

General Contractual Conditions: Logistics, Consulting & Management

Streif Baulogistik GmbH

As at: 01.11.2008

- 1. Contracting parties' general rights and obligations**
 - 1.1 All offers and contracts in respect of the contractor's logistics, consulting & management business area are governed exclusively by these General Contractual Conditions.
 - 1.2 The client's own terms and conditions are not binding on the contractor unless the contractor has expressly agreed to such terms and conditions.
 - 1.3 Amendments, alterations or other supplementary agreements must be recorded in writing. This does not rule out the possibility of oral supplementary agreements. The written form may not be replaced by the electronic form.
 - 1.4 These General Contractual Conditions apply to businesspersons, public-law legal entities and public-law special assets under section 310.1 of the German Civil Code.
 - 1.5 Unless otherwise agreed, all our offers are subject to change.
- 2. Position and consulting function**
 - 2.1 The contractor is subject only to the client's instructions. The contractor has a consulting function within the framework of the client's responsibility. This consulting function does not release the companies from their existing responsibility to comply with the relevant accident prevention regulations and the laws, ordinances, guidelines and employment instructions on occupational health and safety and accident prevention.
 - 2.2 Nor does the aforementioned consulting function release the contracting parties from their obligation to coordinate with other companies in accordance with the accident prevention regulation "general provisions" (VBG 1 section 6) and the corresponding federal state construction code.
 - 2.3 The contracting parties undertake to cooperate in a mutual and trustful way and will inform each other of any changes in project specifications.
- 3. Client's obligations**

The client will make documentation (e.g. up-to-date timetable, architects' plans, specifications, etc.) and information available to the contractor in good time and free of charge for the fulfilment of its duties. Documentation must be updated by the client during construction.
- 4. Remuneration and invoicing**
 - 4.1 The contractor receives appropriate remuneration as per contract for services rendered.
 - 4.2 Unless otherwise agreed, payments must be made in full within fourteen (14) days of receipt of invoice.
- 5. Defect liability and other liability**
 - 5.1 The contractor is liable with respect to the client for the performance, subject to a duty of care, agreed as per contract. In the event of any claims arising from defects, the contractor has a right to be given the opportunity to remedy such defects.
 - 5.2 On request, the contractor confirms the existence of professional indemnity insurance for third-party injuries and property damage with sums insured of at least:
 - €2,500,000.00 all-inclusive for personal injuries and property damage
 - €250,000.00 all-inclusive for financial losses
 - €2,500,000.00 all-inclusive for bodily, property and co-insured financial losses (environmental liability insurance).
 - 5.3 The contractor's contractual activity may result in encroachments into the construction sequence or even partial or complete cessations of work. Notwithstanding section 5.4, the contractor's liability is excluded.
 - 5.4 The contractor is liable for losses, irrespective of the legal reason for them and irrespective of whether they are contractual or tortious, only in case of wilful intent or gross negligence on the part of the owner or of the management bodies or senior executives, culpable injury to life, limb and health and defects that the contractor has deliberately concealed or whose absence it has guaranteed. In the event of culpable breach of major contractual obligations the contractor is also liable for the gross negligence of non-executive employees and for minor negligence, the latter case being limited, however, to losses that are typical for this type of contract and are reasonably foreseeable. Other claims are excluded.
 - 5.5 All the client's claims, irrespective of the legal grounds, become time-barred after twelve (12) months. The statutory periods apply to compensation claims under section 5.4 hereinabove. If the contractor renders the contractual services on a construction and thereby causes its defectiveness, the statutory periods also apply.
- 6. Termination**
 - 6.1 If the client is unable to fulfil its obligation for a reason beyond its control, the contractor may demand only remuneration for its services rendered until that time as per contract.
 - 6.2 If the contractor is unable to fulfil its obligation for a reason beyond its control or if the contract is terminated ahead of schedule for a reason beyond its control, the contractor is entitled to claim full contractual remuneration in accordance with section 4 subject to deduction of proven saved expenses.
- 6.3 The contract is concluded for a specified period and may not be terminated by either party with notice. This does not affect the parties' right to terminate without notice for a compelling reason.
 - 6.4 The contractor is entitled to terminate the contract without notice
 - if insolvency proceedings are instituted against the client's assets or
 - if the client is in arrears with the payment of the invoice by more than fourteen (14) calendar days.
- 7. Disruption of services and additional services**
 - 7.1 Remuneration under section 4 hereof is based on project handling that assumes continuous rendering of services. If completion of the construction project is delayed by more than fifteen (15) calendar days beyond the deadline stipulated in the contract, the contractor is entitled to compensation for expenses and losses.
 - 7.2 If additional hourly services are commissioned by the client, the contractor's charge rates valid when the contract was concluded (currently EUR 71.00 net per hour) during core time apply along with the overtime surcharges valid when the contract was concluded: 25% for each of the first two hours, 50% for each further hour and 100% for Sundays and public holidays. Supplementary costs are charged at 4% in addition to the stipulated hourly rate. Travelling expenses are remunerated separately.
- 8. Alterations of services**
 - 8.1 In the event of subsequent alterations to the scope of services that result in additional services being rendered by the contractor, e.g. changes in the planning specifications or multiple processing, the contractor is entitled to appropriate additional remuneration.
 - 8.2 Any claim for additional remuneration requires that the contractor has informed the client of the need for additional services.
- 9. Confidentiality**

The contractor will use all documentation and knowledge including business and operating secrets that it obtains from the client only for the purposes jointly pursued and keep it secret from third parties with the same care as it does its own documentation and knowledge if the client designates it as confidential or has an obvious interest in keeping it secret. This obligation does not apply to documentation and knowledge that is generally known or was already known when the contractor received it without being subjected to any confidentiality obligation.
- 10. Intellectual property**

The client will use the plans, drawings, designs, calculations and suchlike prepared within the framework of cooperation only for the agreed purposes.
- 11. Security interest**

The client herewith assigns to us as security for the fulfilment of our claims all present and future claims arising out of the contracts for work and labour with its client in respect of the building sites to which our contract applies.

We herewith accept the client's declarations of assignment.

At our request the client must provide proof of each of these claims and disclose the assignment made to its clients with a request to pay the outstanding claims up to the amount required only to us. We are also entitled ourselves to inform its clients of the assignment and to recover the claims. We will not, however, make use of these powers and recover the claims as long as the client complies with its payment obligations. If the client recovers parts of claims assigned to us, it herewith assigns to us its respective residual claim in the amount of these parts of claims. This does not affect the right to hand back recovered amounts. The client may not assign or pledge its claims against the respective client without our consent, nor may it agree a covenant against assignment with its client. The client must immediately inform us of any distraint or any other encroachment of our rights by third parties. The client must deliver to us all documentation required for any intervention and reimburse us in respect of any intervention costs incurred.
- 12. Place of jurisdiction**

If the client is a businessperson, public-law legal entity or public special asset, the place of performance and sole place of jurisdiction, summary procedures included, for both parties and for all present and future claims arising out of the business relationship will at the contractor's discretion be either the place of the contractor's head office, Essen, or the place at which the contractor has a branch when the contract was concluded.
- 13. Supplementary agreements**

German law will apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.