

## General Terms and Conditions of Purchase and Payment for Consultancy and Programming Services (ABP) 07/2011

### 1. Scope/conclusion of contract

The following terms and conditions shall apply to the provision of work and/or services, in particular:

- a) Consultancy and support services of all kinds (including training services),
- b) Planning and organisation services,
- c) Programming and implementation services (including data migration).

Purchase orders by Amprion GmbH – hereinafter referred to as “Amprion” - shall be placed according to these terms and conditions as well as any supplementary terms and conditions named in the purchase order or in the functional/technical specifications.

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

### 2. Written form

Purchase orders and agreements and amendments made in connection with such purchase orders shall only be binding where in writing.

### 3. Subcontractors

If the Contractor would like to commission third parties to provide the services, this shall require the prior written consent of Amprion. Correspondingly, this shall apply to the change of or the use of other subcontractors. Amprion shall give its consent unless there are factual reasons for objecting to the use of specific subcontractors, or to any use of subcontractors, in a project. Amprion explicitly reserves the right to award by itself any work to be awarded to subcontractors.

### 4. Code of Conduct

Amprion expressly refers to RWE's Code of Conduct which applies within the RWE Group and may be viewed at the following web address: [www.rwe.com/lieferanten](http://www.rwe.com/lieferanten) (path: <http://www.rwe.com/web/cms/en/2438/rwe/rwe-group/about-rwe/code-of-conduct/>). Amprion expects the Contractor to support compliance with the regulations and principles expressed in the Code of Conduct and, in particular, to commit itself to supporting and implementing the principles on human rights, labour relations, the environment and anti-corruption laid down under the Global Compact Initiative of the United Nations ([www.unglobalcompact.org](http://www.unglobalcompact.org)).

### 5. Applicable provisions

In the event of contradictions, the following shall apply in the order of precedence shown:

- a) The provisions of the individual purchase order together with the specifications and any supplements,
- b) Any framework agreement with appendices
- c) The provisions of these terms and conditions as amended on conclusion of contract,
- d) The supplementary provisions to clause 23 of these terms and conditions – Supplementary Industrial Safety Conditions – as amended,
- e) The Security Policy of the RWE Group as amended on conclusion of contract.

### 6. Contractual hierarchy

Service contract law shall apply, subordinated, to pure consultancy and support work for which no target result can be agreed. Otherwise the Contractor shall provide the specifically described result, or the result representing the purpose of the service described. Work contract law shall apply, subordinated, under exclusion of applicability of section 651 German Civil Code (BGB).

### 7. Contractor's duties

The Contractor shall provide the service on time and free of defects according to the specifications and the current state of technology. It shall hand over to Amprion all the services and documentation required of it under the contract (e.g. expert reports, organisation charts, drafts, drawings, listings and calculations, IT systems and programmes) and transfer title for them to Amprion.

The Contractor shall employ qualified personnel for all services. At the request of Amprion, the Contractor shall replace individual employees insofar as Amprion puts forward objective reasons for it to do so. Any additional expense related to such employee substitution shall be for the account of the Contractor.

Even insofar as services are provided by Amprion, the Contractor shall exclusively retain the powers to instruct the employees it deploys. The employees shall not be integrated into the operations of Amprion.

### 8. Collaboration requirements on Amprion

Amprion shall support the Contractor's work to an appropriate extent. In particular, it shall grant to the Contractor and its deployed employees access to the information and premises necessary for their work. Where agreed, Amprion shall make employees of its specialist departments available as contact persons to support the contractor.

### 9. Change request

Even after conclusion of contract, Amprion may request changes to the scope of performance, in particular the agreed services, methods and deadlines.

In the event of a change request by Amprion the Contractor shall report within 10 working days whether the requested change is possible and what effects it has on the contract, especially taking into account the timing, remuneration and any collaboration required. If no report is received within this period, the requested changes shall be deemed feasible without affecting prices and deadlines. Amprion shall then notify the Contractor in writing whether the changes should be made.

Amprion may request that the work is suspended until a decision on the change request is made. Otherwise the work shall be continued under the current conditions.

### 10. Deadlines

The delivery times/deadlines of performance indicated in the purchase order shall be binding. The Contractor undertakes to notify Amprion

immediately if circumstances occur or are identified which indicate that the delivery time agreed upon or the deadline of performance agreed upon cannot be met.

Where a date is defined in the individual purchase order as attracting a penalty, failure to meet that deadline shall attract a penalty in the amount of 0.28% per working day of the total net annual maintenance charges, but with a maximum of 5% of the total net annual maintenance charges. The right to assert further damages shall remain unaffected.

#### **11. Right to information**

Amprion shall be entitled at any time, following prior notice, to inform itself about the progress of the work. For this purpose, Amprion shall be entitled at any time during normal business hours to visit the Contractor's premises to check adherence to the relevant rules and regulations.

Irrespective of the above, the Contractor shall be obliged to inform Amprion about the work performed and the results achieved in regular intervals in writing. If no times are specified in the individual purchase order, including specifications, the Contractor shall be obliged to provide information on a monthly basis.

#### **12. Rights to use/industrial property rights/inventions**

The Contractor shall permanently grant Amprion a temporally and geographically unrestricted, transferable, non-exclusive, irrevocable right to use the rights that are the object of the respective delivery (goods/services). Amprion shall be particularly entitled to transfer the right to use to the IT service provider. The Contractor shall entitle Amprion and the IT service provider to make the right to use available to the Group companies - and thus also the services specified in the contract.

Insofar as patentable results arise within the scope of project work, the Contractor shall transfer permanently and gratuitously to Amprion the exclusive, transferable, geographically unlimited and irrevocable rights to use and disposal thereof. For programming work, the Contractor shall be obliged to hand over to Amprion the source code for the software created.

The Contractor shall assure that it strictly observes the provisions of the German Employee Invention Act (Arbeitnehmererfindungsgesetz) and that it claims respective inventions within the period provided for. This shall also apply insofar as the Contractor employs no staff of its own, but has employed third parties within the scope of a legitimate employee leasing transaction.

#### **13. Acceptance/transfer of risk**

Performance capable of acceptance shall be subject to formal acceptance. Acceptance of parts shall not be allowed. Formal acceptance shall be made after trial operation. A detailed procedure of the acceptance test (functional tests/utilisation of test or real data, etc.) shall result from the acceptance specifications that are agreed upon between the parties. The Contractor shall report readiness for acceptance with notice of at least 10 days to the acceptance date. Amprion shall prepare an acceptance record in duplicate. The testing steps carried out and the test results shall be documented therein. Furthermore, all errors occurring during trial operation shall be recorded. Amprion shall send the acceptance record to the Contractor for first signature. The second signature of Amprion shall represent a binding declaration of acceptance. The Contractor then shall receive a copy for its files.

The use or commissioning of such services under contracts for work and services as part of test operation shall not be deemed acceptance. Acceptance shall be deemed to have taken place if Amprion fails to perform the acceptance within six weeks, although the service was provided free of defects or only with insignificant defects.

The risk of coincidental loss or coincidental deterioration shall also transfer to Amprion when Amprion delays the acceptance for reasons for which it is responsible. However, notwithstanding the provisions of para. 2, second sentence, a condition shall be that the delay continues so long that the Contractor has previously set a date appropriate to the circumstances by which Amprion has failed to meet the relevant collaboration requirements.

#### **14. Remuneration**

The prices named in the purchase order shall be lump-sum, fixed prices, except where invoicing by time and materials at certain daily rates has been agreed. Where no prices are stated, Amprion reserves the right to recognition of the prices calculated subsequently. Except where otherwise agreed in writing, prices shall be understood to be free delivery to the indicated delivery address/place of use, including packaging, customs duties and insurance. Insofar as Amprion or the customer does not keep the packaging, this shall be returned at the expense of the Contractor and any packaging costs billed will be deducted; this also applies to pallets of all kinds, including interchangeable pallets.

Travel time and travel expenses for the Contractor and/or its employees to the regular place of deployment shall not be remunerated separately and shall be deemed reimbursed by the fixed price or hourly rates. Where the Contractor and/or its employees work outside the regular place of deployment, travel expenses shall be reimbursed at a flat rate of € 0.40 per km.

Other expenses of the Contractor shall only be reimbursed when agreed in writing in advance.

#### **15. Invoicing and payment**

The invoice shall meet the requirements of sections 14, 14a of the German Value-Added Tax Act (UStG). A single copy of the invoice shall be sent to the invoice receiver stated in the purchase order and to the correspondingly stated invoice address, separately indicating the value-added tax at the rate applicable at the time of delivery/performance.

Prepayments/progress payments made shall be shown individually in the invoice. Any contractor providing building services shall indicate on the invoice the tax number assigned to it by the Tax Office. In case of fixed prices, the Contractor shall require a confirmation of Amprion regarding the performed services.

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

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

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

subsequently.

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

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

**16. Securities/guarantees**

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

**17. Liability for defects**

Amprion shall have full recourse to statutory warranty claims. The Contractor shall be liable for any defects in the goods/services with a warranty period of 24 months; this period shall commence with the acceptance of the respective service or full completion of service provision and handover in cases where an acceptance is not possible. This provision, however, shall only be applied where the contract or statutory regulations do not provide for a longer warranty period or period of limitation.

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

All errors or defects arising during the period of limitation – e.g. due to failure to supply according to the contract, inferior materials or breach of legal regulations or recognised engineering standards – shall be, at the discretion of Amprion, eliminated by the Contractor at its own expense, or shall be provided retroactively according to the contract by a new delivery.

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

In cases where efforts to eliminate defects fail, Amprion shall be entitled to withdraw from the contract and reduce payment; rights to compensation for expenses and damages, in particular rights to damages in lieu of performance, shall remain unaffected.

**18. Third-party property rights**

The Contractor undertakes that all goods and services to be provided by it are unencumbered by third party rights. In the event of an infringement of property rights of third parties, the Contractor shall, at the discretion of Amprion, procure for Amprion the rights to use of the entire system or change the entire system in such a way that it is no longer encumbered by third party rights.

Furthermore, the Contractor shall indemnify Amprion among themselves against all claims asserted by third parties with respect to infringements of property rights. Further claims and rights to which Amprion is entitled under law in this respect shall remain unaffected. Such obligation of exemption shall remain in force for a period of 10 years after time of performance.

**19. Liability**

The Contractor shall be liable for any breach of duty and the resulting damage unless the Contractor proves that it is not responsible for such breach of duty. The Contractor shall be further obliged to release Amprion from any claims for damages by third parties submitted to Amprion by such third parties for reasons based on defective delivery (goods/services) by the Contractor, unless the Contractor can prove to Amprion that the Contractor is not responsible for the circumstances that caused the loss. The foregoing provisions shall also apply if the Contractor employs a servant or vicarious agent.

**20. Insurance**

The Contractor undertakes to maintain at its own expense an employer's liability insurance and a financial liability insurance for IT risks, each with a coverage of € 5 million per insured event, for the duration of this agreement including the period of limitation for material and legal deficiencies, as well as for the duration of any maintenance agreements.

The specific amount of insurance cover shall not constitute a limitation of liability.

The Contractor undertakes, on first written request, to submit to Amprion a confirmation of coverage from its insurer covering the scope according to para. 1. It furthermore undertakes, on first written request, to prove to Amprion that it has paid the respective premiums to the insurer.

**21. Termination**

In the event of a termination pursuant to section 649 German Civil Code (BGB) – with regard to the offsetting of expenses not incurred – the Contractor shall receive only the portion of the remuneration which corresponds to the proportion of the service so far provided, measured against the total service to be provided, except where the Contractor can demonstrate that its savings related to the service not provided are lower.

In the event of termination for serious reasons for which the Contractor is responsible, however, the latter shall receive only the portion of the remuneration which corresponds to the proportion of the service previously provided, and usable for Amprion, measured against the total service to be provided. Any further claim to remuneration of the Contractor shall be excluded in this case. The Contractor shall be liable for compensation for loss incurred by Amprion as a result of the termination, including any consequential loss.

The mutual right to extraordinary termination for serious reasons shall remain unaffected by the provisions of this section. In particular, Amprion may terminate the contract extraordinarily if the Contractor ceases payments or if insolvency proceedings have been filed or opened covering its assets, or such proceedings have been denied due to lack of assets.- { }-

**22. Assignment of receivables/setoff**

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

Amprion shall be entitled to fully or partially offset any pecuniary claims that are due by the Contractor and asserted by the Group companies Amprion GmbH (Dortmund), RWE Power AG (Essen), RWE Innogy GmbH (Essen), RWE Vertrieb AG (Dortmund), RWE Deutschland AG

(Essen), RWE Supply & Trading GmbH (Essen), Essent N.v (Arnhem), NL, and/or npower PLC (Swindon), UK, against receivables of the Contractor.

### **23. Safety stipulations**

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

Machines covered by the German Machine Ordinance (Maschinenverordnung) or electrical equipment covered by the Low-Voltage Directive (Niederspannungsrichtlinie) shall be provided with a CE mark and supplied with operating instructions. The certificate of conformity and the operating instructions shall be delivered to Amprion or the customer. Machines which are not ready for use shall be delivered with a manufacturer's certificate.

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

### **24. Anticompetitive arrangements**

Amprion shall be entitled to terminate the agreement without notice or to withdraw from the agreement in case the Contractor is demonstrably involved in anticompetitive arrangements to the detriment of Amprion. In case of termination without notice the Contractor shall only be entitled to a remuneration corresponding to the already provided part of the scope of delivery and performance that is free of defects. In case of withdrawal, the legal regulations shall apply.

### **25. Confidentiality**

The Contractor undertakes to treat as confidential all confidential information and business secrets of Amprion obtained during fulfilment of the purchase order and to use such information only within the scope of order fulfilment. The services provided by the Contractor shall also be deemed business secrets of Amprion.

The Contractor may make the object of a contract accessible to employees and other third parties only insofar as necessary to provide the service ordered; otherwise it shall treat all objects of contracts as confidential. It shall inform all persons to whom it grants access to the object of a contract in writing of the rights of Amprion to such object and instruct them on the requirement for confidentiality. It shall also commit such persons in writing to compliance with the confidentiality requirements.

Other transmission of documents by the Contractor (reports, expert statements and the like) to a third party and any publications in connection with the results of the service provided shall require the written permission of Amprion.

The obligation to confidentiality shall also apply after the end of the contractual term. It shall end ten years after the end of all business relations between the contractual partners based on this agreement.

### **26. Data protection**

(1) Amprion is entitled to collect, process and use data obtained under the contractual relationship within the meaning of the German Data Protection Act (BDSG) in its latest valid version and to pass on such data to companies affiliated with Amprion under sections 15 ff of the German Stock Corporation Act (AktG).

(2) To safeguard operational routines and to meet Amprion's safety requirements, the performance of orders involves the collection, processing and use of personal data whilst observing the provisions of the German Data Protection Act (BDSG). This refers, in particular, to data and images of security components (e.g. ID cards, ID card management systems, time/access and video systems, etc.), of Amprion IT and telco components as well as to infrastructures connected with the same.

The Contractor shall ensure that any ID cards it receives are not abused or shared with third parties. Where applicable, they shall be visibly displayed by the relevant persons on RWE premises; any loss shall be reported to Amprion immediately.

Any information processing and/or telecommunications resources supplied by Amprion (e.g. personal computers, landline telephones, mobile telephones, Blackberries, software, Internet access, e-mail, etc.) may only be used as part of performing an order and shall not be used for private purposes.

The Contractor shall ensure that all its agents entrusted with performing an order (e.g. permanent staff, temporary staff etc.) are instructed concerning the aforementioned points before the performance of work/services and that they are placed under suitable commitments. Any such agents shall subsequently also be placed under an obligation to assume proper conduct and to comply with the relevant RWE regulations.

When engaging subcontractors, the Contractor shall ensure that those subcontractors enter into the same commitments through suitable contracts.

The Contractor shall provide evidence of implementation of these points towards Amprion upon request.

(3) Any details shared by the Client shall not be used for the purpose of advertising or market/opinion research unless written permission has been given for this purpose by the Client or the agreed service allows this explicitly.

### **27. References/advertising**

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

### **28. Place of performance/jurisdiction/choice of law**

Place of performance for goods and services provided by the Contractor shall be the delivery address/place of use indicated by Amprion, or the agreed place of the provision of services.

Unless otherwise expressly provided for by law, the place of jurisdiction for any disputes arising under or in connection with the contract shall be Essen.  
The laws of the Federal Republic of Germany shall apply exclusively. Application of the UN Convention on Contracts for the International Sale of Goods shall be precluded.

**29. Disclaimer**

Those general terms and conditions are drawn up in German and English language. In the event of any contradictions or discrepancies between the English and the German version, the German version shall prevail.

Last updated: July 2011