

General Terms and Conditions of Purchase & Payment (EZB) of RWE 12/2018

1. Applicability/conclusion of contract

Orders by an RWE company - hereinafter referred to as "Client" - are placed subject to these General Terms and Conditions of Purchase and Payment and also subject to any additional conditions which may be stated in the order.

Deviating terms and conditions of business of the Contractor shall still not be considered part of the contract even where, in individual cases, the Client does not expressly contradict them or where the delivery (goods/services) is accepted. Any confirmations made by the Contractor with reference to its terms and conditions of business are herewith rejected.

2. Contract conclusion, supplement agreements and written form

This contract comes into existence as a result of the Contractor accepting an offer of the Client, i.e. a written order or an SAP purchase order of the Client. An SAP purchase order can be submitted electronically or in writing. The declaration of acceptance shall be in the form in which the offer was made.

Additional agreements, changes and additions to the contract (hereinafter referred to as supplement agreements) come into existence as a result of the Contractor accepting an offer of the Client, i.e. a written order or an SAP purchase order of the Client. An SAP purchase order can be submitted electronically or in writing. In the case of a written offer, the acceptance by the Contractor also has to be in writing. Furthermore an SAP purchase order shall be deemed accepted, if the Contractor does not object the SAP purchase order within 30 calendar days as of receipt and was informed of this legal consequence in the respective SAP purchase order or if the Contractor begins with the execution of the ordered goods and services within this period without raising objections.

Unilateral constitutive declarations (einseitige Gestaltungserklärungen) as well as the exercise of any service determination rights under this contract must be in writing. Writing for the purposes of this contract requires that the relevant document is signed by the issuer with his name in his own hand.

3. Subcontractors

If the Contractor would like to commission third parties to provide the services, this shall require the prior written consent of the Client. This applies accordingly to the change of or the use of other subcontractors.

4. Observance of legal regulations for the protection of the employee

The Contractor shall comply with all legal regulations for the protection of the employee, in particular all regulations with regard to the payment of the minimum wage, and payment of holiday fund contributions pursuant to the German law on the secondment of workers (AEntG) and according to the German Act on minimum wages (MiLoG) as well as to comply with the agreed collective regulations concerning its business.

The Contractor shall ensure that its subcontractors meet these requirements and are contractually obliged to do so. Where doubt exists or arises the Contractor is obliged to actively seek compliance with the legal regulations. The Contractor's subcontractors are its immediate and all subordinate subcontractors.

The Contractor shall indemnify and hold the Client harmless in their internal relationship from all possible claims, which are made against the Client because of a non-compliance of the Contractor or one of its subcontractors against the AEntG, the MiLoG as well as further legal regulations giving rise to a possible liability. In particular the Contractor undertakes to support the Client with regard to the defence of alleged claims against the Client in the best possible way and to provide the latter for example with the necessary information.

The Contractor shall provide the Principal Client with a certificate of safety issued by an auditor, tax consultant or the applicable social security fund in accordance with the collective bargaining agreement ("Soka-Bau, Soka-Dach or Soka-Gerüstbau"), with a date of issue of the last 3 months. This is to confirm that the general minimum wage, or if it does not exist, the legal minimum wage, is adhered. If no general minimum wage is applicable, this must be mentioned in the certificate of safety.

Alternatively, the Client will also accept the contractor's current extract from the commercial central register (<https://www.fuehrungszeugnis.bund.de>), provided that it does not contain an entry for violations of the minimum wage law.

The contractor is obliged to ensure that all subcontractors are contractually bound by the contract. Corresponding evidence must be made available to the client within the framework of the proper application of subcontractors.

If the Contractor infringes the obligation to pay the minimum wage or if the Contractor of the obligation does not provide any evidence within a reasonable period set by Client, the Client shall be entitled to terminate the Contract without notice period for serious cause.

In the event of infringement of the obligation to pay the minimum wage by a subcontractor of the Contractor or the failure to provide any evidence the Client shall be entitled to terminate the Contract with the Contractor without notice period, unless the Contractor hasn't already immediately terminated the contractual relationship with the subcontractor.

In the event of termination for serious cause without notice period the Client shall be entitled to have the services, which have not been performed yet, carried out by a third party at the expense of the Contractor.

5. Code of Conduct

The Client expressly refers to RWE's Code of Conduct which applies within the RWE Group and may be viewed at the following web address: <https://supplier.rwe.com> (path: <http://www.rwe.com/web/cms/en/90780/suppliers/code-of-conduct/>). The Client expects the Contractor to accept the principles of conduct included in the Code of Conduct as the basis for the partnership and, in particular, to commit itself to supporting and implementing the principles on human rights, labour relations, the environment and anti-corruption laid down under the Global Compact initiative of the United Nations (www.unglobalcompact.org).

6. Shipment

Shipment instructions, in particular shipment addresses, must be observed in precise detail. Costs incurred due to non-compliance with the shipment instructions shall be for the account of the Contractor, unless the Contractor proves that it is not responsible for them.

Dispatch notes must be sent together with easily identifiable order details to the Client, the shipment address, and to any other addresses of recipients indicated in the order, and must be enclosed with the shipment.

7. Deadlines/acceptance

The delivery times/deadlines of performance indicated in the order are binding. The Contractor undertakes to notify the Client immediately if circumstances occur or are identified which indicate that the delivery time agreed upon or the deadline of performance agreed upon cannot be met.

Performance under a service contract is subject to formal acceptance with a record. The Contractor undertakes to notify the Client of the completion of services. No conduct of the Client may be implied to represent acceptance; in particular, the use, resp. the putting into operation, of such goods or services supplied under a service contract do not qualify as acceptance. This is without prejudice to section 640, subsection 2 (Abnahmefiktion) of the BGB (German Civil Code). The notional acceptance regulated in § 640 subsection 2 BGB (German Civil Code) is only possible under the condition that the Contractor has already fulfilled all deliveries and services including the complete final documentation and has requested the Client to take acceptance giving a deadline of 14 days. Furthermore the Contractor is obliged to point out to the Client what the consequences are of not declaring acceptance or declining acceptance without naming the defect after such a written request for acceptance."

This provision does not apply to such contracts for which acceptance is excluded for material technical reasons.

8. Changes of the scope of delivery and performance

Changes of the scope of delivery and performance (including contractually agreed deadlines) of Contracts concerning the performance of services (e.g. contract for services (Werkvertrag)) may be requested of the Contractor by client, extent that this is reasonable for the Contractor in any exceptional individual case. The Contractor shall comply with any such request. The effects thereof, particularly any increase or reduction in cost or any effects on delivery deadlines, shall be appropriately taken into account and in principle to put down in writing between Client and Contractor before execution of the performance starts. In case of risks of delays or danger in delay client shall be entitled to stipulate that Contractor starts to perform even if such a written Agreement does not exist yet. Contractor will comply with this request.

9. Prices

Except where expressly agreed otherwise, the prices stated in orders are fixed prices. All prices are net, VAT shall be added as applicable. Where no prices are stated, the Client reserves the right to recognition of the prices calculated subsequently. Unless agreed otherwise in writing, prices are free delivered, including packing, duty and insurance up to the stated shipment address/place of use. If the Client does not wish to keep the packing, it shall be returned at the expense of the Contractor and the packing costs invoiced shall be reduced; this also applies to pallets of all types, including pool pallets.

10. Securities / guarantees

Securities and guarantee shall be agreed for each individual contract inasmuch as the Client is not already entitled to demand the same under applicable law.

11. Billing and payment

The invoice must meet the requirements of sections 14 (Ausstellung von Rechnungen), 14a (Zusätzliche Pflichten bei der Ausstellung von Rechnungen in besonderen Fällen) of the German Value-Added Tax Act (Umsatzsteuergesetz). The invoice shall be transmitted to the invoice recipient stated in the order and to the invoice address indicated there while showing the VAT at the rate applicable at the time of delivery / service provision separately.

Prepayments/progress payments made must be shown individually in the invoice. Contractors of building services must indicate the tax number given by the revenue office in the invoice. In the event of lump sum prices, the Contractor must have completion of the work certified by the Client.

All payments by the Client are subject to the following conditions:

1. Correct and complete delivery resp. acceptance
2. Provision of the securities/guarantees agreed in the individual contract
3. Receipt of a correct invoice based upon these requirements
4. Receipt of confirmation of correct quantities and quality (agreed specifications, time sheets, plant certificates, expert opinions, acceptance reports etc.) inasmuch as included in the scope of supply.

Provided the above mentioned terms of payment have been met, payment shall be 14 days from receipt of invoice less 3 % discount or 30 days from receipt of invoice less 2% discount, unless any other terms of payment have been agreed in the order. The discount period, however, shall only begin when these conditions have actually been met. Discount deductions can be withheld both from progress payments and from prepayments and final payments. Where a discount has already been deducted from a prepayment or progress payment, the base amount for the discount in the final invoice will be

reduced by that prepayment or progress payment amount and discount only withheld from the remaining amount. Payments are always made subject to adjustment in the event that objections should be made subsequently.

The Client shall be entitled to charge a deadline penalty or partial amounts thereof to the Contractor or to deduct same from agreed payments. The Client shall not be required to reserve the right to impose a deadline penalty on receipt of the goods and services. Rather, it shall be entitled to assert that right until final payment.

If, at the time of settlement of the accounts, a Contractor of construction services does not present a valid certificate of exemption for tax under section 48 b, subsection 1, sentence 1 (Freistellungsbescheinigung) of the German Income Tax Act (EStG), a tax deduction of 15 % of the consideration within the meaning of section 48 EStG (Freistelungsbescheid) is made and paid to the tax office responsible for the Contractor in accordance with the Act to Control Illegal Employment in the Construction Sector (Gesetz zur Eindämmung illegaler Betätigung im Baugewerbe). In order to compensate for the resulting additional accounting expenditure, the Client is entitled to deduct a lump-sum allowance of € 100 from the Contractor's invoice. Further claims shall remain unaffected.

In case hourly wages are charged, the input tax must be deducted from the travel costs (fares, accommodation costs etc.) in accordance with the tax guidelines in force. All receipts must be correct and permanently legible.

12. Assignment of receivables/setoff

Without prejudice to an assignment of any financial claim under section 354a of the German Commercial Code (HGB), the Contractor is not entitled to assign receivables from the Client to third parties or to have them collected by third parties, unless the Client has given its prior written consent.

The Client is entitled to offset receivables, all or partly of the Contractor with falling due against the Contractor directed pecuniary claim of the group of companies RWE AG, RWE Power Aktiengesellschaft (Essen), RWE Supply & Trading GmbH (Essen), GFV Gesellschaft für Vermögensverwaltung mbH and/or RWE Generation SE.

13. Title/provision of materials/processing/risk transfer

Upon delivery, the shipment becomes the property of the Client; this is without prejudice to simple retention of title in favour of the Contractor.

Materials provided by the Client shall be separated by the Contractor from other materials, marked as being the property of the Client, and kept with the due diligence of a prudent businessman. The Contractor is obliged to prevent access by third parties and to inform the Client immediately on request of any changes in the quantity (such as theft, loss and destruction) or condition (such as loss of application) of the materials provided.

Processing or transformation is carried out by the Contractor on behalf of the Client. In the event that goods for which the Client has reserved title are processed together with other objects not belonging to the Client, the Client shall acquire joint ownership of the new object pro rata the purchase value plus VAT of the property of the Client relative to the other objects processed at the time of processing. This last point applies accordingly for mixing and combining, unless another object which does not belong to the Client is considered to be the principal object.

Risk transfers to the Client on receipt of the delivery in the receiving plant or at the receiving point specified by the Client; for deliveries for which acceptance takes place at the receiving point on acceptance, regardless of whether the items to be delivered have already been received beforehand. On collection by the Client, the risk transfers to the Client as soon as the shipment has left the Contractor's site.

The Client shall be entitled at any time to inform itself of the status of the service rendering under the contract, and in particular on the contractual and orderly progress of the manufacturing in the plants of the Contractor, resp. those of the Contractor's suppliers.

In the case of dismantling or repair work at the Client's premises materials and components etc. removed, or excess materials provided by the Client, must be returned to the Client in an orderly manner.

14. Rights to use/industrial property rights/inventions

The Contractor shall permanently grant the Client a temporally and geographically unrestricted, transferable, non-exclusive, irrevocable right of use regarding the subject of the delivery and performance as well as any protective rights related to these subjects of the delivery and performance. The Contractor shall entitle the Client and the IT service provider to make the right of use available to the Group companies - and thus also the services specified in the contract. Group Companies within the meaning of this contract are besides the Client all those companies, which pursuant to sections 15 et seq. of the German Stock Corporation Law (AktG) are affiliated with RWE AG (collectively referred to as „Group companies“).

The rights of use granted to the Client under this contract shall also apply to any new versions (e. g. updates, upgrades, releases, patches, bugfixes) of the subject of the delivery and performance and of any protective rights related to these subjects of the delivery and performance that are made available to the Client.

Insofar as work results eligible for patent/utility patent protection arise within the order, the Contractor shall grant the Client property thereto, including the right to file the patent application in his own name or by acting as an agent. The Contractor has to provide evidence if he pleads that the patent/utility patent has not been generated in connection with the order.

Insofar as work results eligible for other property right protection arise within the order, the Contractor shall transfer to the Client the exclusive, irrevocable, temporally and geographically unrestricted, sublicensable and transferable right of use. The Client shall have the right to use the work results in all types of use, including, but not limited to the right to reproduce, redesign and publish and exploit the work result. The Contractor has to provide evidence if he pleads that the work result has not been generated in connection with the order. For programming work, the Contractor shall be obliged to hand over to the Client the source code for the software created.

15. Warranty

The Client has full recourse to statutory warranty claims. The Contractor accepts a statutory warranty period of 24 months covering any defects in the shipment/service; this period begins with the delivery or acceptance of the respective service. However, this provision shall only apply where, due to the contract or statutory regulations, no longer warranty or limitation periods apply.

The aforementioned warranty period is followed by a six month period, within which the Client and Contractor shall settle any claims not yet settled or obtain a decision of a third party, e.g. of a court of law.

Any faults or defects occurring during the warranty period - e.g. due to execution not in compliance with the contract, sub-standard materials, or non-compliance with statutory regulations or recognized engineering standards - must either be remedied by the Contractor at its own expense or replaced by a new delivery executed in compliance with the contract, at the discretion of The Client.

If the Contractor fails to remedy the faults and defects in response to the Client's first complaint within the reasonable deadline set, the Client shall be entitled, without further notice or setting of a period of grace, to remedy them itself or have them remedied by third parties, and to deduct the expenses incurred from the Contractor's invoice or to charge these to the Contractor's account.

In those cases in which subsequent performance fails, the Client is entitled to rescission or a price reduction; this is without prejudice to claims for damages, in particular claims for damages instead of performance.

16. Third-party property rights

The Contractor undertakes that all goods and services to be provided by it are unencumbered by third party rights. In the event of an infringement of property rights of third parties, the Contractor shall, at the discretion of the Client, procure for the Client the rights to use the goods and services or change them in such a way that it is no longer encumbered by third party rights.

Furthermore, the Contractor shall indemnify the Client among themselves against all claims asserted by third parties with respect to infringements of property rights. Further claims and rights to which the Client is entitled under law in this respect shall remain unaffected. Such obligation of exemption shall remain in force for a period of 10 years after time of performance.

17. Liability

The Contractor shall be liable for any breach of duty and the resulting damages unless the Contractor proves that it is not responsible for such breach of duty. The Contractor is further obliged to release the Client from any claims for damages by third parties asserted against the Client by such third parties for reasons based on defective delivery (goods/services) by the Contractor, unless the Contractor can prove to the Client that the Contractor is not responsible for the circumstances that caused the loss. The foregoing provisions shall also apply if the Contractor employs a servant or vicarious agent.

18. Liability for cartel law offences (anti-trust law violations)

Should the Contractor in respect to the contractual services be demonstrably involved in an unlawful restraint of competition prior to this Contract and / or before or after this Contract act anticompetitively, it shall be required irrespective of the other liability rules to pay liquidated damages in the amount of 15% of the contract value, unless a damage has been accounted for in different height. This also applies if the Contract has been terminated or already been fulfilled. Other rights of the Client remain unaffected.

Unlawful restrictions of competition are in particular anti-competitive negotiations, recommendations or appointments with other bidders (tenderers) / applicants regarding

- submission or non-submission of bids (tender) including territorial agreements,
- pricing as well as profit arrangements or
- delivery quantities.

Such acts of the Contractor itself are equal to acts of persons appointed by it or working for it.

19. Insurance

The Contractor undertakes at its expense to take out an appropriate business liability insurance policy, to include processing damage, and to maintain that insurance for the entire duration of the contract until expiry of all periods of limitations. That liability insurance must provide cover for at least €5,000,000 for personal injury and property damage and all consequential losses. At the request of the Client, the Contractor undertakes to provide the Client with a confirmation of coverage by the insurer.

20. Termination

The Client is entitled to terminate service contracts at any time. In such an event, in respect of imputation of the saved expenses, the Contractor shall receive that part of the remuneration that corresponds to the performance so far carried out in proportion to the overall performance, unless the Contractor can prove that its savings in respect of the services not yet provided are lower.

However, where termination is for good cause where the Contractor is at fault, the latter shall only receive that part of the remuneration that corresponds to the share of the previous performance measured as a percentage of the overall performance. Any further claim to remuneration by the Contractor is excluded in this case. The Contractor shall be liable for compensation for loss incurred by the Client as a result of the termination, including any consequential loss.

The Client may terminate the contract without observing deadlines if the Contractor suspends payments, or insolvency proceedings concerning the Contractor's assets are filed or opened.

21. Rescission/ Termination in case of antitrust violations

The Client shall be entitled to terminate or withdraw from the contract without notice if the Contractor has demonstrably been involved in unlawful restrictions of competition at the expense of the Client. In the event of termination without notice, the Contractor shall be entitled only to that portion of the agreed remuneration for goods and services already rendered without defects. In the event of rescission, the legal stipulations shall apply.

22. Safety and environmental stipulations

In the course of execution and implementation of the contract, the Contractor is obliged to observe the applicable provisions and recognized engineering standards, especially with regard to industrial health and safety, as well as the provisions applicable under construction, trade and traffic laws (in particular, supervisory and traffic safety duties on construction sites and other workplaces); this shall also apply to the applicable environmental protection and waste management regulations. Supplies and services must comply with the laws, regulations and directives prevailing at the time of the delivery and/or acceptance.

Except where provided for otherwise by individual contract, the Contractor shall be responsible as the party producing the waste for any waste produced, such as packaging materials, material residues, offcuts etc. On accepting the order, the Contractor affirms that it will immediately properly dispose of any waste it produces in line with the legal requirements, in particular the German Recycling and Waste Management Act (KrW-/AbfG) and subordinate legislation, as well as the State Waste Management Acts and statutes of the municipalities, the Water Household Management Act (WhhG), the Goods Traffic Act (GKvG), the Order on Transportation of Hazardous Materials by Road and Rail, as well as the Hazardous Materials Act, as amended.

The Client shall be entitled to carry out checks to determine whether the Contractor or any subcontractor has lived up to its public, legal and contractual obligations. To that end, the Client shall be entitled to inspect the documentation to be kept by the Contractor, resp. subcontractor, in accordance with the legal regulations and the permit notice for the plant since started. The Contractor shall further inform the Client on request, in particular, concerning the transport, appropriate vehicles, transport routes and locations of the respective plants and/or storage sites, in advance.

When delivering hazardous substances or products containing hazardous substances, which are subject to the Ordinance on Hazardous Substances (GefStoffV), to the Client, material safety data sheets complying with EC regulation no. 1907/2006 in conjunction with Section 6 GefStoffV (Informationsermittlung und Gefährdungsbeurteilung) shall be enclosed in German with the delivery/offer. In case there are any changes to the composition or new findings on the impact of the substances/formulations on humans and the environment the Contractor shall send an updated material safety data sheet to the Client without delay, indicating order number, order item as well as material number. Delivery of the material safety data sheets forms part of the agreed scope of performance; any costs the Contractor incurs in this respect are considered to be included in the prices.

Machines coming under the 9th Ordinance of the German Product Safety Act (Produktsicherheitsgesetz (ProdSG)) – Machinery Ordinance (Maschinenverordnung – 9. ProdSV) – and electrical operating equipment coming under the low voltage directive (Niederspannungsrichtlinie) must include a CE mark and be delivered with operating instructions. The declaration of conformity and the operating instructions shall be handed over to the Client. Deliveries of machines not ready for use must include a manufacturer's declaration.

In addition, any supplementary occupational safety conditions in force at the client shall apply.

23. Data protection

The Client and the service providers (data processors) are entitled to process contact and contract details obtained under the contractual relationship within the legal requirements of the applicable data protection and privacy laws in its respective latest valid version and - to the extent required in connection with the Contract and its implementation - to pass on such data to companies affiliated with RWE AG under sections 15 ff AktG.

The Client has single tasks and services carried out by service providers, especially IT-service providers, who are carefully selected and engaged and have their seat outside the EU/EEA (third country). Therefore, a third country transfer of the personal data takes place. The third country transmission takes place in compliance with the EU data protection legislation and applicable national data protection legislation as valid at the time. Data protection provisions to establish an adequate level of data protection are defined in contracts with our contractual partners for this purpose in accordance with the applicable legal requirements, e.g. EU Model Clauses. On demand, we will provide you with a copy of these guarantees.

To safeguard operations and ensure that the security requirements of the Client are met, personal data will be collected, processed and used within the scope of order execution, having due regard to the EU data protection legislation and applicable national data protection legislation as valid at the time. In particular, this shall apply to data and images relating to security components (such as identification badges, identification management systems, time/access and video surveillance systems and the like), RWE and/or IT and telecommunications components, and the infrastructures related to these. The Contractor must ensure that identification badges supplied are not misused or supplied to third parties. They must be worn visibly on Client's premises and the Client must be notified of any losses immediately. They have to be returned to the Client when leaving the premises. If necessary the equipment provided by the Client for information processing and / or telecommunication (e.g., personal computer, telephone, mobile phone, smartphone, software, internet access, email, etc.) are to be used solely in the context of order fulfilment; private use is prohibited. The Contractor shall ensure that the vicarious agents appointed by it (such as employees, temporary workers and the like) have been informed of and have undertaken to observe the above points before the services are provided. Furthermore, the vicarious agents must undertake to conduct themselves professionally and to observe the relevant Client's regulations. If subcontractors are engaged, the Contractor must also contractually impose these obligations on the subcontractor. Upon request, the Contractor must prove to the Client that these points have been implemented.

Insofar as personnel of the Contractor are deployed at locations of the Client, time tracking data (in and out times) for said personnel can be determined for specific persons from the access control system. Insofar as required, the time tracking data determined in this manner can be used by the Client for billing purposes. If subcontractors are engaged, the Contractor

must also contractually notify the subcontractor accordingly. Upon request, the Contractor must prove to the Client that these points have been implemented.

Any details shared by the Client shall not be used for the purpose of advertising or market/opinion research unless written permission has been given for this purpose by the Client or the agreed service allows this explicitly.

24. Confidentiality

The Contractor, its own personnel and that of its subcontractors shall be obliged to maintain the confidentiality of all commercial and technical information not already in the public domain that becomes known to them by virtue of the business relationship (also including the date/period of any overhaul or measure) as business secrets and not to make it available to third parties. All employees, including those of the Contractor's subcontractors must be obliged accordingly.

25. References/advertising/photography

Without prior consent by the Client, the Contractor is not entitled to use information concerning intended or existing contractual cooperation for reference or marketing purposes. Also, photography on the property and/or construction sites of the Client, and any kind of publication in this respect are prohibited without the prior written consent of the Client.

26. Place of performance/jurisdiction/choice of law:

Place of performance for supplies and services provided by the Contractor is the shipment address/place of use indicated by the Client, or the agreed place of the provision of services.

Unless otherwise expressly provided for by law, the place of jurisdiction for any disputes arising under or in connection with the contract is Essen.

The laws of the Federal Republic of Germany shall apply exclusively. Application of the UN Convention on Contracts for the International Sale of Goods is excluded.