to plans and documents of tender to third parties is forbidden, if the provision of information or the access is not necessary for the fulfilling of the contract. The same applies to company secrets and other confidential information which emerge in connection with the fulfilling of the contract.
8. Publications about the services and performances of the agent and parts of the project are only permitted after an agreement written by the principal. Same applies to publication of the principals name or the principals clients by the agent, especially in advertisement of the supplier and on his home page.
9. If a non-disclosure agreement has been signed, the agent has to pay for every case of culpable breach of secrecy or limitation of using our documents and name a contractual penalty in an appropriate amount but at least 10.00,00€. Irrespectively of indemnity claims, contractual penalty can be claimed but has to be credited against the indemnity claims unless a special non-disclosure agreement has been signed.

§ 21 –Final Clause

1. Amendments and modifications as well as oral sub-agreements to this contract have not been made. For the reason of evidence, only written form is applicable for modifications of contract and amendments. This applies also for the obligation of using the written form itself.
2. If one or more provisions of this contract are partially invalid or impracticable, it does not affect the validity and the practicability of the other terms and conditions. The parties have to work together to replace the invalid and impracticable provisions by those who match the commercial aims of the party with the invalid and impracticable provision best. The above shall apply accordingly to the closing of any gaps in the Agreement.
3. This Agreement shall be governed by the law of the Federal Republic of Germany without conflict of laws rules. The application of the "United Nations Convention on Contracts for the International Sale of Goods" (CISG) is excluded.
4. Exclusive place of jurisdiction for all disputes which result from this contract is Waldkirch – as long as the supplier is a merchant as per Commercial Law.
5. An agent who is not located in the Federal Republic of Germany is obliged to tell us his German authorized receiving agent within 14 days after the conclusion of the contract.
6. This agreement and its terms shall be governed by and constructed in accordance with the laws of Germany. If the English legal meaning differs from the German legal meaning of this agreement and its terms, the German meaning shall prevail.