

General Terms and Conditions of Waste Disposal (AEB) of RWE 12/2018

1. Scope/conclusion of contract

Purchase orders by an RWE-Company - hereinafter referred to as the "Client" – for waste management (disposal and recycling of waste) shall be placed subject to these General Terms and Conditions of Waste Disposal and also subject to any supplementary terms and conditions which may be stated in the purchase order.

Any deviating terms and conditions of the Contractor shall not become part of the contract even if the Client has not expressly rejected them in the individual case or the delivery (goods/services) has been accepted. Any confirmations made by the Contractor with reference to its terms and conditions of business shall be herewith contradicted.

The Contractor shall examine the purchase order and immediately point out any errors or ambiguities in writing. If the Contractor does not accept the purchase order within a period of 10 days, the Client shall be no longer bound to its request. This purchase order shall be placed only on condition that the Contractor has obtained all the licenses required to process the purchase order.

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 on its part would like to commission third parties to provide the services, this shall require the prior written consent of the Client. Correspondingly, this shall apply to the change of or the use of further subcontractors. The Contractor shall pay all the costs and damages caused by any breach of these obligations. The Contractor shall impose the obligations defined in these terms and conditions on every subcontractor used by the Contractor with the written consent of the Client in order to fulfil these obligations. In the event that the Client agrees to the use of a subcontractor, the Contractor shall remain fully responsible for the provision of the contractually agreed services. Insofar as the waste to be disposed of includes hazardous goods pursuant to the German regulations governing the transport of dangerous goods by road and rail (Gefahrgutverordnung Straße und Eisenbahn), the Contractor undertakes to assign only staff with sufficient knowledge about hazardous material or to train the staff, and to provide evidence thereof at the request of the Client.

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 a 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, (please mention in the clearance certificate) 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: <https://www.group.rwe/en/the-group/responsibility/compliance/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. Transport

Upon conclusion of the agreement, the Contractor shall assure that the Contractor itself and/or the third party commissioned by it (subcontractor) is/are holder(s) of the official transport licence required under section 49 (Transportgenehmigung) of the Closed Substance Cycle and Waste Management Act (KrW-/AbfG) or that this licence is not required due to their certification as waste management company specialised in transportation in line with section 51 KrW-/AbfG (Verzicht auf die Transportgenehmigung und die Genehmigung für Vermittlungsgeschäfte); at the request of the Client, the Contractor shall provide evidence thereof. The Contractor shall inform the Client without delay in writing about any expiry of a licence.

The Contractor undertakes to take along during every transport a copy of the required transport licence or the waste management company certificate (Zertifikat Entsorgungsfachbetrieb) as well as the transport documents relevant for the transport (e.g. a copy of the record of proper waste management (Entsorgungsnachweis, EN)/collective record of proper waste management (Sammelentsorgungsnachweis, SN), consignment note (Begleitschein)/handover certificate (Übernahmeschein), accompanying documents required under dangerous goods legislation).

The Contractor, as owner of the waste, undertakes to comply with its duty of care.

Once the Contractor, or its vicarious agent, has accepted the waste, the risk and the obligation to ensure transportation security as well as the waste management responsibility under public law shall be transferred to the Contractor.

7. Deadlines/acceptance

The delivery times/deadlines of performance indicated in the purchase order shall be 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.

Every waste management service shall require formal acceptance. If the waste is disposed of in the framework of the handover certificate procedure, the service shall be accepted upon receipt of a copy of the handover certificate signed by the waste management company at the Client; in the framework of the consignment note procedure upon receipt of sheet no. 5 (old gold) of the consignment note at the Client.

8. Prices

The prices stated in purchase orders shall be fixed prices. All prices are net, VAT shall be added as applicable. Where no prices are stated, the Client shall reserve the right to recognition of the prices calculated subsequently. Unless agreed otherwise in writing, prices shall include the costs for returning the documents mentioned in Article 7, para. 2.

In the event of a variation of the costs forming the basis of the agreement, the agreement shall only be adapted to the new conditions if these costs are to be attributed to legal stipulations.

In the event of a considerable change of the nature or volume of the waste, the prices shall be adapted by mutual consent of the Contractor and the Client. In order to adapt the agreement, the Contractor shall submit a new offer to the Client taking into account the change of prices. The Client may object in writing to the intended price adjustment within a period of two weeks after receipt of the offer. If the Client objects to the price adjustment, the Contractor shall be entitled to serve notice of early termination of the agreement by the end of the calendar month following expiry of the objection deadline or by a later date. Should the Client object to the price adaptation but nevertheless demand further execution of the order because danger is imminent, the Contractor shall provide these services even though costs have not yet been adjusted. However, the Contractor is entitled to provide the services subject to the demanded additional remuneration.

Any measures taken by the Contractor in addition to the agreed services (e.g. sample analyses) shall exclusively serve the purpose of fulfilling the Contractor's obligations under public law and are on its own account.

9. Securities/guarantees

Securities and guarantees shall be arranged in the individual contract, unless such securities and guarantees can already be requested by the Client in accordance with applicable law.

10. Invoicing/payment

The invoice shall meet the requirements of sections 14 (Ausstellung von Rechnungen), 14a (Zusätzliche Pflichten bei der Ausstellung von Rechnungen) of the German Value-Added Tax Act (Umsatzsteuergesetz). The invoice shall be transmitted to the invoice receiver stated in the purchase order and to the correspondingly stated invoice address, separately indicating the value-added tax at the rate applicable at the time of performance. Prepayments/progress payments made shall be shown individually in the invoice.

Any payments of the Client shall be based on the following requirements:

1. Proper and complete delivery/performance or acceptance,
2. Provision of the securities/guarantees as contractually agreed,
3. Receipt of a proper invoice in accordance with the aforementioned requirements,
4. Receipt of proof of quantity and quality (e.g. joint measurement, time sheet, certificate of compliance with the order, certificates, acceptance reports, etc.), insofar as they belong to the scope of delivery/performance.

If the aforementioned payment terms are fulfilled, then payment - subject to any agreed deviating payment terms - shall take place 14 days following receipt of the invoice less 3% discount, or 30 days following receipt of the invoice less 2% discount. However, the discount period shall only start after actual fulfilment of the aforementioned payment requirements. Discounts can be deducted from progress payments as well as advance payments and final payments. If a discount has already been applied to an advance payment or progress payment, then the discount base amount included in the final invoice shall be reduced by the amount of such advance payment or progress payment and the discount shall only be applicable to the remaining amount. Payments shall always be made subject to adjustment in the event that objections should be made subsequently.

The Client is entitled to invoice to the Contractor or to deduct from the agreed payments a time penalty or percentages of such time penalty. The Client is not required to claim the time penalty on receipt of the deliveries and/or performance, but may do so until final payment.

In case of accounting of hourly rates, input tax shall be deducted from the travel expenses (fares, accommodation costs, etc.) in accordance with the applicable tax regulations. Place of arrival and return shall be stated for calculation of fares. Any receipts shall be properly and permanently legible.

11. Assignment of receivables/setoff

Without prejudice to an assignment of any financial claim per section 354a German Commercial Code (HGB), the Contractor shall not be entitled to assign receivables from the Client to third parties, or to have them collected by third parties, except with the prior written consent of the Client.

The Client shall be entitled to fully or partially offset any pecuniary claims by the Contractor against receivables due from the Contractor and asserted by the Group companies RWE AG, RWE Service GmbH (Dortmund), RWE Power Aktiengesellschaft (Essen), RWE Supply & Trading GmbH (Essen), GFV Gesellschaft für Vermögensverwaltung mbH and/or RWE Generation SE.

12. Liability for defects

The Client shall have full recourse to statutory warranty claims. The Contractor shall accept a warranty period of 24 months covering any defects in the service; this period shall start with the acceptance of the respective service. This provision, however, shall only be applied where the contract or statutory regulations do not provide for a longer warranty period or period of limitations.

The aforementioned warranty period shall include a six-month period that can be used by the parties to agree upon a not yet regulated notice of claim and/or to request the decision of a third party, e.g. a court.

Any defects occurring during the warranty period - e.g. due to execution not in compliance with the contract, or non-compliance with statutory regulations or recognized engineering standards - shall be remedied by the Contractor on its own account at the discretion of the Client.

Where the Contractor fails, on first notification by the Client, to correct the defects within the period of notice set, the Client shall be entitled without further notification and without further notice to eliminate them itself or have them eliminated by a third party and to deduct the costs incurred from the Contractor's invoice amounts or to charge them to the Contractor.

In cases where efforts to eliminate defects fail, the Client shall be entitled to withdraw from the contract and reduce payment; claims for damages as well as other claims resulting from the presence of defects, in particular rights to damages in lieu of performance, shall remain unaffected.

13. Liability

The Contractor shall be liable for any breach of duty and the resulting damage unless the Contractor proves that it is not responsible for such breach of duty. The Contractor shall be further obliged to release the Client from any claims for damages by third parties submitted to 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.

In the event that the Contractor makes permissible containers available, these shall be used by the Client within the scope of the legal and contractual provisions and according to the Contractor's instructions exclusively. The Client shall be liable for loss and damage only for the time the containers are located in its sphere. Once the Contractor has taken over the containers, the risk shall be transferred to the Contractor.

14. 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.

15. Insurance

The Contractor undertakes to maintain at its own expense a reasonable employer's liability insurance that includes processing risks and public liability risks for water pollution, and to maintain such insurance for the duration of this agreement until the end of any possible periods of limitations. The minimum cover of the liability insurance shall not be below 5,000,000 € per occurrence of bodily injury, material damage and any resulting consequential damage. The Contractor shall be obliged to provide a corresponding confirmation of coverage from its insurer upon the Client's request.

16. 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.

In the event of termination for serious reasons for which the Contractor is responsible, however, the latter shall receive only the portion of the remuneration which corresponds to the proportion of the service previously provided, and usable for the Client, measured against the total service to be provided. Any further claim to remuneration of the Contractor shall be 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 extraordinarily without observing deadlines if the Contractor suspends payments, or insolvency proceedings concerning the Contractor's assets are filed or opened.

17. 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.

18. Safety stipulations

In the course of contract execution and implementation, the Contractor undertakes to observe the applicable provisions and recognised engineering standards, especially with regard to occupational health and safety, as well as the provisions applicable under construction, trade and transport legislation (in particular, supervisory and road safety obligations on construction sites and in other working areas); this shall also apply to the applicable environmental protection regulations. The services shall comply with the laws, regulations and directives prevailing at the time of the performance.

By accepting the purchase order, the Contractor undertakes to subject the waste provided by the Client to proper waste management. To this end, the Contractor shall observe and fulfil the relevant provisions under public law, in particular those of the German Closed Substance Cycle and Waste Management Act (Kreislaufwirtschafts- und Abfallgesetz) including the legislative provisions that implement the act, the German Technical Instructions on Waste Management (TA Abfall), the German Water Management Act (Wasserhaushaltsgesetz), the German Road Haulage Act (Güterkraftverkehrsgesetz), the German regulations governing the transport of dangerous goods by road and rail (Gefahrgutverordnung Straße und Eisenbahn) as well as the German Ordinance on Hazardous Substances (Gefahrstoffverordnung).

The Contractor undertakes to dispose of the waste without delay in specifically licensed or permitted plants exclusively.

The Client is entitled to examine whether the Contractor or its subcontractor has fulfilled its public law or contractual obligations. To this end, the Client may, among other things, inspect the record books to be kept by the Contractor or subcontractor under public law and the notice of approval of the plant started up. At the request of the Client, the Contractor shall inform the Client in advance about the transport, suitable vehicles, routes of transport and locations of the respective plants or storage sites, in particular.

In addition to this clause 18, the Supplementary Industrial Safety Conditions (ZB/A), as amended, shall also apply.

19. Confidentiality

The Contractor, its own personnel and the personnel of its subcontractors are obliged to treat confidential any business and technical information that becomes known to them within the scope of business relations and that is not publicly known, and to not disclose such information to third parties. Any employees, including the employees of the Contractor's subcontractors, shall be committed correspondingly.

20. 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 of the German Stock Corporation Act (AktG).

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.

21. References/advertising/photography

Without the prior written consent by the Client, the Contractor shall not be entitled to use information concerning intended or existing contractual cooperation for reference or marketing purposes. Photography on the premises and/or construction sites of the Client as well as any kind of publication in this respect shall also be prohibited without the prior written consent of the Client.

22. Place of performance/jurisdiction/choice of law

Place of performance for services provided by the Contractor shall be 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 this contract shall be 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 shall be precluded.