

# **VOB Part B: General Terms and Conditions of Contract for the Execution of Construction Services (VOB/B Edition 2016)<sup>1)</sup>**

amended by announcement of 7 January 2016 (BAnz AT 19.01.2016 B3; ber. BAnz AT 01.04.2016 B1)

## **§ 1 Type and scope of the service**

(1)

The type and scope of the service to be performed is determined by the contract. The General Technical Terms and Conditions for Construction Services (VOB/C) also apply as part of the contract.

(2)

In the event of contradictions in the contract, the following shall apply in succession:

1.

the service description,

2.

the Special Conditions of Contract,

3.

any Additional Terms and Conditions of Contract;

4.

any Additional Technical Terms and Conditions of Contract,

5.

the General Technical Terms and Conditions of Contract for Construction Services,

6.

the General Terms and Conditions of Contract for the Execution of Construction Services

(3)

The Client reserves the right to order changes to the building design.

(4)

At the request of the Client, the Contractor must also perform services that have not been agreed upon and which are necessary for the performance of the contractual service, unless its business is not equipped for such services. Other services can only be transferred to the Contractor with his consent.

## § 2

### Vergütung

(1)

The agreed prices shall compensate for all services that are part of the contractual service according to the service description, the Special Contract Conditions, the Additional Contract Conditions, the Additional Technical Contract Conditions, the General Technical Contract Conditions for Construction Services and commercial custom.

(2)

The remuneration is calculated according to the contractual unit prices and the services actually performed, unless another method of calculation (e.g. by lump sum, hourly wage rates, cost price) has been agreed.

(3)

1.

If the quantity exported of the service or partial service covered by a unit price does not deviate by more than 10% from the scope provided for in the contract, the contractual unit price shall apply.

2.

For exceeding the quantity estimate in excess of 10 per cent, a new price shall be agreed upon request, taking into account the additional or reduced costs.

3.

In the event of a fall below the quantity estimate in excess of 10 per cent, the unit price for the quantity of the service or partial service actually performed shall be increased on request, unless the contractor receives compensation by increasing the quantities for other ordinal figures (items) or in some other way. The increase in the unit price is essentially intended to correspond to the additional amount resulting from the distribution of the construction site equipment and construction site overhead costs and the general business costs over the reduced quantity. VAT will be refunded according to the new price.

4.

If other services for which a lump sum has been agreed depend on the service or partial service covered under a unit price, the change in the unit price may also require an appropriate change in the lump sum.

(4)

If services of the Contractor stipulated in the contract are assumed by the Client itself (e.g. delivery of building materials, auxiliary construction materials and supplies), Section 8 (1) No. 2 shall apply mutatis mutandis, unless otherwise agreed.

(5)

If the basis of the price for a service provided for in the contract is changed by a change in the building design or other instructions of the client, a new price

taking into account the additional or reduced costs. The agreement is to be reached before execution.

(6)

1.

If a service not provided for in the contract is required, the contractor is entitled to special remuneration. However, he must announce the claim to the client before he begins to perform the service.

2.

The remuneration is determined according to the basis of the price determination for the contractual service and the special costs of the required service. If possible, it must be agreed before the start of the execution.

(7)

1.

If a lump sum has been agreed as remuneration for the service, the remuneration remains unchanged. If, however, the performance performed deviates so significantly from the contractually provided service that it is not reasonable to maintain the lump sum (Section 313 of the German Civil Code), compensation must be granted on request, taking into account the additional or reduced costs. The calculation of the compensation must be based on the basis of the price determination.

2.

The provisions of subsections 4, 5 and 6 shall also apply if a lump sum is agreed.

3.

Unless otherwise agreed, numbers 1 and 2 shall also apply to lump sums agreed for parts of the service; Paragraph 3 number 4 shall remain unaffected.

(8)

1.

Services that the Contractor performs without a mandate or under arbitrary deviation from the assignment will not be remunerated. The Contractor shall remedy them upon request within a reasonable period of time; otherwise it can be done at his expense. He shall also be liable for other damages incurred by the Client as a result.

2.

However, the contractor is entitled to remuneration if the client subsequently acknowledges such services. He is also entitled to remuneration if the services were necessary for the performance of the contract, corresponded to the presumed will of the client and were notified to him immediately. Insofar as the Contractor is entitled to remuneration, the calculation bases for changed or additional services in paragraphs 5 or 6 shall apply accordingly.

3.

The provisions of the German Civil Code (BGB) on management without mandate (§§ 677 et seq. of the German Civil Code) remain unaffected

(9)

1.

If the Client requests drawings, calculations or other documents which the Contractor is not required to obtain under the contract, in particular the Technical Terms and Conditions of the Contract or commercial custom, he shall pay for them.

2.

If he has technical calculations not made by the contractor checked by the contractor, he must bear the costs.

(10)

Hourly wage work is only remunerated if it has been expressly agreed as such before it begins (§ 15).

### **§ 3 Implementation documents**

(1)

The documents required for the execution must be handed over to the contractor free of charge and in good time.

(2)

The staking out of the main axes of the structural facilities, as well as the boundaries of the terrain that is made available to the contractor, and the creation of the necessary height fixed points in the immediate vicinity of the structural facilities are the responsibility of the client.

(3)

The terrain surveys and stake-outs provided by the Client and the other documents handed over for the execution shall be authoritative for the Contractor. However, insofar as this is part of the proper performance of the contract, he must check them for any discrepancies and inform the Client of any discovered or suspected defects.

(4)

Before the start of the work, the condition of the roads and ground surface, the receiving waters and receiving water pipes, as well as the structural facilities in the construction area, must be recorded, if necessary, in a record which must be approved by the client and contractor.

(5)

Drawings, calculations, checks of calculations or other documents which the Contractor is required to procure in accordance with the contract, in particular the Technical Terms and Conditions of the Contract, or commercial custom, or at the special request of the Client (§ 2 subsection 9), shall be submitted to the Client in good time upon request.

(6)

1. The documents referred to in paragraph 5 may not be published, reproduced, modified or used for any purpose other than that agreed upon without the authorisation of their author.

2.

The Client shall have the right to use computer programs with the agreed performance characteristics in unchanged form on the specified devices. The Client may make two copies for the purpose of data backup. These must contain all identification features. The whereabouts of the copies must be proven on request.

3.

The Contractor shall remain entitled to use the documents and the computer programs without prejudice to the Client's right of use.

#### **§ 4 Implementation**

(1)

1.

The client must ensure that general order is maintained on the construction site and regulate the cooperation of the various contractors. He must obtain the necessary permits and permits under public law — e.g. under building law, road traffic law, water law, trade law.

2.

The Client has the right to monitor the performance of the service in accordance with the contract. For this purpose, he has access to the workplaces, workshops and storage rooms where the contractual service or parts of it are manufactured or the materials and components intended for this purpose are stored. Upon request, the work drawings or other execution documents as well as the results of quality tests must be submitted to him for inspection and the necessary information must be provided, provided that no business secrets are disclosed in this way. Information and documents designated as trade secrets must be treated confidentially.

3.

The Client shall be entitled to issue such orders as are necessary for the performance of the service in accordance with the contract, while maintaining the direction to which the Contractor is entitled (paragraph 2). In principle, the orders are to be issued only to the contractor or his representative appointed to direct the execution, unless there is imminent danger. The Client shall be informed of who has been appointed as the Contractor's representative for the management of the execution.

4.

If the Contractor considers the Client's instructions to be unjustified or inexpedient, he shall raise his doubts, but shall execute the instructions on request, unless there are statutory or official provisions to the contrary. If this causes an unjustified aggravation, the client must bear the additional costs.

(2)

1.

The Contractor must perform the service under his own responsibility in accordance with the contract. In doing so, he must observe the recognised rules of technology and the legal and official provisions. It is his business to direct the execution of his contractual performance and to ensure order at his workplace.

2.

He is solely responsible for fulfilling the legal, official and employers' liability insurance association obligations towards his employees. It is solely his responsibility to conclude the agreements and measures that govern his relationship with employees.

(3)

If the contractor has doubts about the intended type of execution (also because of the safeguarding against the risk of accidents), about the quality of the materials or components supplied by the contracting authority or against the services of other contractors, he must inform the contracting authority of these in writing without delay — if possible before the start of the work; however, the Client remains responsible for his information, orders or deliveries.

(4)

Unless otherwise agreed, the Client shall make available to the Contractor free of charge for use or shared use:

1.

the necessary storage and workstations on the construction site,

2.

existing access roads and sidings,

3.

Existing connections for water and energy. The costs for consumption and the meter or meter are borne by the contractor, several contractors bear them proportionately.

(5)

The contractor must protect the services performed by him and the objects handed over to him for execution against damage and theft until acceptance. At the request of the client, he must protect them from winter damage and groundwater, and also remove snow and ice. If the obligation under sentence 2 is not already incumbent on him under the contract, the remuneration shall be regulated in accordance with § 2 subsection 6.

(6)

Substances or components that do not comply with the contract or the samples shall be removed from the construction site by order of the Client within a period of time specified by the Client. If this is not done, they may be removed at the Contractor's expense or sold for his account.

(7) Services that are already recognized as defective or contrary to the contract during performance must be replaced by the Contractor at its own expense with defect-free services. If the contractor is responsible for the defect or lack of conformity, he must also compensate for the resulting damage. If the Contractor fails to comply with the obligation to remedy the defect, the Client may set him a reasonable period of time to remedy the defect and declare that he will terminate the contract after the period has expired without success (Section 8 (3)).

(8)

1.

The contractor must carry out the service in its own company. With the written consent of the client, he may transfer them to subcontractors. Consent is not required for services for which the Contractor's business is not prepared. If the contractor does not provide services in its own business without the written consent of the client, even though its business is set up for this, the client may set a reasonable period of time for the contractor to commence the service in its own business and declare that it will terminate the contract after the period has expired without success (Section 8 (3)).

2.

When awarding construction services to subcontractors, the Contractor shall base its decision on the Procurement and Contract Regulations for Construction Services Parts B and C.

3.

The Contractor shall notify the Client of the subcontractors and their subcontractors with their names, legal representatives and contact details without request at the latest by the subcontractor's commencement of services. At the request of the Client, the Contractor shall submit declarations and evidence of suitability on behalf of its subcontractors.

(9)

If, during the performance of the service, objects of antiquity, art or scientific value are discovered on a property, the Contractor shall notify the Client of the find before any further discovery or modification and deliver the objects to him in accordance with further instructions. The reimbursement of any additional costs is governed by § 2 (6). The rights of the discoverer (§ 984 BGB) are held by the client.

(10)

The condition of parts of the service shall be determined jointly by the client and the contractor upon request if these parts of the service are withdrawn from inspection and determination by further execution. The result must be recorded in writing.

## **§ 5 Execution Deadlines**

(1)

Execution must be commenced, appropriately promoted and completed after the binding deadlines (contractual deadlines). Individual deadlines contained in a construction schedule are only considered contractual deadlines if this is expressly agreed in the contract.

(2)

If no deadline has been agreed for the commencement of the performance, the Client shall provide the Contractor with information on the expected commencement upon request. The Contractor shall commence within 12 working days of being requested. The start of the execution must be notified to the client.

(3)

If manpower, equipment, scaffolding, materials or components are so inadequate that the execution deadlines cannot be met apparently, the contractor must remedy the situation immediately upon request.

(4)

If the Contractor delays the commencement of performance, is in default of completion, or fails to comply with the obligation referred to in subsection (3), the Client may, if the contract is maintained, claim damages in accordance with Section 6 (6) or set the Contractor a reasonable period of time for the performance of the contract and declare that it will terminate the contract after the period has expired without success (Section 8 (3)).

#### **§ 6 Obstruction and interruption of execution**

(1)

If the Contractor believes that the proper performance of the service is impeded, he must notify the Client of this in writing without delay. If he fails to notify, he is only entitled to have the obstructive circumstances taken into account if the client was obviously aware of the fact and its obstructive effect.

(2)

1.

Execution deadlines are extended if the obstruction is caused:

a)

by a circumstance from the client's area of risk,

b)

by a strike or a lockout ordered by the employers' professional association in the Contractor's business or in a company working directly for it,

c) due to force majeure or other circumstances unavoidable for the Contractor.

2.

Weather conditions during the execution period, which normally had to be expected when the bid was submitted, are not considered to be an obstruction.

(3)



The contractor must do everything that can reasonably be expected of him to enable the continuation of the work. As soon as the obstructive circumstances disappear, hat er ohne to resume work further and immediately and to notify the Client thereof.

(4)

The extension of the deadline will be calculated according to the duration of the obstruction, with a surcharge for the resumption of work and any postponement to a less favourable time of year.

(5)

If the performance is interrupted for a probable longer period of time without the performance becoming permanently impossible, the services performed shall be invoiced according to the contract prices and shall also be reimbursed for the costs already incurred by the Contractor and included in the contract prices of the part of the service not performed.

(6)

If the obstructive circumstances are the responsibility of one party to the contract, the other party is entitled to compensation for the demonstrably incurred damage, but only in the case of intent or gross negligence. In all other respects, the Contractor's claim to appropriate compensation pursuant to Section 642 of the German Civil Code shall remain unaffected if the notification is made pursuant to subsection 1 sentence 1 or if there is public knowledge pursuant to subsection 1 sentence 2.

(7)

If an interruption lasts longer than 3 months, either party may terminate the contract in writing after the expiry of this period. Billing shall be governed by subsections 5 and 6; if the contractor is not responsible for the interruption, the costs of clearing the construction site shall also be reimbursed, insofar as they are not included in the remuneration for the services already performed.

#### **Section 7 Distribution of the risk**

(1)

If the service performed in whole or in part is damaged or destroyed before acceptance by force majeure, war, riot or other objectively unavoidable circumstances for which the Contractor is not responsible, the Contractor shall have the claims pursuant to Section 6 (5) for the parts of the service performed; there is no mutual obligation to compensate for other damages.

(2) The service carried out in whole or in part includes all services directly connected with the structural system and incorporated into its substance, regardless of its degree of completion.

(3)

The service carried out in whole or in part does not include the materials and components that have not yet been installed, as well as the construction site equipment and stakeouts.

The service carried out in whole or in part also does not include auxiliary structures and scaffolding, even if these are awarded as a special service or independently.

## **§ 8**

### **Termination by the Client**

(1)

1.

The Client may terminate the contract at any time until the performance has been completed.

2.

The Contractor shall be entitled to the agreed remuneration. However, he must allow himself to be credited for what he saves in costs as a result of the cancellation of the contract or which he acquires or maliciously fails to acquire by other uses of his labour and his business (§ 649 BGB).

(2)

1.

The Client may terminate the contract if the Contractor ceases to make payments, if insolvency proceedings (Sections 14 and 15 of the Insolvency Code) or a comparable legal procedure have been applied for by the Contractor or if the Client or another creditor have applied for insolvency proceedings, if such proceedings are opened or if the opening of which is rejected for lack of assets.

2.

The services performed are to be invoiced in accordance with § 6 (5). The Client may claim damages for non-performance of the remainder.

(3)

1.

The Client may terminate the contract if, in the cases referred to in Paragraph 4(7) and (8)(1) and Paragraph 5(4), the period set has expired without success. The termination can be limited to a self-contained part of the contractual service.

2.

After termination, the Client shall be entitled to have the part of the service not yet completed carried out by a third party at the expense of the Contractor, but its claims for compensation for any further damage that may arise shall remain. He is also entitled to waive further execution and to claim damages for non-performance if the execution is no longer of interest to him for the reasons that led to the termination.

For the continuation of the work, the Client may make use of equipment, scaffolding, other facilities available on the construction site and delivered materials and components for appropriate remuneration.

4.

The Client shall send the Contractor a list of the additional costs incurred and of its other claims within 12 working days of settlement with the third party at the latest.

(4)

The Client may terminate the contract,

1.

if the contractor had entered into an agreement on the occasion of the award that constitutes an impermissible restriction of competition. Subsection 3 number 1 sentence 2 and numbers 2 to 4 shall apply mutatis mutandis.

2.

if this was concluded within the scope of application of Part 4 of the GWB,

a)

if the contractor should not have been commissioned at the time of the award due to a compelling reason for exclusion. Subsection 3 number 1 sentence 2 and numbers 2 to 4 shall apply mutatis mutandis.

b)

in the event of a substantial amendment to the Treaty or in the event of a finding of a serious violation of the Treaties on the European Union and the Functioning of the European Union by the European Court of Justice. The services performed are to be invoiced in accordance with § 6 (5). Any claims for damages by the parties remain unaffected.

The notice of termination must be given within 12 working days of becoming aware of the reason for termination.

(5)

If the contractor has subcontracted the service in whole or in part, regardless of the scope of Part 4 of the GWB, it is also entitled to the right of termination pursuant to paragraph 4 no. 2 letter b if the contract binding on it as a contractor (main contract) has been terminated in accordance with paragraph 4 no. 2 letter b. The same shall apply to each client in the subcontractor chain, provided that its respective client has terminated the contract in accordance with sentence 1.

(6)

The termination must be declared in writing.

(7) The contractor may demand measurement and acceptance of the services performed by him immediately after the termination; he must immediately submit a verifiable invoice for the services performed.

(8)

A contractual penalty forfeited due to default, measured in time, can only be claimed for the period up to the date of termination of the contract.

## **§ 9 Termination by the Contractor**

(1)

The contractor may terminate the contract:

1.

if the client fails to perform an act incumbent on him and thereby renders the contractor unable to perform the service (default of acceptance pursuant to §§ 293 et seq. of the German Civil Code),

2.

if the client fails to make a payment due or is otherwise in default of debt.

(2)

The termination must be declared in writing. It is only permissible if the contractor has unsuccessfully set the client a reasonable period of time for the performance of the contract and has declared that it will terminate the contract after the period has expired without success.

(3)

The previous services are to be invoiced according to the contract prices. In addition, the contractor is entitled to appropriate compensation in accordance with Section 642 of the German Civil Code; any further claims of the Contractor shall remain unaffected.

## **§ 10 Liability of the Contracting Parties**

(1)

The contracting parties are liable to each other for their own fault as well as for the fault of their legal representatives and the persons they use to fulfil their obligations (§§ 276, 278 BGB).

(2)

1.

If a third party suffers damage in connection with the performance for which both parties are liable on the basis of statutory liability provisions, the general statutory provisions shall apply to the settlement between the contracting parties, unless otherwise agreed in the individual case. To the extent that the damage suffered by the third party is only the consequence of a measure which:

the Client has ordered in this form, he shall bear the damage alone if the Contractor has pointed out to him the danger associated with the ordered execution pursuant to Section 4 (3).

2.

The Contractor shall bear the damage alone to the extent that it has covered it by insuring its statutory liability or could have covered it by insuring it at the rate of premiums and premium surcharges with an insurer licensed to conduct business in Germany at rates and not based on extraordinary circumstances.

(3)

If the Contractor is obliged to compensate a third party pursuant to §§ 823 et seq. of the German Civil Code (BGB) for unauthorised entry into or damage to adjacent properties, for the removal or storage of soil or other objects outside the areas designated by the Client for this purpose, or for the consequences of unauthorized blocking of paths or watercourses, he shall bear the damage alone in relation to the Client.

(4)

The contractor shall be solely liable for the infringement of industrial property rights in the relationship between the contracting parties if he himself has offered the protected process or the use of protected objects or if the client has prescribed the use and referred to the property right.

(5)

If one contracting party is exempt from the obligation to pay compensation to the other pursuant to subsections 2, 3 or 4, this exemption shall also apply to the benefit of its legal representatives and vicarious agents, unless they have acted intentionally or with gross negligence.

(6)

To the extent that a Contracting Party is held liable by the third party for damage which the other Contracting Party has to bear pursuant to paragraphs 2, 3 or 4, it may demand that its Contracting Party release it from its liability towards the third party. It may not acknowledge or satisfy the third party's claim without first giving the other contracting party the opportunity to comment.

## **§ 11 Contractual penalty**

(1)

If contractual penalties have been agreed, §§ 339 to 345 BGB apply.

(2)

If the contractual penalty has been agreed in the event that the Contractor does not comply within the prescribed period, it shall be due if the Contractor is in default.

(3) If the contractual penalty is calculated in days, only working days shall count; if it is measured in weeks, each working day of weeks or part thereof shall be counted as 1/6 week.

(4)

If the client has accepted the service, he can only demand the penalty if he has reserved this at the time of acceptance.

## **12 Acceptance**

(1)

If the contractor requests acceptance of the service after completion — if necessary also before the expiry of the agreed execution period — the client must carry it out within 12 working days; another deadline may be agreed.

(2)

On request, self-contained parts of the service are to be specially accepted.

(3)

Due to significant defects, acceptance can be refused until it has been remedied.

(4)

1.

A formal acceptance must take place if a contracting party so requests. Each party may call in an expert at its own expense. The findings must be recorded in writing in a joint hearing. Any reservations due to known defects and contractual penalties must be recorded in the minutes, as well as any objections by the contractor. Each party receives one copy.

2.

The formal acceptance can take place in the absence of the contractor if the appointment was agreed or the client had invited to it with sufficient notice. The result of the acceptance must be communicated to the contractor as soon as possible.

(5)

1.

If no acceptance is required, the service shall be deemed to have been accepted upon expiry of 12 working days after written notification of the completion of the service.

2.

If no acceptance is required and the Client has taken advantage of the service or part of the service, the acceptance shall be deemed to have taken place after the expiry of 6 working days after the start of use, unless otherwise agreed. The use of parts of a structural facility to continue the work is not considered acceptance.

3. Reservations due to known defects or contractual penalties must be asserted by the Client at the latest by the dates specified in numbers 1 and 2.

(6) Upon acceptance, the risk shall pass to the Client, insofar as he does not already bear it in accordance with § 7.

### **§ 13 Claims for defects**

(1)

The Contractor shall provide the Client with its performance free of material defects at the time of acceptance. At the time of acceptance, the service is free of material defects if it has

the agreed quality and complies with the recognised rules of technology. If the quality has not been agreed, the performance shall be free of material defects at the time of acceptance,

1.

if they are in favour of the

otherwise

2.

is suitable for ordinary use and has a quality that is customary for works of the same kind and that the client can expect based on the nature of the service.

(2)

In the case of services after a sample, the properties of the sample shall be deemed to be the agreed quality, unless deviations are to be regarded as meaningless according to custom. This also applies to samples that are only recognized as such after the conclusion of the contract.

(3)

If a defect is attributable to the description of services or to instructions of the Client, to the materials or components supplied or prescribed by the Client or to the nature of the preliminary performance of another contractor, the Contractor shall be liable, unless it has provided the notification incumbent on it pursuant to Section 4 (3).

(4)

1.

If no limitation period has been agreed in the contract for claims for defects, it shall be 4 years for buildings, 2 years for other works whose success consists in the manufacture, maintenance or modification of an object, and for the parts of combustion systems affected by the fire. By way of derogation from sentence 1, the limitation period for fire-contacted and exhaust gas-insulating parts of industrial combustion plants shall be 1 year.

2.

Is for parts of mechanical and electrical engineering/electronic equipment where maintenance is influencing safety and functionality, unless otherwise agreed, shall be

In derogation from number 1, the limitation period for claims for defects is two years if the Client has decided not to assign maintenance to the Contractor for the duration of the limitation period; this also applies if a different limitation period has been agreed for further services.

3.

The period begins with the acceptance of the entire service; only for self-contained parts of the service does it begin with partial acceptance (Section 12 (2)).

(5)

1.

The Contractor shall be obliged to remedy all defects that occur during the limitation period and are attributable to performance in breach of contract at its own expense if the Client requests this in writing before the expiry of the period. The claim for remedy of the defects complained of shall become time-barred after 2 years, calculated from receipt of the written request, but not before the expiry of the standard periods pursuant to subsection 4 or the period agreed in their place. After acceptance of the defect rectification service, the following shall begin for diese Leistung eine Verjährungsfrist von 2 Jahren neu, die jedoch nicht vor Ablauf der Regelfristen nach Absatz 4 oder der an ihrer Stelle vereinbarten Frist endet.

2.

If the Contractor does not comply with the request to remedy the defects within a reasonable period of time set by the Client, the Client may have the defects remedied at the Contractor's expense.

(6)

If the remedy of the defect is unreasonable for the Client or if it is impossible or would require a disproportionately high amount of effort and if it is therefore refused by the Contractor, the Client may reduce the remuneration by making a declaration to the Contractor (Section 638 of the German Civil Code).

(7)

1.

In the event of culpably caused defects, the Contractor shall be liable for damages resulting from injury to life, limb or health.

2.

In the event of defects caused intentionally or by gross negligence, he is liable for all damages.

3.

In addition, the Client shall be compensated for the damage to the structural system for the production, maintenance or modification of which the service serves if there is a substantial defect which significantly impairs the usability and is attributable to the fault of the Contractor. The Contractor shall only compensate for any damage that goes beyond this:

a) if the defect is based on a violation of the recognized rules of technology,

b)

if the defect consists in the absence of a contractually agreed quality, or

c)

insofar as the Contractor has covered the damage by insuring its statutory liability or could have covered it with such insurance at premiums and premium surcharges in accordance with the tariff and not based on exceptional circumstances with an insurer licensed to conduct business in Germany.

4.



By way of derogation from paragraph 4, the statutory limitation periods shall apply to the extent that the Contractor has protected himself or could have protected himself by insurance in accordance with number 3 or to the extent that special insurance cover has been agreed.

5.

A limitation or extension of liability can be agreed in justified special cases.

## **§ 14 Billing**

(1)

The contractor must invoice his services in a verifiable manner. He must prepare the invoices in a clear manner, observing the order of the items and using the designations contained in the components of the contract. The quantity calculations, drawings and other supporting documents required to prove the nature and scope of the service must be enclosed. Changes and additions to the contract must be specifically indicated in the invoice; they are to be billed separately on request.

(2)

The determinations necessary for the settlement shall be made jointly as far as possible in accordance with the progress of the service. The billing provisions in the Technical Terms and Conditions of Contract and the other contract documents must be observed. For services that are difficult to determine when the work is continued, the contractor must apply for joint assessments in good time.

(3)

In the case of services with a contractual execution period of no more than 3 months, the final invoice must be submitted no later than 12 working days after completion, unless otherwise agreed; this period shall be extended by 6 working days for each additional 3 months of execution.

(4)

If the Contractor does not submit a verifiable invoice even though the Client has set a reasonable deadline for doing so, the Client may draw it up himself at the Contractor's expense.

## **§ 15**

### **Hourly wage work**

(1)

1.

Hourly wage work is billed according to the contractual agreements.

2.

If no agreements have been made for the remuneration, the customary local remuneration applies. If this cannot be determined, the Contractor's expenses for wage and salary costs of

the construction site, ancillary wage and salary costs of the construction site, material costs of the construction site, costs of the facilities, equipment, machinery and machinery of the construction site, freight, transport and loading costs, social security contributions and special costs incurred in the course of economic management shall be covered with appropriate surcharges for overhead costs and profit (including general entrepreneurial risk) plus VAT.

(2)

If the contracting authority requires that the hourly wage work be supervised by a foreman or other supervisor, or if supervision is necessary under the relevant accident prevention regulations, subsection (1) shall apply mutatis mutandis.

(3)

The client must be notified of the execution of hourly wage work before the start of the work. Unless otherwise agreed, lists (hourly wage slips) must be submitted on a working day or weekly, depending on custom, of the hours worked and the expenditure required for the consumption of materials, for the provision of equipment, equipment, machines and machinery, for freight, transport and loading services as well as any special costs. The client must return the hourly wage slips certified by him without delay, but no later than within 6 working days of receipt. In doing so, he can raise objections on the hourly wage slips or separately in writing. Hourly wage slips not returned by the deadline are considered to have been recognised.

(4)

Hourly wage invoices must be submitted as soon as the hourly wage work has been completed, but at intervals of 4 weeks at the latest. Section 16 shall apply to payment.

(5)

If hourly wage work was agreed, but there are doubts about the extent of the hourly wage payments due to the lack of timely submission of the hourly wage slips, the client may demand that remuneration be agreed for the demonstrably performed services which, in accordance with subsection 1 number 2, is calculated for an economically justifiable expenditure of working time and consumption of materials, for the provision of facilities, equipment, machinery and machinery, for freight, transport and loading services as well as any special costs

### **Section 16 Payment**

(1)

1.

Advance payments are to be granted upon application at the shortest possible intervals or on the agreed dates, namely in the amount of the value of the respective proven contractual services, including the stated amount of VAT attributable to them. The achievements must be proven by means of a verifiable list, which must enable the performance to be assessed quickly and reliably. In this context, the components specially manufactured and provided for the required service as well as the materials and components delivered to the construction site are also considered to be services, if the Client has been given ownership of them at his discretion or is given corresponding security.

2.

Counterclaims can be retained. Other withholdings are only permitted in the cases provided for in the contract and in the legal provisions.

3.

Claims for advance payments are due within 21 days of receipt of the statement.

4.

The advance payments have no influence on the liability of the Contractor; they are not considered to be an acceptance of parts of the service.

(2)

1.

Advance payments can also be agreed after the contract has been concluded; sufficient security must be provided for this at the request of the client. Unless otherwise agreed, these advance payments are to bear interest at a rate of 3% above the base interest rate of § 247 of the Civil Code.

2.

Advance payments shall be offset against the next payments due to the extent that they are intended to compensate for services for which the advance payments have been granted.

(3)

1.

The claim for final payment is due as soon as it has been checked and determined, at the latest within 30 days of receipt of the final invoice. The period shall be extended to a maximum of 60 days if it is objectively justified by reason of the particular nature or characteristics of the agreement and has been expressly agreed. If objections to verifiability are not raised by the expiry of the respective deadline, stating the reasons, the contracting authority can no longer invoke the lack of verifiability. The examination of the final invoice should be accelerated if possible. If it is delayed, the undisputed credit balance is to be paid immediately as an advance payment.

2. The unconditional acceptance of the final payment excludes additional claims if the Contractor has been informed of the final payment in writing and has been informed of the exclusionary effect.

3.

It is equivalent to a final payment if the client finally rejects further payments in writing with reference to payments made.

4.

Claims made earlier but unresolved are also excluded if they are not reserved again.

5.

A reservation must be made within 28 days of receipt of the notification of the final payment in accordance with points 2 and 3. It shall lapse if a verifiable invoice for the reserved claims is not submitted within a further 28 days — starting on the day after the expiry of the 28 days referred to in sentence 1 — or, if this is not possible, the reservation is substantiated in detail.

6.

The limitation periods do not apply to a request for correction of the final invoice and payment due to measurement, calculation and transmission errors.

(4)

Self-contained parts of the service can be finally determined and paid for after partial acceptance without regard to the completion of the other services.

(5)

1.

All payments must be accelerated to the utmost.

2.

Non-agreed discount deductions are not permitted.

3.

If the Client does not pay by the due date, the Contractor may set him a reasonable grace period. If he does not pay within the grace period, the contractor is entitled to interest from the end of the grace period in the amount of the interest rates specified in Section 288 (2) of the German Civil Code (BGB), unless he can prove a higher damage caused by default. However, the Client shall be in default of payment no later than 30 days after receipt of the invoice or the statement of advance payments without the need to set a grace period, if the Contractor has fulfilled its contractual and statutory obligations and has not received the amount of the remuneration due on time, unless the Client is not responsible for the delay in payment. The period shall be extended to a maximum of 60 days if it is objectively justified by reason of the particular nature or characteristics of the agreement and has been expressly agreed.

4. The Contractor may stop the work in the event of default of payment until payment has been made, provided that a reasonable period of time previously set for the Client has elapsed without success.

(6)

The Client shall be entitled to make payments to creditors of the Contractor in order to fulfil its obligations under paragraphs 1 to 5 insofar as they are involved in the performance of the contractual performance of the Contractor on the basis of a service or work contract concluded with the Contractor, rightly refuse to continue their performance due to default of payment by the Contractor and the direct payment is intended to ensure the continuation of the performance. The Contractor shall be obliged, at the request of the Client, to declare within a period set by the Client whether and to what extent it acknowledges the claims of

its creditors; if this declaration is not submitted in time, the conditions for direct payment shall be deemed to have been accepted.

### **Section 17 Provision of security**

(1)

1.

If security has been agreed, §§ 232 to 240 of the Civil Code shall apply, unless otherwise provided for in the following provisions.

2.

The security serves to ensure the contractual performance of the service and the claims for defects.

(2)

Unless otherwise agreed in the contract, security may be provided by withholding or depositing money or by guaranteeing a credit institution or credit insurer, provided that the credit institution or credit insurer

1.

in the European Community or

2.

in a State of the Contracting Parties to the Agreement on the European Economic Area, or

3.

in a State of the Contracting Parties to the WTO Agreement on Government Procurement is approved.

(3)

The contractor has the choice between the different types of security; it can replace one security with another.

(4)

In the case of the provision of security by guarantee, the prerequisite is that the client has recognised the guarantor as suitable. The declaration of guarantee must be made in writing, waiving the objection of advance action (Section 771 of the Civil Code); it may not be limited to a specific period of time and must be issued in accordance with the instructions of the client. The client cannot demand a guarantee as security that obliges the guarantor to pay on first demand.

(5)

If security is provided by depositing money, the contractor must pay the amount into a blocked account at a financial institution to be agreed, which both can only dispose of jointly ("and account"). The contractor is entitled to any interest.

(6)

1.

If, according to the agreement, the client is to withhold the security in instalments from its payments, it may reduce the payment by a maximum of 10% in each case until the agreed security sum has been reached. If invoices are issued without VAT in accordance with § 13 b of the German VAT Act, VAT is not taken into account in the calculation of the security retention. He has paid the amount withheld in each case to the Auftragnehmer mitzuteilen and within 18 working days of this notification to a blocked account at the agreed financial institution. At the same time, he must arrange for this financial institution to notify the contractor of the payment of the security amount. Paragraph 5 shall apply mutatis mutandis.

2.

In the case of smaller or short-term orders, it is permissible for the client to pay the retained security amount into a blocked account only when the final payment is made.

3.

If the Client does not pay the retained amount in due time, the Contractor may set a reasonable grace period for this. If the client also allows this to pass, the contractor can demand immediate payment of the retained amount and then no longer has to provide security.

4.

Public contracting authorities are entitled to take the amount retained as collateral into their own custody account; the amount does not bear interest.

(7)

The Contractor shall provide the security within 18 working days of the conclusion of the contract, unless otherwise agreed. If he has not fulfilled this obligation, the Client shall be entitled to withhold from the Contractor's credit balance an amount equal to the agreed security. In all other respects, subsections 5 and 6 except number 1 sentence 1 shall apply mutatis mutandis.

(8)

1.

The Client shall return an unused security for the performance of the contract at the agreed time, at the latest after acceptance and provision of the security for claims for defects, unless claims of the Client that are not covered by the security provided for claims for defects have not yet been met. In this case, he may withhold a corresponding part of the security for these claims for the performance of the contract.

2.

The Client must return an unused security for claims for defects after the expiry of 2 years, unless another return date has been agreed. However, if his asserted claims have not yet been fulfilled at this time, he may withhold a corresponding part of the security.

## Section 18 Disputes

(1)

If the requirements for a jurisdiction agreement pursuant to Section 38 of the Code of Civil Procedure are met, the place of jurisdiction for disputes arising from the contract is nach dem Sitz der für die Prozessvertretung des Auftraggebers zuständigen Stelle, wenn nichts anderes vereinbart ist. Sie ist dem Auftragnehmer auf Verlangen mitzuteilen.

(2)

1.

If differences of opinion arise in contracts with authorities, the contractor should first call the authority directly superior to the contracting authority. This should give the contractor the opportunity to discuss the matter orally and, if possible, notify him in writing within 2 months of the referral, pointing out the legal consequences of sentence 3. The decision shall be deemed to be recognised if the contractor does not lodge a written objection with the client within 3 months of receipt of the decision and the client has not informed him of the limitation period.

2.

Upon receipt of the written application for proceedings under number 1, the limitation period for the claim asserted in this application shall be suspended. If the client or contractor does not wish to pursue the proceedings further, they shall inform the other party in writing. The suspension ends 3 months after receipt of the written decision or the notification pursuant to sentence 2.

(3)

In addition, a dispute resolution procedure can be agreed. The agreement was to be made upon conclusion of the contract.

(4)

In the event of disagreement as to the properties of substances and components for which generally applicable testing procedures exist and as to the admissibility or reliability of the machinery used in the testing or the testing methods used, each Party may, after prior notification of the other Party, have the materials testing carried out by a State or State-recognized materials testing body; their findings are binding. The costs are borne by the losing party.

(5)

Disputes do not entitle the contractor to stop the work.

