

# **General Terms and Conditions of Purchase for Purchase Contracts and Contracts for Work and Labour**

**of E.ON Energie**

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## **1. Validity of the Client's Terms and Conditions**

These Terms and Conditions of Purchase shall be taken as a basis for all purchase orders and apply exclusively as herein amended. If this version conflicts with a translation in a foreign language, the German version shall be exclusively binding. Conflicting or additional terms and conditions of the Contractor are objected to. They shall only apply, if the Client has agreed to them, or to parts thereof, expressly and in writing.

## **2. Order of Precedence**

In terms of their nature and scope, the mutual services shall be governed, in the following order of precedence, by:

- the stipulations in the purchase order,
- the further terms and conditions of contract set out in the purchase order, as well as specific and general technical terms and conditions,
- the Client's building site rules,
- these Standard Terms and Conditions of Purchase for Purchase Contracts and Contracts for Work and Labour

## **3. Offer**

3.1 In its offer, the supplier shall strictly adhere to the specifications and the wording of the request for an offer. Any and all deviations shall be expressly pointed out. The offer shall be made free of charge.

3.2 Subject to the prerequisites under section 48 of the Income Tax Act [EStG], the Contractor shall, upon submitting the offer, present a valid exemption certificate as per section 48 b of the Income Tax Act [EStG] in the form of a legible copy or, in the case of a certificate relating to the order, in the original. Otherwise, it shall not be possible to take account of the offer in the further contract award procedure. The Contractor shall, without undue delay, inform the Client of any revocation of a valid exemption certificate.

## **4. Purchase Order**

4.1 Purchase orders must be in writing. Communication by electronic data transmission shall also comply therewith. Verbal collateral agreements relating to a purchase order shall only be binding, if the Client confirms them in writing. This also applies to subsequent amendments and additions.

4.2 The purchase order shall be acknowledged by the Contractor within ten weekdays by signing, with legal validity, and returning the copy of the purchase order (purchase order acceptance) envisaged for this. Purchase orders which the Client communicates by electronic data transmission may be acknowledged by the Contractor in the same manner.

## **5. Subcontractors**

- 5.1 Except with the Client's prior written consent, the Contractor may not, either in whole or in part, transfer its obligations arising from the contract to other parties or outsource to other undertakings the services and works assigned to the Contractor. This also applies to services which the Contractor's business is not geared to.

Outsourcing of service instalments by a subcontractor to another undertaking shall likewise be subject to the Client's prior written consent.

In respect of the tasks assumed by subcontractors, the Contractor shall impose upon the subcontractors all obligations which the Contractor has assumed in relation to the Client and shall ensure that the subcontractors comply with those obligations.

If subcontractors are appointed, the persons responsible at the Contractor and at the subcontractors appointed by the Contractor shall discuss the provisions under the law on on-the-job safety, particularly the applicable rules and regulations of the employers' liability insurance association [Berufsgenossenschaft], as well as further rules and regulations prescribed by the Client, and shall document this in a short protocol. The Client shall receive a duplicate thereof.

- 5.2 The subcontractors, or the services to be outsourced to subcontractors, shall be designated as early as upon submission of the offer.
- 5.3 In the subcontractor contractor, the Contractor shall place the subcontractor under an obligation to hand over to the Contractor, for submission to the Client, the essential up-to-date certificates from the tax office, from the relevant social insurance institutions and from the employers' liability insurance association, as well as work permits if essential. The Contractor shall impose upon the subcontractor all obligations concerning the tasks assumed by it and ensure compliance therewith.
- 5.4 The Contractor may not hinder its subcontractors from concluding with the Client contracts for other deliveries / services. Particularly impermissible are exclusivity agreements with third parties which hinder the Client or a subcontractor from procuring deliveries / services required by the Client itself, or by the subcontractor, for the handling of such orders.
- 5.5 If the Contractor appoints workers as subcontractors without prior written consent as required under subsection 5.1, or if the Contractor breaches the duties under subsection 5.3, the Client shall have the right to rescind the contract and/or demand compensatory damages for non-performance.

## **6. Execution, Environmental Protection, Safety, Health Protection, Quality**

- 6.1 The Contractor shall take account of the recognised technical rules, the respective valid statutory and official regulations and the Client's company rules and regulations. In particular, the Contractor shall observe the rules and regulations of the employers' liability insurance association, the "Principles of Prevention" BGV A 1 and the generally recognised rules on safety and occupational medicine. The Contractor shall take account of the content of the Occupational Health and Safety Act [Arbeitsschutzgesetz] and the Industrial Safety Regulation [Betriebssicherheits-

verordnung]. This particularly includes the drawing-up of danger assessments for the activities to be carried out and the work resources used.

- 6.2 Deliveries of machinery and technical work resources shall include assembly and operating instructions, an EC declaration of conformity, a CE mark and, where appropriate, a design examination certificate in accordance with the Equipment and Product Safety Act [Geräte- und Produktsicherheitsgesetz, GPSG] and the Machinery Regulation [Maschinenverordnung]. Preference shall be given to delivering work resources which bear a CE mark. If no test mark is issued, compliance with the aforesaid regulations shall be proven by the supplier.
- 6.3 The Contractor shall be obliged to test the products in accordance with general German industrial standards and, on request, make the test results available to the Client free of charge. The Client shall also be entitled to test the products. Tests within this meaning shall not be deemed to be an acceptance test.
- 6.4 In the case of delivery of hazardous materials within the meaning of the Regulation on Hazardous Materials [Gefahrstoffverordnung], product information - particularly current EC safety data sheets in German - shall be sent to the Client in good time prior to delivery at the point of delivery. The same applies to information on marketing restrictions required by law. The stipulations laid down in the Act on Carriage of Hazardous Goods [Gefahrgutbeförderungsgesetz] shall be complied with.
- 6.5 Use of materials which are carcinogenic, toxic to reproduction or mutagenic shall be generally avoided. If deviations herefrom are necessary, the Client shall be informed in writing prior to delivery / use. Protective measures resulting from this shall be jointly agreed upon.
- 6.6 If the Contractor maintains a quality assurance system, e.g. as per DIN EN ISO 9001 - 9003, the Client or a third party contracted by the Client shall be entitled to examine the system according to agreement with the Contractor.
- 6.7 In respect of replacement parts and spare parts, the Contractor shall state all characteristics clearly described, e.g.:

manufacturer  
type  
purchase order number / article number / identification number  
dimensions  
material  
designations of standards, such as DIN, IEC, ISO etc.

If articles / equipment to be delivered contain materials, or use operating materials, which are subject to the Regulation on Hazardous Materials [Gefahrstoffverordnung], those materials shall be declared accordingly.

- 6.8 The Contractor shall, without undue delay, notify the Client of misgivings as to the envisaged method of execution or as to performance on the part of other contractors, in so far as this relates to the Contractor's scope of the order.
- 6.9 The Contractor shall adapt itself to the working hours applicable at the place where the service is to be rendered. The Contractor's authorised representatives and personnel shall be obliged to use the Client's attendance time recording system. Be-

fore work is taken up, the provisions customary at the site shall be agreed upon with the respective business establishment.

- 6.10 The Contractor and its subcontractors shall appoint personnel who are qualified, have been instructed and have been medically examined commensurately with the responsibilities to be executed and in accordance with the principles of the employers' liability insurance association. Corresponding up-to-date proof of qualifications and examinations shall be submitted at the Client's request.

The Client reserves the right to carry out, in the course of the works, checks as to compliance with occupational health and safety regulations by the Contractor and the subcontractors appointed by it

- 6.11 The Contractor undertakes not to expose any person with whom it comes into contact, in connection with the performance of its responsibilities for the Client, to any unjustified discrimination or harassment. The Contractor further undertakes to expressly point this obligation out to its employees and place them under a corresponding obligation.

- 6.12 The Contractor shall be obliged to comply with the site's rules of conduct relating to emergency management which are made known to it.

- 6.13 For good cause, the Client shall be entitled to demand that personnel of the Contractor be replaced. In particular, this shall apply, if there are justified doubts as to possession of necessary experience or qualifications or if on-the-job safety stipulations / environmental protection stipulations are not observed. The Contractor undertakes to provide a qualified replacement in those cases. Agreed dates shall remain unaffected by this. Replacement of personnel by the Contractor shall be subject to the Client's prior written consent. The Contractor shall bear all extra costs in connection therewith.

- 6.14 The Contractor undertakes to indemnify the Client against all damage and costs (including costs relating to the pursuit of rights) resulting from breaching of legal standards which is attributable to the Contractor or any of its employees or subcontractors.

- 6.15 The Client shall record all accidents occurring at work, or on the way to or from work, in respect of its own personnel and external personnel working for the Client. Recording shall serve to improve on-the-job safety. .

If an employee appointed by the Contractor or by one of its subcontractors suffers an accident on the way to or from the place of performance (accident occurring on the way to or from work) or at the place of performance in the course of exercising agreed responsibilities (accident at work), the Contractor shall, without undue delay, give the Client's on-site safety specialist written notification of this and of further details regarding how the accident occurred. Reporting of an accident shall not release the Contractor from existing statutory duties to report, particularly in relation to the employers' liability insurance association.

## **7. "UN Global Compact" Initiative and EU Counter-Terrorism Regulations**

- 7.1 E.ON attaches overriding importance to social responsibility as part of corporate activities. Consequently, it participates in the "United Nations Global Compact" initiative. The initiative is based on ten fundamental principles intended to make globalisation more **socially** and economically beneficial and prevent corruption. The information sheet "E.ON Responsible Procurement Policy" refers to the UN Global Compact principles and can be downloaded from the Internet at <http://materialwirtschaft.eon-energie.de>. The Contractor shall be obliged to observe those principles.
- 7.2 For the purpose of counter-terrorism, the ban on the direct and indirect provision of monies and economic resources to certain individuals, legal entities, groups and organisations has been introduced by the European Union Council Regulation (EC) No. 881/2002 and (EC) No. 2580/2001, which apply directly in every member state of the European Community. The Contractor undertakes to observe this ban and check its business partners and employees as to whether their name and identity exist in the lists of named individuals, legal entities, groups or organisations published as annexes to the Regulations. If their name and identity exist in the said lists, implementation of transactions with those persons, groups or organisations shall be refrained from.

## **8. Insurances**

For the duration of the contract, including warranty periods and limitation periods for defect-related claims, the Contractor must maintain liability insurance cover with terms and conditions customary in this branch of business (minimum amount of cover: 1.5 million EUR per occurrence of damage). The Contractor shall prove this at the Client's request.

## **9 Delivery Period / Performance Period**

- 9.1 Dates for delivery or performance stated in the purchase order are binding. The Contractor shall be obliged to inform the Client in writing, without undue delay, if circumstances indicating that the agreed date cannot be complied with occur or become evident to the Contractor.
- 9.2 The Contractor may only plead non-receipt of necessary documents to be supplied by the Client, if the Contractor has not received those documents within a reasonable period despite a prior written request.

## **10 Dispatch**

- 10.1 The transportation option which is most favourable for the Client shall be chosen, except where the Client has expressly stated certain carriage instructions. The consignments shall be packaged in such a manner that transport damage is avoided.

- 10.2 The purchase order particulars (purchase order number, purchase order date, point of delivery, name of consignee - where appropriate - and material number), along with the dispatch address, shall be stated in the transportation documentation.
- 10.3 The Contractor shall bear costs arising as a result of misdirected deliveries, in so far as the Contractor assumes responsibility for transportation or in so far as misdirecting is attributable to the Contractor.
- 10.4 The Contractor shall only be entitled to deliver / perform by instalments with the prior written consent of the Client.
- 10.5 Signing of the delivery note shall not signify recognition that the goods delivered conform to the contract.

## **11. Entry to and Driving On the Works Grounds / Building Site**

- 11.1 Entry to and driving on the works grounds / building site shall be subject to timely registration. Instructions issued by the Client's specialist personnel shall be followed. Traffic law regulations shall be complied with. Regardless of the legal grounds, the Client and its employees shall only be liable for gross negligence and intent, also for ordinary negligence in cases of injury to life, body or health.
- 11.2 If services are rendered on the works grounds / building site, the corresponding building site rules shall apply. At the time the work is take up, or on prior request, a counterpart of the building site rules, including the schedule of appendices, shall be handed over to the Contractor's supervisors against signature. Knowledge of the content of the building site rules, including the schedule of appendices, shall be confirmed by written declaration.

## **12. Changes to Performance**

- 12.1 The Contractor shall, without undue delay, give the Client written notification of changes to, or expansions of, the scope of delivery / performance which prove necessary in the course of execution. Implementation thereof shall require the Client's prior written consent.
- 12.2 Within ten calendar days from receipt of change requests from the Client, the Contractor shall examine them as to possible consequences and give the Client written notification of the result. In particular, effects on technical execution, on costs and on the time schedule shall be pointed out in this connection. If the Client decides in favour of implementation of the changes, the parties to the contract shall adapt the contract accordingly.

## **13. Waste Disposal**

In so far as waste arises in the course of the Contractor's deliveries / services, the Contractor shall, except where otherwise agreed upon in writing, recycle or dispose of the waste at its own expense in conformity with waste law regulations. Owner-

ship, risk and responsibility under the law on waste shall pass to the Contractor at the time the waste arises.

#### **14. Passage of Risk**

Risk shall only pass to the Client upon hand-over of the deliveries / services to the Client or upon acceptance of the deliveries / services by the Client.

#### **15. Defect-Related Claims**

- 15.1 The Client shall be fully entitled to statutory defect-related claims. As supplementary performance, the Client may, at its option, demand either elimination of the defect or delivery of an item free from defects or, as the case may be, production of a new work. Supplementary performance shall be effected in agreement with the Contractor, taking account of the Client's operational concerns.
- 15.2 The limitation period for defect-related claims shall be extended by the period between lodging of the defect-related complaint and elimination of the defects.
- 15.3 If parts of the subject of the contract are altered, or are replaced with parts of a different kind, within the framework of defect-related claims, the corresponding replacement parts and spare parts shall be altered or exchanged at the Contractor's expense.
- 15.4 In the event of rescission, the Client shall be entitled to continue using the Contractor's services free of charge until a suitable replacement is obtained.
- 15.5 In the event of rescission, the Contractor shall bear the cost of dismantling / removal, as well as return freight charges, and shall assume responsibility for disposal.

#### **16. Date-Independent Consistency**

The Contractor guarantees that the products shall show date-independent consistency. This means that, in respect of time-related particulars such as dates, periods and steps in time (hereinafter: date-related particulars), the products shall work, function and be usable in conformity with the contract, faultlessly and correctly, without limitation, also in interoperation with other products.

In particular,

- date-related particulars of the products must not cause any impairment of functionality, operational disruptions or interruptions of operations in respect of the products or other products;
- -date-related particulars or the processing of date-related particulars must not lead to incorrect results,
- -leap years must be correctly calculated and processed.

**17. Weights / Quantities**

In the event of deviations in weight, the weight determined by the Client in the advice of receipt shall apply, unless the Contractor proves that the weight calculated by it was correctly determined in accordance with a generally recognised method. This also applies analogously to quantities.

**18. Complaint Relating to Defects**

In the case of delivery of goods which the Client is required to examine in accordance with section 377 of the German Commercial Code [HGB], the period for examining the goods and complaining of any apparent defect in the goods shall be two weeks from the time delivery was taken receipt of. The period for complaining of hidden defects shall be two weeks from discovery of the defect.

**19. Prices / Issuance of Invoices**

19.1 The prices stated in the purchase order are fixed prices. They include all discounts and extra charges and are subject to the addition of statutory value-added tax.

19.2 After delivery / performance has been effected, the invoices, which are to be issued in duplicate, shall be sent - separately according to purchase orders - to the invoice address stated in the purchase order or to the Client's administrative office. Purchase order numbers shall be stated, and all settlement documents (bills of materials, records of work performed, measurements etc.) shall be enclosed.

19.3 Invoices for delivery instalments / service instalments shall bear the note "Invoice for a delivery instalment" or "Invoice for a service instalment". Final invoices shall bear the note "Invoice for a residual delivery" or "Invoice for a residual service".

19.4 Every invoice must separately show the value-added tax owed by law. No original invoices may be enclosed with the consignment of goods.

19.5 The Contractor shall be responsible for all consequences arising on account of non-compliance with the obligations stated in subsections 19.1 to 19.4.

19.6 The Client shall be entitled to rights of set-off and retention to the statutory extent.

**20. Non-Assignment of Rights and Duties**

Assignment and other forms of transfer of the Contractor's rights and duties outside of the scope of application of section 354 a of the German Commercial Code [HGB] are excluded. Exceptions shall only enter into effect with the Client's prior written consent.

## 21. Termination

21.1 The Client shall be entitled to terminate the contract at any time in accordance with section 649 sentence 1 of the German Civil Code [BGB] or in application thereof mutatis mutandis. Notice of termination shall be given in writing, stating the relevant reason for termination.

If one of the parties to the contract gives notice of termination, the Contractor shall vacate the building site and return it to the Client without undue delay and surrender all work documents essential for continuation of the services. If, in such a case, entitlements of the Contractor to residual remuneration are disputed and, for this reason, the Contractor asserts a right of retention at or around the time of notice of termination, the Client may avert any existing right of retention by providing security of sustainable value, at its option. The Client may fix the sum of this security in accordance with section 315 of the German Civil Code [BGB].

Contrary to the consequences of notice of termination provided for by law, the following applies:

21.2.1 If notice of termination is given for a reason attributable to the Contractor, the Client shall remunerate the Contractor, for the services which have been rendered in conformity with the contract up until receipt of notice of termination and which the Client is able to use, on the basis of the agreed price relating to the service instalments. Damage claims on the part of the Client shall remain unaffected.

In particular, the following reasons for termination shall be attributable to the Contractor:

- The Contractor fails to meet its contractual duties despite a written request and the setting of a reasonable time limit to no avail.
- In connection with the execution of deliveries or services, the Contractor violates, to a substantial extent, public-law regulations or directives which are subject to punitive damages and a civil fine.
- The Contractor definitively refuses to perform one or more of its contractual duties.

21.2.2 If the Client gives notice of termination for a reason not attributable to the Contractor, the Contractor shall be entitled to demand the agreed remuneration. However, the Contractor must allow deduction of expenditures which it saves as a result of nullification of the contract or of income which it acquires, or wilfully omits to acquire, by using its labour elsewhere.

21.2.3 The Client may terminate the contract, if the Contractor discontinues its payments or insolvency proceedings or comparable statutory proceedings are permissibly petitioned for or commence or their commencement is rejected due to insufficient assets. The Client shall, on a pro-rata basis, remunerate the Contractor for the services carried out. The Client shall be entitled to demand from the Contractor compensatory damages on account of non-performance of the remainder.

21.2.4 In so far as there is a reason for termination under both subsection 21.2.1 and subsection 21.2.3, termination under subsection 21.2.1 shall take precedence.

- 21.3 The right of termination for good cause, as well as the Contractor's right of termination under section 643 of the German Civil Code [BGB] remain unaffected.
- 21.4 Until the consignment is handed over, the Client may at any time rescind a purchase order for deliveries (section 433 of the German Civil Code [BGB]), if, as a consequence of decisions made by a government authority, the Client no longer has any interest in rendering of the services owed by the Contractor. The Client may likewise rescind, if insolvency proceedings or comparable statutory proceedings concerning the Contractor's assets are permissibly petitioned for or commence or their commencement is rejected due to insufficient assets. In the event of rescission on the part of the Client on account of this subsection, the stipulations above in subsections 21.2.1 to 21.2.3 shall apply in respect of the Contractor's entitlement to remuneration. The Client shall acquire title to the service instalments remunerated.

## **22. Rights of Use and Property Rights**

- 22.1 Within its corporate group, the Client may use, without limitation, the subject of the contract, including the patent rights and other property rights taken as a basis. This right of use also gives entitlement to alter the subject of the contract and also covers illustrations, drawings, calculations, methods of analysis, recipes and other works made or developed by the Contractor in the course of the formation and/or implementation of the contract. The Client may make documents available to third parties for the purpose of reproducing replacement parts or spare parts. The Contractor represents and warrants that no rights of third parties, particularly of its subcontractors, conflict with granting of the right of use and shall indemnify the Client against claims to this extent.
- 22.2 The Contractor shall be liable that no third-party property rights or copyrights are infringed as a result of delivery and/or use of the subject of delivery or performance and/or as a result of delivery and/or use of the work produced. The Contractor shall indemnify the Client against any and all third-party claims on account of infringement of those rights and shall also otherwise hold the Client harmless. Repairs may be carried out by the Client or its authorised representatives, even if industrial property rights of the Contractor exist.

## **23. Maintenance of Secrecy, Data Protection, Processing of Order Data, Security**

- 23.1 The Contractor undertakes to treat with absolute confidentiality, and use exclusively for the performance of the contract, all information which the Client makes accessible to it in connection with the order. Confidential information within the meaning of this stipulation encompasses documents, particulars, data and other information which are designated as confidential information or are, by their nature, to be regarded as confidential. The duty to maintain secrecy does not apply to information which was provably already known to the Contractor upon receipt or which the Contractor has acquired knowledge of elsewhere (e.g. from third parties without any reservation as to confidentiality, or through its own efforts).
- 23.2 The Contractor undertakes to grant access to the Client's confidential information only to employees, subcontractors and suppliers who have been entrusted with the rendering of services under this contract and have undertaken to maintain secrecy

in the same manner. On request, the Contractor shall prove to the Client that the obligation has been passed on.

All information handed over by the Client shall remain the Client's property. The same applies to copies, even if made by the Contractor.

After the contract has been implemented, the information handed over by the Client shall, at the Client's request or no later than upon expiration of the limitation period for defect-related claims, be fully and automatically returned to the Client or, at its option, be destroyed. The foregoing shall not apply, if statutory periods for retention of records conflict therewith.

23.3 The Contractor shall be obliged to observe the statutory stipulations on data protection (e.g. the German Federal Data Protection Act [Bundesdatenschutzgesetz] and the Telecommunications Act [Telekommunikationsgesetz]) and ensure and monitor compliance therewith. The Contractor shall impose those obligations upon all persons assigned by it to implement the contract. This particularly applies to the obligation to maintain data secrecy. On request, the Contractor shall prove to the Client's data protection officer, in the form necessary according to the statutory stipulations, compliance with the said obligation.

23.4 The Contractor shall only process personal data within the framework of the order and of the Client's instructions in accordance with section 11 of the German Federal Data Protection Act [BDSG]. The regulations on processing of order data shall further apply mutatis mutandis, if inspection or servicing of automated procedures or of data processing systems is carried out by the Contractor and access to personal data cannot be excluded in this respect (section 11 (5) of the German Federal Data Protection Act). The Client shall be responsible for assessing the permissibility of data processing and for safeguarding the rights of the persons concerned in accordance with the data protection laws (entitlement to information, correction, deletion etc.).

Regarding the processing of data in conformity with the order, the Contractor warrants adequate data protection for ensuring the confidentiality, availability and accuracy of the data and shall, for its part, make sure that the essential technical and organisational security measures relating to data protection are adhered to in accordance with section 9 of the German Federal Data Protection Act [BDSG].

The Client shall be entitled to check, at any time, that data are processed in accordance with the instructions issued and that the technical and organisational data protection measures taken are adhered to. The Contractor shall be obliged to provide the information essential for monitoring the order and grant the necessary rights of entry, inspection and access.

In individual cases, the Client shall be entitled to lay down further technical and organisational measures relating to data protection.

23.5 Access to data stock relating to employees and customers shall only be granted in so far as, and to the extent that, this is essential for the proper handling of the work.

23.6 After the contractual relationship has discontinued, the Contractor may only continue to store, or retain in some other form, personal data made available, in so far

as statutory or contractual periods for retention of records require further retention. Otherwise, documents containing personal data shall either be handed over to the Client or - according to consultation with the Client - be destroyed by the Contractor in a manner compatible with data protection.

- 23.7 The Client shall be entitled to have a security check carried out on employees of the Contractor in accordance with section 12b of the Atomic Energy Act [Atomgesetz], if they render services in connection with handling or carriage of radioactive materials or in connection with construction or operation of facilities within the meaning of section 7, section 11, subsection 1, no. 2, or section 9a, subsection 3 of the Atomic Energy Act. The Contractor undertakes to make available the data relating to those employees as essential for this.
- 23.8 The Contractor shall, without undue delay, inform the Client of all indications of a violation of provisions of data protection regulations or of this section.
- 23.9 The Client may wholly or partly rescind the contract, if the Contractor fails to perform, within a set reasonable period, its duties under this section "Data Protection, Processing of Order Data, Maintenance of Secrecy, Security" or breaches data protection regulations with intent or by gross negligence. The Contractor shall be liable to the Client for all damage resulting to the Client from breaching of the Contractor's obligations.
- 23.10 The duties arising from subsections 23.1 to 23.9 shall not be affected by discontinuation of the contract.
- 23.11 The Client reserves the right to pass on to affiliates of E.ON within the meaning of sections 15 et seq. of the Public Limited Companies Act [AktG], for the purposes of group-wide procurement, data relating to the Contractor which were made available in connection with the purchase order and reserves the right to store those data, within the scope of applicable provisions on retention of records or for possible further purchase orders, even after discontinuation of a contract.

**24. Safeguarding Use of Information Free from Discrimination as per Section 9 of the Energy Industry Act [Energiewirtschaftsgesetz]**

- 24.1 The Contractor undertakes not to pass on economically sensitive information, or information providing an economic advantage, which arises from the Client's sphere of influence, which come to its knowledge in the course of implementing the order and which could be of commercial interest to energy distribution, trading, production or generation organisations and/or undertakings.
- 24.2 Particularly subject to confidential treatment are:
- addresses and load profile data of connected customers
  - names of supplying distributors
  - information on the readiness of connected customers to change over Informationen
  - information on potential new customers' interest in being connected
  - information on measures for extending the grid and creating access to the grid
  - information on inactive house connections

- information on cost-effectiveness criteria for assessing connections and grid extensions

24.2.1 The Contractor undertakes to expressly point these obligations out to its employees and place them under a corresponding obligation. The Contractor further undertakes to impose the obligation to comply with section 9 of the Energy Industry Act [EnWG] upon subcontractors appointed within the framework of its order.

## **25. Reservation as to Intra-group Netting**

25.1 The Client and E.ON undertakings shall be entitled to receivables of the Client, and of E.ON undertakings, as joint creditors. According to sections 15 et seq. of the Public Limited Companies Act [AktG], E.ON undertakings are affiliates of the Client and undertakings at home and abroad in which E.ON AG holds a participating interest of at least 50 %.

E.ON undertakings may net / set off their receivables against the Contractor's receivables. All substantive and procedural rights which the Contractor has against one joint creditor in respect of a receivable shall also exist in relation to the other joint creditors.

25.2 Regarding the Contractor's receivables against the Client and against E.ON undertakings, the Client and E.ON undertakings may set off / net with receivables of the Client and receivables of E.ON undertakings against the Contractor.

25.3 The above provisions shall also apply, if cash payment on the one hand and submission of bills of exchange on the other hand have been agreed upon or if mutual claims are due on different dates. In this respect, however, settlement shall occur on the value date. In the case of running payment transactions, this entitlement relates to the balance.

25.4 In the case of a plurality of receivables, the Contractor shall waive its right to object to the Client's stipulation of the receivables to be netted.

25.5 On request, the Client shall make available a list of E.ON undertakings authorised to carry out intra-group netting.

## **26. Publication / Advertising**

Evaluation or disclosure, in publications or for advertising purposes, of business relations existing with the Client shall only be permissible with the Client's express prior written consent.

## **27. Shipment Abroad**

The Contractor is aware that shipment of documents and items of any kind is, in many cases, subject to a permit, e.g. under the External Trade Act [Außenwirtschaftsgesetz]. In cases where the Contractor ships abroad its own documents or items, or the Client's documents or items, the Contractor shall be responsible for checking whether a permit for such shipment is obtainable and - in so far as neces-

sary - for obtaining in due time all essential permits and for compliance with all relevant legal regulations.

If those regulations are contravened, the Client shall have the right to assert compensation claims for damage incurred.

## **28. Place of Jurisdiction**

In so far as the Contractor is a merchant within the meaning of the German Commercial Code [Handelsgesetzbuch], a legal entity under public law or a special fund under public law, the place where the Client's registered office is situated shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. Over and above the foregoing, the Client shall be entitled to bring an action before the court which has jurisdiction over the place where the Contractor's registered office is situated.

## **29. Contractual Language / Applicable Law**

29.1 The contractual language is German. German law applies.

29.2 If the Contractor's registered office is situated abroad, German law is agreed upon, excluding the law on conflict of laws and excluding the United Nations Convention on Contracts for the International Sale of Goods, of 11 April 1980. Trade terms shall be construed in accordance with the respective valid Incoterms - ICC, Paris.

## **30. Written Form**

Subject to the exceptions provided for in section 4., emails do not satisfy the written form within the meaning of these GT&C or within the meaning of individual contracts concluded on the basis hereof. Amendments or additions to these GT&C must be in writing. This also applies to the written form requirement itself.

## **31. Severability Clause**

If individual stipulations in these terms and conditions are or become invalid or unenforceable, the contract as a whole and the other stipulations in these terms and conditions shall remain in effect. From the commencement of invalidity / unenforceability, the parties to the contract shall be obliged to replace the invalid / unenforceable stipulation with a commercially equivalent stipulation in so far as possible, taking their mutual interests into account. The same applies mutatis mutandis to omissions.