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**General Purchasing Conditions for  
Work Contracts**

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## General Purchasing Conditions for Work Contracts

The abbreviated terms used in the conditions stand for

NV-EnerTech GmbH & Co. KG  
 or client of  
 NV-EnerTech GmbH & Co. KG

Contractor (AN) the contractor appointed by NV-EnerTech GmbH & Co. KG or a client of NV-EnerTech GmbH & Co. KG to carry out the services and/or deliveries, in the tendering phase also the bidder.

Customer Client of NV-EnerTech GmbH & Co. KG

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## **1 Contract principles**

### **1.1 Orders, conditions**

Only written orders are binding. In order to acquire legally binding force, verbal agreements must be confirmed in writing by NV-EnerTech. Unless otherwise set out in the order letter and accompanying order-related documents, these “General Delivery and Service Conditions for Work (Delivery) Contracts” exclusively prevail. If applicable, they supplement the official, statutory and customer’s conditions and requirements. Differing general or special conditions of the contractor are only binding for NV-EnerTech if NV-EnerTech expressly declares that it is in agreement with them. Neither does acceptance of the delivery signify their approval.

### **1.2 Limitation of the order value**

The order value is a predetermined value limit. If the contractor sees that the order value is being exceeded he must immediately request a follow-up order in writing, stating the reasons. NV-EnerTech is not obliged to make use of the entire order value: settlement then takes place on a pro rata basis of completed deliveries and/or services.

### **1.3 Order of priority of the contractual documents**

The following order of priority applies:

- the order
- the order-specific conditions and documents
- the “General Delivery and Service Conditions for Work (Delivery) Contracts”

## **2 Pricing**

Unless otherwise agreed the order value is a fixed price.

## **3 Scope**

### **3.1 Prices**

Unless otherwise agreed the prices stated in the order include all costs for the services and deliveries described below. The following list is for explanatory purposes only and does not claim to be complete.

### **3.2 Personnel costs**

Personnel costs to be borne by the contractor are salary, wage, incidental wage and overhead costs, work and protective clothing usually worn in the sector, the provision of the usual tools and accessories used in the sector as well as the costs of employee insurance, post, telephone and similar costs such as luggage insurance.

### **3.3 Residence and work permit**

In the case of deliveries and/or services within the Federal Republic of Germany the contractor must only employ non-German personnel (EU citizens are put on the same footing as German citizens) only if they have a valid residence and work permit for the entire duration of employment.

In the case of deliveries and/or services abroad the contractor must only employ personnel with a valid residence and work permit for the country in question for the entire duration of employment.

If necessary the contractor will obtain entry visas as well as residence and work permits for the Federal Republic of Germany or the relevant foreign country and bears all the costs of the insurances, e.g. health insurance, pension insurance etc that have to be taken out in the countries involved.

### **3.4 Requesting of implementation documents**

The contractor must request the implementation documents to be provided by NV-EnerTech so that they can be handed over in good time.

### **3.5 Work flow**

Via the NV-EnerTech site management the contractor must coordinate his work with other companies working on the building site so that they do not hinder each other.

### **3.6 Building and assembly report**

The contractor must draw up a building and assembly report every day.

### **3.7 Correct and professional implementation**

The contractor is responsible for the correct and professional implementation in accordance with the state of the art of the services and/or deliveries set out in the order and order-related documents, including the required tests.

See point 9 with regard to this.

### **3.8 Complete implementation of the work**

The services and/or deliveries must be carried out to the extent that operationally safe use of the installation is guaranteed, even if the services and/or deliveries required for this are not specially listed in the order documents.

### **3.9 Checking of documents before the start of the work**

All measurements in plans and descriptions must be checked by the contractor. In the event of errors NV-EnerTech's site management must be informed before carrying out the services and/or deliveries.

### **3.10 Operational tests and test runs**

Operational tests and test runs must be carried out in consultation with NV-EnerTech.

### **3.11 Additional work beyond work limits**

If agreed, additional work beyond work limits in consultation with NV-EnerTech.

## **4 Building site equipment**

Building site equipment in accordance with the given conditions is made available to the contractor.

## **5 Safety regulations and rules**

When planning and carrying out the services and/or deliveries, the contractor must on his own responsibility observe the statutory regulations of the supervisory authorities, the provisions of the responsible insurance companies as well as the designated technical regulations (standards, guidelines of professional associations) in their relevant valid versions. These include:

- local official regulations relating to health and safety at work, environmental and property protection,
- provisions of the accident insurance company at the company headquarters of the contractor as well as locally valid accident prevention regulations and contractual provisions of insurance companies,
- safety instructions issued by the NV-EnerTech site management as part of the above regulations, contractual provisions and relevant technical regulations. In the case of multiple regulations the strictest requirements apply.

## **6 Building site regulations**

The building site regulations are attached to these conditions and form an integral part thereof.

## **7 Maintenance and downtimes**

### **7.1 Notification**

If maintenance and downtimes occur, the contractor must notify the NV-EnerTech site management immediately.

### **7.2 Confirmation of maintenance and downtimes**

Maintenance and downtimes must be presented to the NV-EnerTech site management on a daily basis in order to confirm material accuracy.

## **8 Temporary leasing of employees**

The services and/or deliveries of the contractor are carried out exclusively on a work (delivery) contract basis. This also applies to any additional and/or supplementary work not covered by the contract value in accordance with point 1.2. If different arrangements are made in exceptional cases the provisions of the law on the regulation of commercial temporary leasing of employees (Law on the temporary leasing of employees - AUG) must be strictly observed and the NV-EnerTech site management must be notified immediately.

## **9 Tests, test certificates**

### **9.1 Tests**

All officially, statutorily and/or contractually stipulated tests must be arranged by the contractor in consultation with NV-EnerTech. In addition, NV-EnerTech is entitled to check services and/or deliveries carried out by the contractor or have them checked by a commissioned test company. If defects come to light, the contractor bears the costs.

### **9.2 Rejection and rectification**

If services and/or deliveries are not in accordance with the statutory and/or official regulations and/or the contractual agreements, NV-EnerTech can reject them in full or in part and demand immediate rectification of the ascertained defects at the cost of the contractor. If the contractor is in default NV-EnerTech can have the defects rectified at the costs of the contractor.

### **9.3 Additional costs, repeat tests**

If additional costs are incurred by the contractor, e.g. through travel and/or longer periods spent by the NV-EnerTech personnel on the building site, the contractor will reimburse these. This also applies to repeat tests.

Notification must take place in enough time for the tests and rectification of any defects still to be possible during the agreed assembly period and/or during the commissioning phase.

### **9.4 Test certificates**

The results of the tests must be recorded in test certificates signed jointly by the contractor, NV-EnerTech and, if required, by the customer. The signing of test certificates by NV-EnerTech or a test company appointed by it, does not release the contractor from his contractual obligations. The relevant test certificates must be issued in the required number and in the appropriate contract language.

## 9.5 Completion of the work

The completion of the work by the contractor is confirmed in writing by the NV-EnerTech site management once all the deliveries and/or services have been carried out in accordance with the contract and are operating correctly. The contractor must apply for this confirmation.

If the NV-EnerTech site management signs a report or acceptance certificate or similar document, this does not affect the liability of the contractor for any undetected, open or hidden defects, nor the start of the guarantee; the contract alone applies here.

## 10 Acceptance and fulfilment liability

### 10.1 Acceptance

Acceptance of the contractor's scope of delivery and/or service takes place at the time of acceptance of the entire installation by NV-EnerTech's client or the end customer.

### 10.2 Fulfilment liability

The contractor also guarantees that his deliveries and/or services have no defects that impair use or operation and that they exhibit the properties indicated or agreed by the contractor.

The warranty period is one year following successfully completed commissioning of the entire installation for which the contractor's deliveries and/or services are intended, at the most two years after complete implementation of the contractor's deliveries and/or services if commissioning has been delayed for reasons for which NV-EnerTech is responsible.

For work on buildings the warranty period is always at least five years. The warranty period for the entire service and/or delivery is extended by the periods during which the subject matter of the delivery or part of the installation for which the deliveries and/or services were carried out, is out of action due to defects for which the contractor is responsible.

All defects in the contractor's deliveries and/or services occurring during the warranty period will be immediately rectified free of charge by the contractor and at NV-EnerTech's choice through repair at the final destination, through rectification or newly carrying out of the defective service, or through replacement of the defective parts with repaired or new parts at this location, and the contractor will compensate damages due to defects. If necessary the contractor must initially take temporary measures free of charge. The replaced parts are made available to the contractor at the above location. Rectification of defects includes the assumption of all necessary expenses by the contractor. These expenses include, in particular, transport, customs, mileage and labour costs, as well as assembly and dismantling costs. Rectification of defects also includes eliminating the causes of the defect. The contractor also bears all the costs incurred for rectifying the defect and its causes as well as for eliminating the causes. If the contractor is in default with rectifying the fault, NV-EnerTech is entitled to replacement at the expense of the contractor. If only minor defects are involved, in the event of risk to life and limb, endangering of operational safety, and in order to avoid disproportionately greater damages, NV-EnerTech is also entitled to the above replacement right even if the precondition of default is not present.

The provisions of this point also apply to the warranty in the event of repair or replacement. In this case the warranty period for repaired or replacement parts of the installation begins with their commissioning, for repaired or newly carried out services and/or deliveries once they have been completed in full.

Limitation of NV-EnerTech's right of complaint is suspended if after notification of defects the contractor has not rejected NV-EnerTech's claims in writing. The rights of complaint expire within six months of such a rejection, but at the earliest on expiry of the warranty period extended by a possible suspension period.

In the case of redhibition NV-EnerTech is entitled to free use of the contractor's service and/or deliveries until a replacement solution is ready for operation on site, at the most however for two years as of written enforcement of the redhibition demand. As part of taking back his services and/or deliveries the contractor must restore the previous condition.

The contractor exempts NV-EnerTech from all claims made against NV-EnerTech in accordance with the product liability regulations in respect of the contractor's deliveries and/or services.



## **11 Deadlines**

### **11.1 Work plan and schedule**

If agreed, the contractor must submit a work plan and schedule with the implementation deadlines to NV-EnerTech before starting the work.

### **11.2 Delays**

If the contractor realises that the agreed deadlines cannot be met, he must inform NV-EnerTech immediately in writing, giving the reasons and indicating the envisaged duration of the delay.

## **12 Liability and insurance**

### **12.1 Liability**

Unless otherwise agreed the contractor is liable for all damages for which he is responsible in accordance with the statutory regulations. In terms of grounds and amount the liability of the contractor is not limited to the sum covered by the insurance.

### **12.2 Liability insurance**

The contractor must take and maintain appropriate liability insurance, including environmental liability, with a cover sum of at least EUR 1,500,000.00 for personal injury and material damage. In the case of goods with a final destination abroad it must be ensured that this insurance cover is also available for damage occurring abroad. The contractor exempts NV-EnerTech from all claims made against NV-EnerTech for which the contractor is responsible in connection with this deliveries and/or services.

Before starting work the contractor must through his insurance company provide evidence to NV-EnerTech of the existence of liability insurance through the submission of a confirmation valid for the duration of this contract.

### **12.3 Assembly insurance**

If NV-EnerTech's customer or the end customer does not take out assembly insurance, NV-EnerTech as a rule takes out assembly insurance of the construction, assembly and commissioning, the provisions of which are in accordance with the German "General Assembly Insurance Conditions" (AMoB) with the normal industrial clauses. In this case the interests of the contractor in respect of his portion of the services and/or deliveries are included in the insurance with the proviso that the contractor assumes an excess of EUR 5,000.00 per claim.

The contractor can obtain information from NV-EnerTech about the existence and scope of cover of insurance protection in individual cases.

### **12.4 Notification of claims**

All claims must be notified immediately in writing to NV-EnerTech GmbH & Co. KG or the NV-EnerTech site management.

## **13 Settlement**

### **13.1 Settlement basis**

The basis of settlement of the work carried out is constituted by settlement documents confirmed by NV-EnerTech. NV-EnerTech templates must be used to draw up the settlement documents.

### **13.2 Public holidays**

Public holidays are the statutory holidays in the federal state in which the work is being carried out, in the case of services and/or deliveries being carried out abroad, the local statutory holidays in the country in which the work is being carried out.

### **13.3 Travel expenses**

Travel expenses incurred in accordance with the NV-EnerTech directives for the journey, means of transport and class, including at the place of deployment, are refunded against receipts. Travel time between the place of work and accommodation is not considered as working time and is not remunerated by NV-EnerTech.

### **13.4 Luggage conveyance**

The costs of conveying luggage are not reimbursed. Customs and customs clearance charges for personal luggage are the responsibility of the contractor's employee. The costs of carrying work-related luggage agreed with NV-EnerTech (assembly tools, business papers etc) are reimbursed in full against receipts. NV-EnerTech determines the means of transport and route.

### **13.5 Use of private cars**

The use of a private car for the journey is only paid for if permission has been granted by NV-EnerTech. No travel expenses may be paid for passengers. If an employee of the contractor uses a private care without the permission of NV-EnerTech, the travel costs are only paid up to the amount of the means of transport stipulated by NV-EnerTech. Longer journey times are also not paid for in connection with this. If a private car is used with or without the permission of NV-EnerTech, no claims can be made against NV-EnerTech or its insurance company in the event of damage.

### **13.6 Journey time**

The actual journey time is paid for at the normal hourly rate up to a maximum duration of 12 hours/day. This also applies to journeys at night and journeys on Saturdays, Sundays and public holidays.

### **13.7 Family trips home**

#### **13.7.1 Domestic long-distance employment**

The provisions of the Federal Building Collective Bargaining Agreement apply. The time of the family trip home must be determined in consultation with the NV-EnerTech site management taking into consideration the operational requirements at the site. The allowance is not paid from the time of arriving at the place of residence to the time of departure from the place of residence to the place of work.

#### **13.7.2 Employment abroad**

NV-EnerTech reimburses the costs of a family trip home at the earliest after 6 months of employment at the building site, insofar as a total period for employment of at least 9 months is anticipated.

In all cases the date of the family trip home is determined by the circumstances on the building site and requires the consent of NV-EnerTech's site management.

### **13.8 Incapacity to work during the period of employment**

#### **13.8.1 In this country**

The provisions of the Federal Building Collective Bargaining Agreement apply.

#### **13.8.2 Abroad**

Medically determined incapacity to work must be notified to the NV-EnerTech site management immediately. The latter will then make the necessary further arrangements.

### **13.9 Deductions, personal and company taxes**

The deductions, personal and company taxes applicable in accordance with local and national laws and regulations are payable by the contractor and/or his employees.

## **14 Payments**

### **14.1 Basis of payment**

Payments are made in accordance with the conditions of the order letter after receipt, verification and approval of the invoices. Acknowledgment of the contractual conformity of the services and/or deliveries is not connected with payment.

### **14.2 Assignment of claims**

The contractor is not entitled to assign claims arising out of this contract to third parties without the written consent of NV-EnerTech.

### **14.3 Offsetting of claims**

The contractor agrees that NV-EnerTech can offset claims against him with claims arising out of services and deliveries against NV-EnerTech GmbH & Co. KG, Dinslaken, even if the due dates differ or if on the one hand cash payment and on the other instalment payment has been agreed. If necessary the balance is offset.

## **15 Termination, suspension, withdrawal, insolvency or bankruptcy proceedings**

### **15.1 Termination and suspension**

NV-EnerTech can at any time or partially

- a) terminate the contract,
- b) suspend it for a certain period
- c) have the suspended contract rescinded again through an appropriate declaration.

In the event of termination NV-EnerTech must pay the actual costs, unless the contractor has given rise to the termination. Evidence of entitlement to the costs claimed by the contractor must be provided. If NV-EnerTech exercises the right to continue the suspended contract the contractual conditions and calculation principles must be assumed. However, any changes in relationship that have occurred in the meantime must be taken into account when redetermining the remuneration, deadline and payment conditions. All other conditions remain unchanged.

### **15.2 Continuation of the work**

If the contractor is responsible for the termination, NV-EnerTech can carry out or have carried out by third parties still unfinished parts of the delivery and/or services at the expense of the contractor. This also applies in the case of insolvency or bankruptcy processing. Other claims and rights of NV-EnerTech remain unaffected.

### **15.3 Withdrawal**

If the service and/or delivery is/are delayed by a state of war, official measures or cases of force majeure, NV-EnerTech is entitled to withdraw from the contract after a period of six months.

### **15.4 Insolvency or bankruptcy proceedings**

If the contractor or one of his creditors applies for insolvency or bankruptcy proceedings against the assets of the contractor, NV-EnerTech can withdraw from the contract without prejudice to other rights and claims. NV-EnerTech is entitled to enter into the contractor's agreements with his suppliers. The same applies if the contractor does not meet interim deadlines and does not make up these arrears within an additional period set by NV-EnerTech.

## **16 Confidentiality**

### **16.1 Confidentiality obligation**

The contractor is committed to confidentiality. Without claiming to be a complete list, the following are subject to confidentiality:

NV-EnerTech, NV-EnerTech customer and/or partner know-how, specifications, drawings, plans, calculations, operating methods and figures, guidelines and contents of contracts.

The contractor must also keep in confidence all operational procedures, equipment, installations etc at NV -EnerTech and the NV-EnerTech customer and/or end customer, which he has become familiar in connection with his work for NV-EnerTech, even after completing orders vis-à-vis third parties not involved in fulfilling the contract. The contractor must impose a corresponding written obligation on his vicarious agents.

## **16.2 Use of documents**

The contractor must only use documents issued to him in trust in connection with fulfilling the contract, and must only make them available to third parties within the context of fulfilling the contract for the purposes indicated by NV-EnerTech. The contractor is also responsible for third-party confidentiality and must impose appropriate obligations on them.

## **16.3 Reproductions**

Documents may only be reproduced with the express permission of NV-EnerTech.

## **16.4 Return of documents**

On completion of the contractor's work for NV-EnerTech the documents, including copies thereof, must be returned to NV-EnerTech or destroyed free of charge at the request of NV-EnerTech.

## **16.5 Publications**

Publications in the press, radio, television etc must be approved in writing by NV-EnerTech.

## **17 Third-party rights, inventions, improvements**

### **17.1 Third-party rights**

The contractor guarantees that through the services and/or deliveries or the use thereof, no rights will be infringed and no claims made by third parties against NV-EnerTech due to infringement of such rights. If third-party rights are infringed, NV-EnerTech is entitled to compensation for damages to NV-EnerTech irrespective of his culpability. At the contractor's cost NV-EnerTech is entitled to obtain permission to use the relevant services from the authorised party.

### **17.2 Inventions, improvements**

If the contractor makes inventions or improvements while implementing the contract, NV-EnerTech is entitled to use these free of charge and without restriction. NV-EnerTech's customer is also entitled to the unrestricted and free use of these rights.

## **18 Data protection clause**

In accordance with the Federal Data Protection Law, NV-EnerTech is entitled to process personal data relating to the contractor.

## **19 Place of performance, applicable law, partial invalidity, jurisdiction and binding force**

### **19.1 Place of performance**

The place of performance of the work is the customer's or end customer's works premises, for payment Dinslaken.

### **19.2 Applicable law**

The legislation of the Federal Republic of Germany applies, excluding both conflicting rules as well as the standard law on the international purchasing of movable goods, the standard law on the conclusion of international purchasing contracts relating to movable goods and the United Nations convention on the international purchasing of goods.

### **19.3 Partial invalidity**

If individual provisions of these conditions are invalid, the validity of the other provisions is not affected by this. Invalid provisions must be replaced with valid provisions that come as close as possible to the economic intention.

### **19.4 Jurisdiction**

The place of jurisdiction for all disputes arising out of the contract is Dinslaken. NV-EnerTech is entitled to take action at any legal venue established for the contractor.

### **19.5 Binding force**

In the event of deviations resulting from the translation of these conditions or parts thereof, only the German version has legally binding force.

### **20.0 Validity provisions**

Should one or more of the above provisions be or become legally invalid, the remainder continue to be valid. The contractor must agree to new conditions which come closest to the invalid ones in terms of intent and economic success. Changes to the contract must be made in writing.