

**1. Validity of the Terms and Conditions**

These Terms and Conditions shall be taken as a basis for all purchase orders and apply exclusively in relation to enterprises in accordance with section 14 of the German Civil Code [BGB]. If this version conflicts with any translation in a foreign language, the German version shall be exclusively binding. The Client does not recognise any conflicting terms and conditions differing from the provisions herein or additional terms and conditions of the Contractor. 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 relevant contract or purchase order,
- the further terms and conditions of contract set out in the contract or purchase order, as well as specific and general technical terms and conditions,
- labour protection and environment protection directive for partner companies / contractors (can be accessed in the Internet under [www.uniper-procurement.com](http://www.uniper-procurement.com)),
- the Client's construction site rules,
- these Terms and Conditions for Purchase Contracts, Contracts for Work and Materials and Contracts for Work and Services and any additional contractual Terms and Conditions.

**3. Offer**

3.1. In its offer, the supplier has to verify the specification and the description of the specification with the drawings and the calculations and the provisions hereunto annexed for any discrepancies and to indicate any changes or additions when submitting an offer. Unless the supplier did not raise any written objections until it has got the contract, it acknowledges the adequacy and accuracy of the information contained in the enquiry documents. Due to the lack of knowledge of local conditions, the supplier has no claim for additional compensation. The offer shall be made free of charge

3.2. Subject to the prerequisites under section 48 of German Income Tax Act [EStG], the Contractor

shall, upon submitting the offer, present a valid exemption certificate as per section 48b of the German 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 working days 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 partial performances by a subcontractor to another undertaking shall likewise be subject to the Client's prior written consent.

5.2. 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.

- 5.3. The subcontractors, or the services to be outsourced to subcontractors, shall be designated as early as upon submission of the offer.
- 5.4. In the subcontractor contract, 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.
- 5.5. The Contractor shall impose upon the subcontractor all obligations concerning the tasks assumed by it in relation to the Client and shall ensure compliance therewith.
- 5.6. 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.
- 5.7. The Client is entitled to reject a certain subcontractor for an important reason. This shall apply in particular when there are justified doubts regarding the necessary experience and qualifications or when the provisions of work safety or environment protection regulations are not followed. The Contractor undertakes in such cases to provide a suitable substitute without delay. Any delays arising from such rejection shall be borne by the Contractor.
- 5.8. If the Contractor employs workers as a subcontractor without first obtaining the prior written consent pursuant to section 5.1 or if the Contractor is in breach of the obligations pursuant to section 5.4, the Client shall be entitled to withdraw from the contract and/or demand compensation due to non-fulfilment.
- 6. Execution, Environmental Protection, Safety, Health Protection and Quality**
- 6.1. The Contractor shall take account of the acknowledged rules of technology, 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 A1 and the generally acknowledged rules on safety and occupational medicine. The Contractor shall take account of the content of the German Occupational Health and Safety Act [*Arbeitsschutzgesetz*] and the German Industrial Safety Regulation [*Betriebssicherheitsverordnung*]. This particularly includes the drawing-up of danger assessments for the activities to be carried out and the work resources used.
- 6.2. The Contractor shall, unless otherwise agreed, obtain all official authorization, in particular building, safety, transport and/or water permission. All expenses and fees related to licensing and inspection procedures shall be paid by the Contractor.
- 6.3. 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 German Product Safety Act [*Produktsicherheitsgesetz*, - ProdSG] and the German 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.
- 6.4. 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.
- 6.5. In the case of delivery of hazardous materials within the meaning of the German Regulation on Hazardous Materials [*Gefahrstoffverordnung*], product information - particularly current safety data sheets pursuant to the REACH Directive 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 German Act on Carriage of Hazardous Goods [*Gefahrgutbeförderungsgesetz*] shall be complied with.
- 6.6. 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.
- 6.7. If the Contractor maintains a quality management system, e.g. as per DIN EN ISO 9001, or a quality assurance system, e.g. as per KTA 1401, the Client or a third party contracted by the Client shall be entitled to examine the system according to agreement with the Contractor.
- 6.8. The Contractor shall, as part of his contractual work for the Client, be responsible explicitly for public safety in compliance with all relevant regulations.
- 6.9. In respect of replacement parts and spare parts, the Contractor shall state all characteristics clearly described, e.g.:
- manufacturer,
  - type,
  - order / article / 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 German Regulation on Hazardous Materials [*Gefahrstoffverordnung*], those materials shall be declared accordingly.
- 6.10. The contractor shall maintain a system for planning, execution and recording of appropriate maintenance, inspection and calibration of equipment and tools used in the execution of his work. Corresponding up-to-date documentation shall be submitted at the client's request.
- 6.11. 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.
- 6.12. 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. Before work is taken up, the provisions customary at the site shall be agreed upon with the respective business establishment.
- 6.13. 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.
- 6.14. 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.
- 6.15. 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.
- 6.16. The Contractor shall be obliged to comply with the site's rules of conduct relating to emergency management which are made known to it.
- 6.17. 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 without delay 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.

- 6.18. 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.
- 6.19. 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. Integrity and Compliance**

- 7.1. Integrity and compliance are of particular importance for the Client. The Client also considers social responsibility in the context of business activities to be of high importance. This said, the Contractor undertakes to implement all necessary measures to avoid corruption and other activities subject to prosecution, and to comply with the standards specified in Client's Supplier Code of Conduct, attached as annex. The Contractor shall also obligate its employees and subcontractors to comply with the Supplier Code of Conduct in connection with the fulfilment of its contractual obligations to the Contractor. Upon request, the Contractor shall provide the Client with proof which shows that it has obligated its employees and subcontractors to do so.

- 7.2. The Contractor undertakes to comply with the provisions of Council Regulation (EC) No. 881/2002, Council Regulation (EC) No. 2580/2001, and other national and international embargo and trade control regulations. This in particular applies, for the purpose of combating terrorism, to the prohibition of making funds or other economic resources available, directly or indirectly, to certain natural or legal persons, groups, or organisations. The Contractor undertakes to ascertain whether the names of any of its business partners or employees are identical to those in the list of natural or legal persons, groups, or organisations published in appendices to these Regulations. If any names are identical, the Contractor shall refrain from conducting business with these natural or legal persons, groups, or organisations.

**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 the branch of business (minimum amount of cover: EUR 1.5 million 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 or the contract 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 nonreceipt 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. Place of performance / Shipping**

- 10.1. All services and goods shall be provided with free delivery to the point of use. Each performance shall include the delivery note or other verifiable proof. The shipment to a destination shall be at the expense and risk of the Contractor.

- 10.2. If the transportation takes place due to a separate written agreement at the expense of the Client, 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.
- 10.3. 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.
- 10.4. 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.
- 10.5. The Contractor shall only be entitled to partial deliveries or performances with the prior written consent of the Client.
- 10.6. Signing of the delivery note shall not signify recognition that the goods delivered conform to the contract and shall not constitute acceptance.
- 11. Entry to and Driving On the Factory Premises or Construction Site**
- 11.1. Entry to and driving on the factory premises / construction site shall be subject to 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. The Client is liable also for ordinary negligence in cases of injury to life, body or health and breaches of other mandatory statutory regulations.
- 11.2. If services are rendered on the factory premises or construction site, the relevant company or construction site rules shall apply. At the time the work is taken up, or on prior request, a copy of the company or construction site rules, including the schedule of appendices, shall be handed over to the Contractor's supervisors against signature.
- Knowledge of the content of the company or construction 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 or extra quantities that 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**
- 13.1. The Contractor is obliged in the first place to avoid waste and in so far as waste arises in the course of the Contractor's deliveries / services, the Contractor as waste producer shall dispose of his waste properly in his own name. This also applies equally to his subcontractors.
- 13.2. Waste of the Client shall be disposed of by the Client except where the Parties have agreed with the Waste Management Officer of the Client otherwise.
- 14. Claims for Defects**
- 14.1. The Client shall be fully entitled to statutory defect-related claims unless otherwise regulated in the following.
- 14.2. 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. Supple-

- mentary performance shall be effected in agreement with the Contractor, taking account of the Client's operational concerns.
- 14.3. If parts of the same kind have to be replaced or improved more than twice on the basis of claims for defects, the Contractor shall be obliged to change all such parts present in the delivery with a view to preventing future defects.
- 14.4. The costs of subsequent performance and the necessary ancillary performance shall be borne by the Contractor. This applies in particular to cleaning and insulation work and scaffolding work. The Contractor shall also bear any costs on site, for example for dismantling, transport, assembly, planning and documentation work, arising in the course of subsequent performance.
- 14.5. Claims for defects shall not be affected or limited by the examinations carried out or requirement and instructions given by the Client. If the Contractor considers the examinations carried out or requirement and instructions given by the Client to be inexpedient, the Contractor shall be obliged to notify the Client in writing accordingly and to submit proposals for improvement.
- 14.6. 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.
- 14.7. 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.
- 14.8. 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.
- 14.9. In case of mechanical and electrical / electronic equipment or parts thereof, where the maintenance has an impact on the safety and operability, the limitation period for defect-related claims shall be 2 years, even if the Client has decided, the
- maintenance works for the duration of the limitation period shall be not carried out by the Contractor.
- 14.10. 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.
- 14.11. Until the defect-free acceptance for delivery the Client has the right to withhold 10 % of the down payment. In addition, the Client shall be entitled to withhold 5% of the total price as security up to expiration of the limitation period to cover claims based on Defects.  
The Contractor shall be entitled to replace the withholding by issuing a free, perpetual, irrevocable and directly enforceable warranty bond to secure the claims for defects. The warranty bond shall be subject to German law.
- 15. 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.
- 16. 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 accordingly to quantities.

**17. Complaints Regarding 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 30 calendar days from the time delivery was taken receipt of. The period for complaining of hidden defects shall be 14 calendar days from discovery of the defect.

**18. Acceptance / transfer of ownership and risk**

18.1. Performance shall be accepted by the Client always formally. A written record shall be made of acceptance checks. Partial acceptance shall take place only when expressly wished by the Client in writing.

18.2. Ownership of the delivery shall be transferred to the Client when the delivery arrives at the Client's premises or construction site, unless the Client has already obtained ownership of the delivery or of individual parts thereof on the basis of law or special agreement. Until the time of acceptance, the legal duty to maintain safety and the risk of accidental loss or accidental deterioration shall be borne by the Contractor. If no acceptance is planned, the risk shall be transferred to the Client when the delivery/work has been duly handed over to the Client at the place of performance.

**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 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, and if possible order item numbers, shall be stated, and all settlement documents (bills of materials, records of work performed, measurements etc.) shall be enclosed. If the Contractor has no purchase order number, an order reference must always be indicated or some other order document enclosed.

19.3. Invoices for partial deliveries or performances shall bear the note "Invoice for a partial delivery" or "Invoice for a partial performance". 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. Unreserved acceptance of the final payment precludes subsequent claims. The Contractor shall declare his reservation concerning the final payment to the Client in writing within two weeks following receipt of the payment. Otherwise the reservation shall lapse within one month after the receipt of the final payment, unless the Contractor submits to the Client immediately and in writing a verifiable invoice or, if this is not possible, the reservation was found to be warranted and is supported by verified evidence.

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

19.8. The Contractor can send invoices either in paper form or by electronic means. An "Information bulletin regarding receipt of electronic invoices" is published under [www.uniper-procurement.com](http://www.uniper-procurement.com).

19.9. If the Client refuses to accept invoices/credit notes due to some non-compliance with technical, legal or fiscal requirements, a copy of these documents shall in general be returned to the Contractor. If required, the Contractor can also request the original document from the Client within a period of three months and this will be sent in return for a correct invoice/credit note. On expiry of the said period, all original documents shall be destroyed by the Client unless otherwise regulated by law and/or fiscal regulations.

**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. Interruption**

The Client is entitled to demand at any time an interruption in execution of the contract. Any extra expenses incurred through such interruption shall be refunded by the Client. The time when execution of the contract is recommenced shall be determined by the Client while also taking due account of the reasonable interests of the Contractor.

**22. Termination**

22.1. 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.

Contrary to the relevant statutory provisions regarding termination, the following applies:

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 remuneration relating to the partial performances. 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, the site regulations of the Client, the instructions given by the supervisory / responsible person on site, statutory work safety regulations or the work safety regulations of the Client,
- the Contractor fails, despite receiving a written request with a suitable period for fulfilment, to furnish proof that the Contractor and its sub-contracts all have a SCC or a OHSAS certificate or some equivalent or comparable certificate,

- 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,
- despite receiving a written request with a suitable period for fulfilment, the Contractor still fails to provide punctual execution of the due performance and deliveries,
- The Contractor definitively refuses to perform one or more of its contractual duties.

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.

22.2. 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.

22.3. Cancellations must be in writing and indicate the relevant reason for cancellation.

22.4. Cancellation shall not prejudice any claims on the part of the Client for indemnity pursuant to the Terms and Conditions

22.5. In the event of cancellation, the Contractor shall remove itself and its effects from the workplace/site without delay hand it over to the Client, while also surrendering all work documents necessary for continuing the work and deliveries. If in such a case the Contractor asserts disputed claims for remaining payments and if the Contractor on this basis asserts a right of retention close in time to the cancellation, the Client can defend itself against any right of retention that may be applicable by providing a sound collateral of its choice, the value of which will be set according to section 315 German Civil Code.

**23. Rights of Use and Property Rights**

23.1. Within its corporate group, the Client may use, without limitation, the object of the delivery and



- performance and/or the work created (subject of the contract), including the underlying patent rights and other property rights. This right of use also entitles the Client or its agents to alter or repair/maintain the subject of the contract and also covers use of 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 the aforesaid documents available to third parties for the purpose of maintaining/repair and/or 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.
- 23.2. The Contractor shall be liable that no third-party industrial property rights or copyrights or other third-party rights are infringed as a result of delivery and/or use of the subject of the contract. 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.
- 24. Confidentiality**
- 24.1. 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 to be regarded as confidential by nature.
- 24.2. Moreover, in so far as confidential information contains personal data, the use thereof shall be governed by the stipulations under section 25. In the event of conflict between the provisions in this section 24 and the provisions in section 25, the provisions in section 25 shall take precedence in respect of personal data.
- 24.3. The duty to maintain secrecy shall not apply to information which was probably already known to the Contractor upon receipt or which the Contractor has otherwise acquired knowledge of (e.g. from third parties without reservation of confidentiality or through its own efforts). However, this exception stated in the sentence above shall not apply to personal data.
- 24.4. The Contractor undertakes to grant access to the Client's confidential information only to employees, subcontractors and suppliers who have been entrusted with rendering services under this contract and have undertaken to likewise maintain secrecy. On request, the Contractor shall prove to the Client that the obligation has been passed on.
- 24.5. All information handed over by the Client shall remain the Client's property. The same shall apply to copies, even if made by the Contractor. The Contractor shall have no right to retain the information, copies or data carriers.
- 24.6. After implementation of the contract, 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 the Client's option, be destroyed, unless statutory retention periods conflict therewith.
- 24.7. The Client may wholly or partly rescind the contract, if the Contractor fails to meet its duties under this section "Maintenance of Secrecy" within a set reasonable period. The Contractor shall be liable to the Client for all losses resulting to the Client from a breach of the Contractor's obligations.
- 25. Data Protection, Data Security, Commissioned Data Processing**
- 25.1. The Contractor shall be obliged to observe the statutory provisions on data protection (e.g. the General Data Protection Regulation ("GDPR"), the German Federal Data Protection Act [*Bundesdatenschutzgesetz*] and the Telecommunications Act [*Telekommunikationsgesetz*]) and ensure and monitor compliance therewith in observance of the provisions in this section 25.
- 25.2. The Contractor shall process personal data for the Client by way of commissioned data processing subject to instructions, in accordance with Art. 28 GDPR ("Commissioned Data Processing") only in so far as this is essential for the performance of

- the Contractor's duties arising from the purchase order. All appendices and documents which the purchase order refers to are also content of the purchase order within this meaning.
- 25.3. The type of data to be used by the Contractor within the framework of commissioned data processing, as well as the categories of persons concerned shall be specified in the purchase order and/or in an appendix to the purchase order ("Personal Data").
- 25.4. Personal data also include personal data which the Client processes itself on behalf of a third party and makes available to the Contractor, in so far as the Client uses the Contractor's services for the performance of its duties in relation to the third party.
- 25.5. The Client shall, also in the case of commissioned data processing, continue to remain the "master" of the personal data. The Contractor shall not have the right to retain personal data or retain data carriers or documents containing such data.
- 25.6. Commissioned data processing shall, in respect of personal data, encompass the acts which are essential for the performance of the Contractor's duties arising from the purchase order and are referred to in the purchase order. Access to data stocks and the right to process data on a commissioned basis shall be granted only in so far as, and to the extent that, such access is essential for the proper performance of these duties. Use of personal data by the Contractor beyond the foregoing shall not be permitted. In particular, the Contractor shall not be permitted to make any copies or duplicates of the data without the Client's knowledge and consent.
- 25.7. The duration of commissioned data processing shall be limited to the duration of the services and the invoicing of these services to be rendered by the Contractor according to the purchase order.
- 25.8. The Client shall have the right to issue instructions to the Contractor concerning the type, scope and methods of data processing and concerning the data security measures to be taken in this connection. The Contractor shall solely be entitled to process personal data within the scope of the Client's instructions. If the Contractor is of the opinion that an instruction from the Client contravenes the statutory provisions concerning data protection, it shall point this out to the Client without undue delay.
- 25.9. The Client's right to issue instructions and its right of control arising from the purchase order and this section 25 may also be safeguarded by any other person mandated by the Client.
- 25.10. The processing and use of the data shall take place exclusively in the territory of the Federal Republic of Germany, in a member state of the European Union or in any other state which has signed up to the European Economic Area Treaty. Any relocation to a country other than the above shall require the Client's prior consent.
- 25.11. Changes to the subject, scope, type, duration or purpose of the commissioned data processing, or changes to the circle of persons concerned, shall require a corresponding written agreement between the Contractor and the Client.
- 25.12. Furthermore, the provisions on commissioned data processing shall apply mutatis mutandis, if the testing or servicing of automated procedures or of data processing systems is carried out by the Contractor for the Client and access to personal data cannot be ruled out in this respect.
- 25.13. The Contractor warrants that its protection of data shall be adequate for ensuring the confidentiality, integrity, availability, resilience and accuracy of the personal data. Within the sphere of its responsibility, the Contractor shall monitor compliance with the essential technical and organisational security measures relating to data protection in accordance with Art. 32 GDPR. The Contractor warrants that it has implemented the Data Security Standards and that it will maintain such Data Security Standards during the term hereof. The Service Provider shall ensure by means of appropriate protective mechanisms that access to Company Personal Data is strictly limited to those employees of the Service Provider who require access in order to fulfil the Admissible Purpose.

- 25.14. The Contractor further warrants that personal data collected for different purposes shall be able to be processed separately. Moreover, the Contractor warrants that the following data shall be processed separately
- the Client's data,
  - the Contractor's data and
  - the data of other clients of the Contractor.
- 25.15. Prior to the commencement of commissioned data processing, and thereafter at the intervals indicated in the purchase order or an annex thereto and at any time at the Client's request, the Contractor shall prove in writing that it is complying with the technical and organisational security measures pursuant to the purchase order or an annex thereto. The Contractor shall be obliged to furnish proof in such a manner that the Contractor hands over to the Client in each case written documentation in such a form that the Client can meet the examination duties incumbent upon it under Art. 28 (3) GDPR.
- The Contractor shall adapt the technical and organisational security measures to technical progress at least every 2 years with the approval by the Client.
- 25.16. Owing to technical progress and developments in legislation which are to be expected, it may become necessary that the technical and organisational measures taken be adapted to technical progress and developments in legislation. In this respect, therefore, the Contractor shall be permitted, for adaptation to technical progress, to implement alternative adequate technical and organisational measures. The level of security of the measures agreed upon with the Client must not be fallen below in this respect. Material changes shall be documented and communicated to the Client without undue delay. Essential adaptations of the technical and organisational measures to changed statutory provisions shall be implemented by the Contractor without undue delay. Material adaptations shall be documented and communicated to the Client without undue delay.
- 25.17. The Client or the relevant office (for which the Client is acting as data controller for the order) shall be responsible for assessing the permissibility of the data processing and for safeguarding the rights of the persons concerned under the data protection laws. If the Client or the relevant office has caused personal data to be corrected, deleted or locked in relation to the Contractor, the Contractor shall be obliged to wholly follow this instruction. If a person concerned asserts rights in relation to the Client or the relevant office, the Contractor shall carry out, without undue delay, all acts essential for the performance of the Client's obligations in relation to the person concerned.
- 25.18. The Contractor shall appoint a data protection officer in accordance with applicable law or, if appointment of a data protection officer is not required under the applicable law, another data protection official responsible for the data protection aspects of the Processing of Personal Data and shall immediately provide the Client with relevant up to date contact details. This person must possess the essential expertise and reliability and use his influence to bring about compliance with the provisions on data protection. The Contractor shall inform the data protection officer about the commissioned data processing.
- 25.19. The Contractor shall be obliged to ensure that it passes on the Client's instructions to all employees who have access to personal data in connection with the performance of the Contractor's contractual duties according to the purchase order. Moreover, the Contractor shall be obliged to prohibit those employees, also for the period after their employment ends, from processing or using personal data contrary to the Client's instructions or for a purpose other than for the performance of the contractual duties in relation to the Client (data secrecy). The obligation of data secrecy shall be imposed upon the employees prior to the take-up of commissioned data processing. On request, the Contractor shall prove in writing to the data protection officer designated by the Client that this obligation has been passed on.
- 25.20. The Client is obliged to impose upon its subcontractors the obligations set forth in this section 25 with the provision that the subcontractor takes the place of the Contractor. Furthermore, the Contractor shall contractually ensure that all rights laid down in this agreement are, at the Client's option, able to be safeguarded either by the Contractor in

accordance with the Client's instruction or by the Client itself. If the Contractor safeguards the rights in accordance with the Client's instruction, the Contractor shall be obliged to pass on all information to the Client without undue delay, particularly documentation and results of controls. On request, the Contractor shall prove in writing to the Client's data protection officer that the duties laid down in this section 25.18 have been performed.

25.21. The provisions in the above section 25.18 shall also apply mutatis mutandis to other persons who are appointed for the performance of the Contractor's duties in relation to the Client and who have access to personal data. The appointment of such persons shall only be permissible in so far as this is expressly permitted by the purchase order.

25.22. The Contractor's duties stated in this section 25 shall not be affected by discontinuation of the contractual relationship which has been established with the Client as a result of the purchase order. This particularly applies to the obligation to maintain data secrecy. After commissioned data processing has ended, the Contractor shall only be permitted to continue to store or otherwise retain the personal data made available, in so far as statutory retention periods mandatorily demand further retention at the Contractor. Otherwise, the Contractor shall be obliged, upon discontinuation of commissioned data processing, to hand over all personal data in its possession to the Client without undue delay or, according to consultation and agreement with the Client, destroy the personal data without undue delay in conformity with data protection rules and provide the Client with written confirmation of destruction. The above also covers personal data generated for data securing and logging. In the case of returning personal data to the Client, the data mentioned in the above sentence, as well as any and all copies or duplicates of the data shall, following handover to the Client, be destroyed at the Contractor by the Contractor without undue delay in conformity with data protection rules and the Client shall be provided with written confirmation of destruction.

25.23. The Contractor makes available to the Client all information necessary to demonstrate compliance with the obligations laid down in this section 25.

The Contractor grants the Client, particularly its data protection officer, the right to monitor at any time, and without hindrance, whether the data processing is being carried out in accordance with the provisions of the law on data protection, the contractual provisions and the instructions issued by the Client. The Contractor undertakes to support the Client in this connection to the extent necessary, particularly by making the necessary information available, carrying out all acts necessary in this connection and granting the necessary admission, entry and access rights. The Client shall be entitled to call in third parties (particularly supervisory authorities) for carrying out the aforesaid controls, in so far as the third parties are entitled to carry out the controls in relation to the Client. The Contractor shall also acquiesce to and support documentation of the results of the controls prior to the commencement of commissioned data processing and during commissioned data processing.

25.24. The Contractor shall, without undue delay, give the Client written notification of all indications of a breach of the data protection provisions or of this section 25 or of the Client's instructions. The duty to inform shall particularly apply in the case of indications of an event within the meaning of Art. 33 GDPR. If the security or confidentiality of the personal data at the Contractor is jeopardised by attachment or seizure, by insolvency or composition proceedings or by other events or measures of third parties, the Contractor shall inform the Client thereof in writing without undue delay. The Contractor shall, without undue delay, inform all persons responsible in this connection that the sovereignty over and ownership of the data lie with the Client.

25.25. Taking into account the nature of the processing, the Contractor assists the Client by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Client's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III GDPR. The Contractor assists the Client in ensuring compliance with the obligations pursuant to Arts. 32 to 36 GDPR taking into account the nature of processing and the information available to the Contractor.

- 25.26. At the choice of the Client, the Contractor deletes or returns all the personal data to the Client after the end of the provision of services relating to processing, and deletes existing copies unless Union or Member State law requires storage of the personal data.
- 25.27. 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, Data Security, Commissioned Data Processing" or breaches data protection provisions with intent or by gross negligence. The Contractor shall be liable to the Client for all losses resulting to the Client from a breach of the Contractor's obligations.
- 25.28. The Client reserves the right to pass on to Uniper's affiliates, within the meaning of sections 15 et seq. of the Public Limited Companies Act [AktG], for the purposes of group-wide procurement the Contractor's data made available in connection with the purchase order and the right to store those data, even after a contract has ended, within the scope of applicable data retention provisions or for possible further purchase orders.
- 26. Safeguarding Use of Information Free from Discrimination as per Section 9 of the German Energy Industry Act [Energiewirtschafts-gesetz]**
- 26.1. 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 comes 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.  
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,
  - 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.
- 26.2. 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 6a of the German Energy Industry Act [EnWG] upon subcontractors appointed within the framework of its order.
- 26.3. The provisions of the sections 24 and 25 above remain unaffected.
- 27. Minimum Wage**
- 27.1. If the Contractor provides goods and services in the Federal Republic of Germany he assures and guarantees to comply with the specifications of the Minimum Wage Law and; in particular, to pay its employees at least the legal minimum wage unless there are legal exceptions.
- 27.2. In the case of the deployment of subcontractors pursuant to section 5, the Contractor assures to pay an adequate remuneration in order that the subcontractors are able to fulfil their obligations relating to the payment of the legal minimum wage.
- 27.3. Furthermore the Contractor ensures and revises on a regular basis that the subcontractors appointed by him as well as the subordinated subcontractors pay the legal minimum wage. The Contractor undertakes to supply the Client with evidence thereof upon request monthly. If there are indications of any infringement, the Contractor grants the Client the right to inspect the (anonymised) payrolls.
- 27.4. Any breach of these obligations gives the Client the right to terminate the contract extraordinarily if the Client has threatened the Contractor with termination and the Contractor does not fulfil its obligations within a reasonable period completely and demonstrably.
- 27.5. The Contractor is responsible for any damages caused by the violation of the Minimum Wage Law; he releases the Client of all third-parties claims at the first request to do so.

**28. Rights and Obligations in the Event of Severe Compliance Violations**

28.1 The Contractor and Client undertake to implement all necessary precautionary measures within their companies in order to avoid legal and other compliance violations. This in particular shall apply to severe violations. Regardless of the form of participation in the offence, severe violations in this sense include incitement or aiding and abetting of

- corruption-related offences, in particular offering, promising, or granting benefits to civil servants, public officials, or persons specially committed to public services (bribery or granting of undue advantages), or to directors, managers, or employees of the Client, third parties commissioned by the Client, or other companies (commercial bribery); as well as demanding, allowing oneself to be promised, or accepting such benefits from the aforementioned persons (or groups of persons);
- other serious commercial offences in one's home country or abroad, which particularly include fraud, breach of trust, or forgery;
- violations of provisions aimed at safeguarding unrestricted competition, in particular participation in agreements regarding prices, price components, customers, sales territories, production quotas, illegal price recommendations, participation in recommendations or agreements regarding the submission or non-submission of tenders, or other illegal influencing of contract awards and requests for proposal;
- unauthorized procurement, securing, exploitation, exchanging, or sharing of business and trade secrets or other strategic or competition-related information, orally, in writing, or on data storage media, for the purpose of influencing competition for personal gain, to benefit a third party, or with the intent of causing the owner of the business damages; as well as

- violations of economic sanctions or the evasion of sanctions of the European Union, in particular Council Regulation (EC) 2580/2001 and Council Regulation (EC) 881/2002 (anti-terrorism regulations), as well as other national and international embargo and trade control regulations.

28.2 If the Contractor, an individual commissioned by the Contractor, or one of the Contractor's employees, in order to influence the outcome of a contract award, verifiably enters into an agreement which constitutes an unlawful restriction on competition, and thus a serious violation within the meaning of the preceding paragraph 28.1, the Contractor shall pay the Client damage compensation of 15% of the net order value, unless the Contractor is not responsible for the violation. The Contractor shall be entitled to prove that no damages have been incurred, or that they are substantially lower than claimed. The Client's right to provide proof of and make a claim regarding a different amount of damages shall also remain unaffected. Evidence of an agreement shall be deemed to have been provided if a government agency or a court finds that there has been such an agreement. Other contractual or statutory claims by the Client shall remain unaffected.

28.3 If there is reasonable suspicion, for example on the basis of statements by government agencies, that the Contractor has violated provisions of anti-trust or competition law, and that damages may be incurred to the Client as a result, the Contractor shall be required to assure the Client in writing that it permanently waives all rights to object on the basis of the statute of limitations, or to make similar objections, against compensation for damages or comparable compensation to which the Client may be entitled.

28.4 In the case of a severe violation as defined in paragraph 28.1 – which is not part of the severe violations governed in paragraph 28.2 – by the Contractor, an individual person commissioned by the Contractor, or an employee of the Contractor, during the implementation and execution of an order, which is to the detriment of the Client, the Contractor shall be required to pay a contractual penalty, unless the Contractor can demonstrate that it is

not responsible for the violation. This contractual penalty shall be

- 5% of the net order value, if the violation was committed by a director, manager, authorised signatory, or authorised agent of the Contractor, and
- 3% of the net order value, if the misconduct was committed by another employee, representative, subcontractor, or sales partner of the Contractor.

Despite the contractual penalty, the Client's right to assert additional damage compensation claims shall remain unaffected. In this case, an incurred contractual penalty shall be counted in addition to the damage compensation.

28.5 In the case of a severe violation within the meaning of paragraph 28.1 by a director, manager, or employee of the Contractor, the Client shall be entitled to exceptionally terminate the contract, or all current contracts with the Contractor. The Contractor shall also, immediately upon being asked to do so in writing, indemnify the Client from all third-party claims arising from or in connection with such a violation.

28.6 If the Contractor should gain knowledge of facts which lead to the suspicion of a severe violation within the meaning of paragraph 28.1 that potentially impacts the Client, the Contractor shall inform the Client immediately in writing, and shall immediately investigate the facts if the violation is within the sphere of the Contractor. If the suspicion is confirmed, the Contractor shall be obliged to take appropriate measures to immediately remedy the misconduct, and to prevent future violations in the long term provided that such measures were not already in place. The Contractor shall inform the Client in writing of the progress and outcome of its investigation of the facts, as well as of any measures taken. The Client shall then have the right to inspect and copy (if necessary take away and copy) the relevant documents, reports, accounts, books, e-mails etc. If direct inspection by the Client is not possible for legal reasons - which the Contractor must prove by means of an external legal opinion - the Client shall have the right to instruct an external third party (at the Contractor's expense) to perform the review, and to inform the Client and Contractor of the outcome of the review.

**29. Publications/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.

**30. Transfer Abroad**

30.1. The Contractor is aware that the transfer of documents and items of any kind is, in many cases, subject to a permit, e.g. under the German External Trade Act [*Außenwirtschaftsgesetz*]. In cases where the Contractor transfers 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 transfer is obtainable and - in so far as necessary - for obtaining in due time all essential permits and for compliance with all relevant legal regulations.

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

**31. Legal Venue**

The exclusive legal venue for all disputes arising directly or indirectly from the contractual relationship is in the case of contracts with merchants in the sense of the Commercial Code, is the domicile of the Client. 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.

**32. Contractual Language / Applicable Law**

32.1. The contractual language is either German or English. The law of the Federal Republic of Germany applies.

32.2. If the Contractor's registered office is situated abroad, the law of the Federal Republic of Germany 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.

**33. Form of Declarations**



**Terms and Conditions for Purchase Contracts, Contracts for Work and Materials and Contracts for Work and Services of Uniper Group - as of 07/2018**

All declarations and notifications with legal effect that the Contractor is obliged to make to the Client or a third party must be in writing. 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.