

The following Special Terms and Conditions for Construction Works and Planning Services (hereinafter 'Special Terms and Conditions') shall form part of all contracts entered into between Neptune Energy Deutschland GmbH as well as Neptune Energy Holding Germany GmbH (each referred to hereinafter as 'Neptune' or 'Customer') and their business partners (hereinafter referred to as 'Contract Partner' or 'Contractor') concerning the provision of construction, dismantling or assembly works and/or planning services. Unless otherwise provided herein, Neptune's General Terms and Conditions of Purchase and Procurement (GTCPP Neptune: [www.neptuneenergy.de/einkauf](http://www.neptuneenergy.de/einkauf)) shall apply by way of supplement.

### 1. Contractual basis

- 1.1 Unless otherwise agreed in writing between Neptune and the Contractor, these Special Terms and Conditions, as amended from time to time, shall apply between the aforementioned parties, including for all future legal transactions executed in the context of an ongoing business relationship, even if this is not expressly agreed to again subsequently.
- 1.2 Any conflicting or additional terms and conditions of the Contractor or third parties, particularly general terms and conditions of contract or business, shall not be binding upon Neptune, even if they are referred to in the Contractor's offer, its order acknowledgement, or other documents, and Neptune does not expressly reject them in the individual case or if Neptune accepts performance. Any acknowledgements on the part of the Contract Partner that include a reference to its own terms and conditions of business are hereby rejected.

### 2. Contractor's obligation to examine and notify

- 2.1 Before making an offer or entering into a contract, the Contractor must fully inform itself of all relevant factors that impact upon the performance to be rendered under the contract and must take adequate account of those factors when entering into the contract or making an offer. In cases involving planning services and construction works, this shall also include, in particular, obtaining adequate information about the location, state and any other conditions on the plot of land.  
If the Contractor, in the course of its examination, becomes aware of any

contradictions, discrepancies or ambiguities, particularly regarding the manner envisaged by Neptune for implementation of the activities or services, it must notify Neptune of this in writing without undue delay. If the Contractor fails to fulfil this obligation to inform, any future supplementary claims of the Contractor resulting therefrom shall be excluded.

- 2.2 Any materials supplied by or at the behest of Neptune for the purposes of the performance to be rendered by the Contractor must be thoroughly inspected for completeness and quality by the Contractor immediately upon their delivery. Any complaints must be reported to Neptune in writing without undue delay. Unless expressly agreed otherwise in individual cases, the risk of accidental loss, destruction or deterioration of such materials provided by or at the behest of Neptune shall pass to the Contractor upon its acceptance of those materials.

### 3. Contractor's scope of supply and services / use of subcontractors

- 3.1 The scope of the supplies and services to be provided by the Contractor is set out in the schedule of services and construction specifications. Unless otherwise expressly specified in the schedule of services, the services shall be deemed to include delivery of all necessary construction materials, indirect construction materials, operating equipment, all accessories, and incidentals, as well as disposal (of waste) and clearance of the construction site or place of performance.
- 3.2 Where necessary, the Contractor must observe and fulfil any existent construction permits and operating plans, including their conditions, as well as all other public-law permits.
- 3.3 Any and all losses or damage occurring as a result of the Contractor's services on neighbouring plots of land and areas, or on the property of Neptune or its consortium partners, must be remedied and financially compensated for by the Contractor, insofar as the Contractor is responsible for such losses or damage. Dust nuisances, odour nuisances and noise pollution in connection with the implementation of the Contractor's services must be avoided.
- 3.4 The use of subcontractors shall be subject to Neptune's prior written approval.

3.5 Any services rendered by the Contractor without a written order, or in unauthorised deviation from the order or scope of supplies and services, shall not be remunerated.

#### **4. Implementation and construction site coordination**

4.1 Construction site, organisation, other services

4.1.1 The construction site equipment as well as the maintenance of safety and order on the construction site and the legal duty to maintain safety (*Verkehrssicherungspflicht*) shall, insofar as they concern the Contractor's scope of supplies and services, be the sole responsibility of the Contractor, who shall indemnify Neptune against all claims arising in this regard.

4.1.2 The Contractor shall maintain a construction site journal.

4.1.3 At the time of acceptance, the entire construction site must be cleared and free of rubble, ashes, formwork or packaging materials, construction materials or other waste and refuse. If this obligation to clear the site and perform fine cleaning has not been completely fulfilled at the time of acceptance, Neptune shall be entitled, after setting an appropriate grace period, to engage, at the Contractor's expense, a third party to clear the site and perform the fine cleaning.

If Neptune makes collection facilities available for the removal of waste, the use of those facilities must be paid for by the users according to the degree of use and the incurred costs.

4.1.4 Any construction panels or other signs that the Contractor intends to install on the construction site, as well as all publications or announcements that the Contractor plans to issue in connection with the commissioned services, shall require the prior, written consent of Neptune.

#### **4.2 Implementation of the construction services and documentation**

4.2.1 If the service description or technical regulations allow for a margin of quality latitude with respect to the implementation of a service, the highest quality must always be provided. The same shall apply in the event of any contradictions between the quality requirements specified for a service in the

service description. The requirements specified in the relevant standards and other technical regulations, the accepted rules of engineering, and the manufacturer's processing instructions must strictly be complied with in all cases.

4.2.2 The plans and documents to be produced by the Contractor must be presented to Neptune in sufficiently good time to allow Neptune at least 15 working days to examine them but without this jeopardising the deadlines for the planning works.

4.2.3 Meetings between Neptune and the Contractor to discuss the construction project must be held regularly (weekly, unless Neptune and the Contractor agree otherwise). These meetings shall be minuted by the Contractor.

4.3 If the Contractor believes it is being hindered in the proper implementation of its performance, it must notify Neptune of this in writing without undue delay and specify the circumstances of the hindrance – even in cases of an obvious hindrance.

#### **5. Additional services**

5.1 In the event of a supplementary order or upon receipt of a corresponding request from Neptune for additional services not agreed to in the contractual scope of supplies and services, the Contractor shall present to Neptune, without undue delay, a corresponding offer with a comprehensible calculation based on the calculation for the main contract that includes the appropriate unit prices and an itemised breakdown of the additional and reduced work and expenses.

If, in the individual case, Neptune and the Contractor are unable to agree on the entitlement to supplementary remuneration, either on the merits or in terms of the amount, the Contractor shall nevertheless be obliged to implement the supplementary orders requested by Neptune. Provided that the parties are able to agree, as regards the merits, on the entitlement to the supplementary claim, the remuneration for the supplementary order shall then be determined subsequently, subject to balancing the additional and reduced work and expenses, as follows:

a) The supplementary or reduced remuneration shall, insofar as possible, be

determined on the basis of the unit prices offered by the Contractor.

- b) Alternatively, a fair price that is typical for the local market shall be payable. The Contractor shall set out in detail, and provide proof of, the services concerned and the individual fees.
- 5.2 The Contractor shall provide Neptune with documentation for the works it has carried out, in the relevant contractually agreed form, upon full completion of the works or services to be provided under the contract.

## 6. Remuneration

The remuneration shall be governed by the agreements set forth in the contract text or in the individual orders, inclusive of their annexes. In all other respects, the following shall apply, depending on the agreed type of remuneration:

a) Fixed lump-sum price:

If a fixed lump-sum price is agreed upon, this is paid in full consideration for everything that is necessary to ensure the full, functional, operational, proper, turn-key and on-time implementation and delivery of the services to be rendered under the concluded contract, even if and to the extent that any necessary individual or ancillary services are not expressly stipulated in the service description, including annexes, and/or any other contractual bases, but were, at the time of entering into the contract, clearly required in order to ensure the contractually assured successful outcome. A fixed lump-sum price also covers – insofar as they concern the contractually agreed scope of supplies and services – all fees, permits and inspections required for the official, final acceptance for use, e.g. TÜV [Technical Inspectorate], VDE [Association for Electrical, Electronic & Information Technologies], etc. The Contractor shall bear the volume risk and mass risk. Additional claims are excluded, even in the event of extraordinary increases in the prices for materials or wage costs.

b) Unit price:

If invoicing and settlement based on unit prices is agreed upon, the Contractor may demand remuneration only for those services which it has actually provided. The construction services actually provided shall be determined on the basis of an on-site measurement. Binding

quantities of masses shall be finally determined only by means of the on-site measurement. Any quantities of masses specified in the schedule of services are merely non-binding estimates and shall not establish any claim to remuneration on the part of the Contractor. Agreed unit prices are fixed prices in all cases. Price adjustments for wages and materials have not been agreed. In all other respects section 2 No. 3 of Part B of the Construction Tendering and Contract Regulations (*Vergabe- und Vertragsordnung für Bauleistungen Teil B, 'VOB/B'*) shall apply. If, in a case of application of section 2 No. 3 of the VOB/B, it is apparent to the Contractor that there will be additional or reduced costs as a result of a deviation of more than 10%, upwards or downwards, from the bill of quantities, which may exceptionally lead to a higher or lower unit price, the Contractor shall notify the Customer of this without undue delay. If the Contractor fails to give such notification, it shall be obliged to compensate the Customer for the resulting losses unless it can prove that it is not responsible for those losses.

c) Work billable by the hour:

By way of derogation from the provisions of section 2 (10), to be read in conjunction with section 15, of the VOB/B, work billable by the hour shall be remunerated separately only if such work, including the charge rates, has been expressly agreed upon in the contract.

d) Planning services

Any planning services provided shall be settled in accordance with the provisions set forth under point (c) on the basis of time sheets that have been confirmed and approved by Neptune.

## 7. Invoicing and payment

- 7.1 By agreement with Neptune, partial payments may be made for up to 85% of the demonstrably provided services. A partial payment shall always be subject to the precondition that the invoiced services have been executed properly and without any defects until that point. Otherwise, Neptune may refuse to effect a partial payment or may withhold a reasonable portion of the partial payments until the defect has been remedied. Effecting partial payments does not constitute acceptance of the services provided and remunerated up to that point.

- 7.2 If invoicing for partial payments has been agreed upon, all invoices for partial payments must specify the scope and value of all services rendered up to that point as well as the partial payments already received and must also state the correct serial numbers.
- 7.3 Upon acceptance of the construction project, the Contractor shall submit a verifiable final invoice, net of all effected partial payments.
- 7.4 The Contractor shall, within one week of entering into the contract, provide the Customer with a certificate of exemption according to section 48b of the *Einkommensteuergesetz* (Income Tax Act, 'EStG'). If said certificate of exemption is not presented, or is revoked, the Customer may withhold 15% of the due payments and pay this to the competent tax office for the Contractor.
- 7.5 The Contractor shall pay all due taxes, duties, charges and contributions for which it is directly liable – including, in particular, income tax, customs duties, import duties, corporate taxes, insurance contributions and social security contributions – promptly and in full to the competent authority/body, and shall indemnify the Customer against all claims brought against it by the competent authorities/bodies on account of services rendered by the Contractor. Neptune reserves the right to invoice the Contractor, in such cases, for reasonable compensation for the time and expense involved.

## 8. Acceptance

- 8.1 Following proper performance of the overall service owed, Neptune and the Contractor shall conduct a joint formal acceptance. An acceptance report must be drawn up for the acceptance proceedings using the form provided by Neptune (accessible at: [www.neptuneenergy.de/einkauf](http://www.neptuneenergy.de/einkauf)). In all other respects, section 12 VOB/B shall apply.
- 8.2 To this end, the Contractor shall send Neptune a written notification that it has rendered the services required of it and that they are, in its opinion, ready for acceptance, and shall request Neptune to acceptance the performance within a period of at least three weeks.
- 8.3 Neptune may, but need not, issue partial

acceptance. If there are only minor defects present, Neptune shall not be entitled to refuse acceptance. Any work performed to remedy defects after acceptance has taken place shall also be subject to formal acceptance in each case.

Acceptance may be declared only by Neptune or a representative expressly empowered by Neptune in writing for such purpose.

## 9. Warranty and liability

- 9.1 By way of derogation from section 13 VOB/B, the limitation period for Neptune to assert its liability claims and/or warranty claims for construction works, as well as for any planning services, shall be 5 years following acceptance, unless the Contractor has fraudulently concealed the defect. If the Contractor has fraudulently concealed the defect, the claims shall become time-barred after 3 years, starting from the time when Neptune acquired knowledge of the circumstances founding the claim and the identity of the party liable, or from the time when it failed to become aware of the same due to gross negligence, but not before 5 years have elapsed since acceptance.
- 9.2 Neptune may demand reimbursement from the Contractor for the costs of remedying defects, even if no prior request and deadline was issued, if remedying the defect immediately was in the public interest, or was required to avoid major consequential damage or imminent danger, and it was not possible for the Contractor to remedy the defect in time.
- 9.3 The entitlement to reimbursement for the costs Neptune incurs in connection with remedying the defects shall also include those costs incurred by Neptune for the use of its own personnel in the preparatory work required for remedying the defect, or for its supervision or invoicing; in this regard such personnel need not have been specifically employed for those purposes.
- 9.4 If any claims are brought against Neptune by third parties for losses or damage arising out of, or in connection with, the performance rendered by the Contractor, the latter hereby agrees to fully indemnify Neptune against all such claims, unless the Contractor was not responsible for the losses or damage in question.

9.5 In the above-mentioned cases, the Contractor agrees to assist Neptune in the pre-litigation and litigation stages of disputes with third parties.

#### 10. Collateral security

10.1 The Contractor shall provide Neptune, within two weeks of entering into the contract, with a perpetual, irrevocable and directly enforceable contract performance guarantee issued by a German bank or a German credit insurer in an amount equivalent to 10% of the gross order value.

10.2 If the Contractor fails to comply with its obligation under Clause 10.1, Neptune shall be entitled to reduce the amount of any partial payments until the agreed collateral security amount is attained.

10.3 The Customer shall furthermore be entitled to deduct a collateral security deposit of 5% from the verified amount of the gross final invoice by way of collateral security for any defect claims. In lieu of the collateral security deposit, the Contractor may provide an irrevocable, perpetual and directly enforceable guarantee for defects issued by a German bank or a German credit insurer.

10.4 The cases referred to in Clause 10.1 to 10.3 shall also cover the collateralisation of claims raised against Neptune for non-payment of the minimum wage or non-payment of contributions to the holiday fund (section 14 of the *Arbeitnehmerentendegesetz* (Posted Workers Act, 'AEntG')) as well as for non-payment of social security contributions (section 28e (3a)-(3f) of the *Viertes Buch Sozialgesetzbuch* (Book Four of the Social Security Code, 'SGB IV') as well as any indemnification in the case of any claims raised against Neptune under section 48 to section 48d of the EStG.

10.5 The guarantees must be issued in such manner that claims arising out of the guarantee will not become time-barred before the collateralised claims.

#### 11. Extension of the construction period

If the Contractor implements supplementary orders at the request of Neptune, an extension to the scheduled construction period shall be granted only if an extension cannot be avoided through an appropriate increase in the number

of deployed personnel or other appropriate capacity expansions, insofar as these can reasonably be expected of the Contractor. The Contractor shall inform Neptune in writing without undue delay, if possible before providing the corresponding services, of the expected impacts on the timetable/construction schedule.

#### 12. Insurance

12.1 The Contractor shall, in addition to the insurance provided for in Neptune's GTCPP, effect a contractors' all risks insurance policy on the basis of the '*Allgemeinen Bedingungen für die Bauwesenversicherung von Unternehmensleistungen*' (General Terms and Conditions for Contractors' All Risks Insurance for Contractor Services, 'ABU') including fire risk, and including the interests of the Customer, as well as the subcontractors, architects and planners, and engineers, and under waiver of the construction-works insurer's rights of recourse against insured subcontractors, architects and engineers (Clause 8.2. of the '*Gemeinsamen Klauseln zu den ABU und ABN*' (Common clauses to the ABU and ABN [General Terms and Conditions for Contractors' All Risks Insurance for the Construction of New Buildings by the Client])). The insurance must be extendible to services that the Customer awards directly to third parties. Insofar as implementation of the construction project could damage and/or destroy the fabric of old buildings, the insurance policy must also cover this eventuality. The insured sum must be at least equivalent to the contract price and be maintained until acceptance. Proof of the conclusion and fulfilment of this insurance policy for the entire duration of the construction period must be presented to Neptune unsolicited. The Contractor shall be responsible for payment of the premiums associated with the insurance it is required to take out; the premiums are covered by the agreed remuneration.

12.2 The Contractor assumes all obligations (notification requirements, etc.) arising out of the insurance policy it has taken out. All insurance-related events must be reported to Neptune without undue delay.

12.3 Insofar as permissible by law and under the relevant terms and conditions of insurance, the Contractor hereby assigns to Neptune its

coverage claims in respect of the liability assumed under this contract and covered by the insurance policies and instructs the relevant insurance company to pay the corresponding coverage payments exclusively to Neptune. The Contractor shall, if necessary and at Neptune's request, repeat this instruction separately to the insurance company.

**13. Documents, information, copyrights**

- 13.1 Neptune shall be exclusively entitled to all rights to data, information, plans, drawings and products of work that are provided or newly produced and developed as a result of the Contractor's activities. This shall apply regardless of any possibility to patent them. Neptune is thus granted an unrestricted and exclusive right to use the data, information, plans, drawings and products of work that have been produced as a result of the Contractor's activities.
- 13.2 The unrestricted right of ownership, use, processing and alteration over the Contractor's products and services, as granted in the above paragraph, shall also include the right of use, processing and alteration in the context of further planning works to be provided in connection with the contract project, particularly in the context of any additional implementation planning that may need to be performed by Neptune or third parties.
- 13.3 The above provisions shall apply also in the event of early termination (in full or in part) of the contractual relationship.
- 13.4 The agreed remuneration also covers consideration for all rights granted to Neptune under this Clause 13.