

1. General Provisions

- 1.1 The present Procurement Terms apply to all contracts and purchase orders for deliveries and services, to the exception of construction services. The Procurement Terms apply to all the GASAG Group companies. They do not apply vis-à-vis “consumers” within the meaning of Section 13 of the *Bürgerliches Gesetzbuch* (BGB, German Civil Code). The Procurement Terms of GASAG are posted on the Internet at <http://www.gasag.de>; thus, they are accessible without undue difficulty and their applicability must be counted on as a matter of course. Should a contractor (referred to hereinbelow as the “Contractor”) expressly so request, the present Procurement Terms will be sent to the Contractor, either electronically or by mail.
- 1.2 By including the present Procurement Terms by reference in the agreement, the Contractor hereby acknowledges that the provisions contained in said Procurement Terms shall be deemed integral contractual components, and that none of the Contractor’s own contractual provisions, particularly with regard to payment, shall be applicable, even if such provisions are expressly referred to in an offer made by the Contractor or in any other written documents. The foregoing shall not apply if GASAG (referred to hereinbelow as the “Client”) has expressly acknowledged the Contractor’s contractual provisions in writing.
- 1.3 The Client’s “Code of Conduct for Suppliers and Business Partners” published online at <http://www.gasag.de> must be observed in connection with all contracts. The Code of Conduct must be separately acknowledged by the Supplier/Business Partner at the inception of the business relationship.

2. Contracts / Purchase Orders

- 2.1. Contracts (purchase orders) are to be issued in text form (at a minimum), unless some other form is called for under the applicable contractual and/or statutory provisions. Any oral outside arrangements or modifications must be in text form in order to be valid.
- 2.2 The Contractor is to duly and promptly review the purchase order in technical terms and, in particular, is to inform the Client in writing of any errors or inconsistencies.
- 2.3. Contractual rights and obligations may be assigned only with the written consent of the Client. If the Contractor commissions additional contractors (subcontractors), it must ensure that these subcontractors duly fulfill all the contractual terms and conditions.
- 2.4 The Client shall be entitled to demand changes with regard to the makeup, quantity, and delivery periods for any order that remains wholly or partially unfulfilled. In the process, reasonable allowance must be made for any resulting effects, particularly increases/decreases in cost as well as changes in delivery dates.
- 2.5 Any cost estimates, offers, and offer presentations provided to the Client, including preparatory work such as plans, drawings or calculations, shall be provided to the Client at no charge.

3. Contractual Components

- 3.1 The following shall be deemed integral contractual components:
- The written award letter (purchase order) from the Client together with its annexes (e.g. negotiation minutes, specification of services, etc.)
 - the present Procurement Terms of the Client governing contracts for deliveries and services,
 - any supplemental terms and conditions of the Client,
 - the *Allgemeine Vertragsbedingungen für die Ausführung von Leistungen, Teil B* (VOL/B, General Contractual Terms for the Performance of Services, Part B) in their most current version.
- 3.2 The laws governing service agreements shall apply as subordinate statutory provisions to any services of a purely supportive or advisory nature for which a definite, successful result cannot be agreed. In all other respects, the Contractor

shall be obligated to deliver the work results that were specifically defined or intended in connection with the specified service.

4. Performance of Deliveries

- 4.1. Each delivery must fulfill the corresponding purchase order in terms of its execution, scope, and partitioning. The Contractor is to state the Client’s order number, article number, and supplier number in all shipping documents, letters, and invoices. In addition, the Contractor is to include, along with the accompanying freight documents, the relevant quality/inspection certificates and, if applicable, any simple or extended safety data sheets.
- 4.2. Depending on the particular contract, timely compliance with the agreed delivery date will be determined based on the time of the Client’s receipt of the goods in a defect-free condition at a delivery location or place of use specified by the Client or, alternatively, based on the time of acceptance. At such time, the risk associated with the delivery will pass to the Client.
- 4.3 The Contractor is obligated to promptly notify the Client in writing of any circumstances that have occurred or become known to the Client, as a consequence of which the agreed deadlines likely cannot be complied with. Concomitantly, the Contractor must notify the Client regarding the earliest possible time for delivery.
- 4.4 The Contractor is under obligation, within the framework of the applicable statutory provisions, to accept any packaging material returned by the Client should the latter so request, and to dispose of same in an appropriate manner. The costs of packaging and shipping shall be borne by the Contractor.

5. Performance of Services

- 5.1 The Contractor shall perform its services upon its own initiative and subject to its own right to instruct the personnel charged with performing the services. Services to be performed on the operating premises of the Client must not hinder the Client’s operations or any third parties, unless and only insofar as this is unavoidable. The instructions of the Client’s authorized representatives are to be followed in this regard. This will also apply to any safety-related directives issued by the Client. In all other respects, the Contractor’s right to issue instructions may not be assigned to the Client without an express written arrangement to this effect. The Contractor is to ensure that an authorized contact person can be reached at all times for purposes of receiving instructions and delivering declarations.
- 5.2 Each service must correspond to the respective purchase order in terms of its performance, scope, and partitioning. The Contractor is to state the Client’s order number and supplier number in all written communications, documents and invoices. In addition, the Contractor is to include any proofs of work performed and, if applicable, any quality / inspection certificates.
- 5.3 The Contractor is to perform each service in a defect-free manner, in accordance with the respective specifications and the current technical state of the art. The Contractor is to provide the Client with physical possession of, and title in, all services and documents that the Contractor is contractually obligated to create or perform (e.g. expert reports, organizational plans, designs, drawings, lists, calculations, EDP systems, and programs).
- 5.4 In performing its services, the Contractor is to take all measures necessary to prevent accidents, while specifically complying with the provisions of the *Arbeitsschutzgesetz* (ArbSchG, Occupational Safety Act), the *Gesetz über technische Arbeitsmittel* (Law Regarding Technical Equipment), the relevant accident-prevention regulations, the regulations regarding hazardous materials, as well as the generally recognized norms regarding health and safety at the workplace.
- 5.5 The Client reserves the right to monitor and verify the progress and order-compliant performance of all work, as well as the materials used in the process. The Contractor must provide the Client’s authorized representative with all requested information. The inspections performed by the Client will not release the Contractor from its warranty obligations or liability.

6 Change Requests

The Contractor is to promptly communicate, in writing, any postponement of the agreed deadlines or any expansion of the agreed scope of services. The parties will subsequently endeavor to come to mutual agreement in this regard. The process shall be documented. If the Client decides upon a change request, it shall communicate this to the Contractor within 15 days of having received the Contractor's corresponding request. Change requests that are not processed, decided upon, or communicated to the Contractor in writing within this deadline will be deemed rejected and thus excluded from the object of the contract.

7 Quality Assurance

The Contractor shall perform all deliveries and services in compliance with the current technical state of the art as defined by the following, relevant technical regulations (*inter alia*):

- The regulations issued by the *Deutscher Vereinigung des Gas- und Wasserfaches e.V.* (DVGW, German Technical and Scientific Association for Gas and Water),
- The European DIN EN standards issued by the *Deutsches Institut für Normung, e.V.* (DIN, German Institute for Standardization) or the standards issued by DIN in conjunction with the *Verband der Elektrotechnik, Elektronik und Informationstechnik* (DIN-VDE standards),
- The relevant quality-assurance systems,

as well as in compliance with the relevant statutory provisions, regulations, and directives issued by government agencies and trade / professional associations, while also exercising the customary level of professional care. Should a deviation from these regulations be required in individual cases, the Contractor is to obtain the written consent of the Client. Such consent will not limit the Contractor's obligation to provide defect-free service. If the Contractor has reservations regarding the mode of performance desired by the Client, it must promptly communicate these to the Client.

8 Acceptance of Services

- 8.1 Services under contracts as to work and services or portions thereof must be "formally accepted" (within the meaning of Section 12 of the Contracting Rules for the Award of Construction Contracts, Part B), of which acceptance a written record is to be prepared.
- 8.2 Payments or confirmations of receipt regarding proofs of work performed will not qualify as acceptance by the Client and will not affect any liability/warranty claims potentially asserted by the Client.
- 8.3 The acceptance of a delayed service will not qualify as a waiver of potential damage claims or of any other claims.

9 Acceptance of Deliveries

- 9.1 The place at which the risk passes shall be the place of use specified in the corresponding order, regardless of the pricing or the manner of transport that is used to fulfill the delivery.
- 9.2 The Client reserves the right to inspect the delivery for apparent and visible defects – provided it does so promptly upon receiving said delivery – and to withhold acceptance until after the inspection. In the event of a complaint, the Contractor may be charged with the costs of the inspection and of any replacement delivery. The period for lodging complaints regarding defects, regardless of type, will expire 14 workdays following discovery of the defect.
- 9.3 The acceptance of a delayed delivery will not qualify as a waiver of potential damage claims or of any other claims.

10 Compensation

- 10.1 The price contractually agreed and stated in a given order represents a fixed, maximum price. Said price includes "free delivery to place of use" and includes the costs of packaging, loading, shipping, insurance (if applicable) and other charges, insofar as such costs are customary in the trade. This shall also

apply to any additional costs for expedited shipment arising from circumstances for which the Contractor is responsible.

10.2 Returned packaging is to be accepted free of charge by the Contractor and shall be appropriately disposed of in accordance with the relevant statutory provisions. Any price reductions occurring between the issuance of the purchase order and payment of the invoice shall be credited to the Client.

11 Settlement of Accounts

- 11.1 Invoices are to be prepared separately for each purchase order following contractually compliant performance of the corresponding deliveries and services, and shall be sent to the billing address specified in the purchase order along with the confirmed proofs of work performed and other supporting documentation. Care must be taken to comply with the relevant provisions of tax law governing the mandatory information to be included on invoices.
- 11.2 Invoices missing any of the required information (including the number of each ordered item and the complete billing address) cannot be processed by the Client and will be sent back. The detriment resulting from any associated delay shall be borne by the Contractor. A delay in invoice processing due to non-compliance with the obligations pursuant to Clause 4.1 or 5.2 of the present Procurement Terms will serve to block the commencement of any relevant deadline period.
- 11.3 Payment shall be made upon contractually compliant performance of the corresponding delivery or service and upon receipt of a proper, verifiable invoice; a prompt payment discount of 3% shall be deducted for payments made within 14 days; full payment is to be made within 30 days. Interim or partial payments must be agreed in advance. The final invoice must be designated as such and must itemize all interim/partial payments collected thus far, along with the applicable value-added tax.

12 Right of Set-off / Assignment

The Client shall be entitled to the right of set-off and retention to the extent provided for by law. The Contractor shall be entitled to exercise the right of set-off or retention only to the extent that its own counterclaims have been acknowledged or recognized by declaratory judgment. The Contractor may not assign, pledge, or otherwise transfer its receivables against the Client to third parties without the Client's written consent.

13 Claims for Defects; Lodging Complaints for Defects

- 13.1 The warranty obligations of the Contractor shall be governed by the applicable statutory regulations, unless otherwise provided for hereinbelow. Upon the Client's first demand, the Contractor is to release the Client from any and all third-party claims that are asserted due to defects, infringement of third-party protected privileges, or product damages in connection with the Contractor's delivery/service, doing so based on the scope that can be attributed to the Contractor's share in the overall responsibility.
- 13.2 The warranty period shall run for at least two years from the time of acceptance by the Client. If the statutory warranty period is longer, then that period shall apply instead. The Client's recourse claims against the Contractor shall become statute-barred, at the earliest, two years after delivery of the item to the respective third party.
- 13.3 If deliverable components must be taken out of operation during the investigation and/or correction of a defect, the corresponding limitation period, insofar as it is already running, will be extended for as long as the interruption of operation persists. The limitation period for components that have been repaired or replaced will resume once such components have been (re-)installed.
- 13.4 In the case of a defective delivery/service, the Contractor is to take one of the following courses of action, at the Client's choosing: provide a replacement free of charge; grant a price discount in accordance with the statutory provisions regarding abatement; correct the defect free of charge. In urgent cases, the Client shall be entitled to correct the defect on its own, commissioning a third party to do so, or to otherwise secure a

replacement, in which context the Contractor shall bear the resulting costs. The same shall apply insofar as the Contractor defaults on its warranty obligations or refuses to correct the defect in a final and credible manner. The Client is entitled to lodge complaints for defects with respect to the entire delivery, or to inspect the entire delivery/service at the Contractor's expense.

- 13.5** The Contractor's scope of liability for any replacement deliveries and repair work shall be the same as for the original deliverable, i.e. the Contractor's liability shall include (without limitation) the costs of transport, travel, and labor. The warranty obligation for replacement deliveries shall begin, at the earliest, on the day the replacement delivery arrives.

14 Termination

- 14.1** If the Contractor repeatedly breaches its performance obligations despite a warning letter before action having been sent, the Client will be free, at its discretion, to either rescind the contract free of charge (in whole or in part), or to terminate the contract with immediate effect, also free of charge. In such cases, the Contractor shall turn over to the Client, at the latter's request, any components, materials, etc. that it has fully or partially produced or purchased on the Client's behalf in connection with the corresponding contract.

- 14.2** The Client shall terminate the contract without notice if the Contractor is found to have demonstrably breached the Client-issued Code of Conduct which it has acknowledged.

- 14.3** In all other respects, the consequences of rescission and termination shall be governed by the applicable statutory provisions.

15 Liability

The Contractor shall be liable to the extent provided for by law for any and all damages suffered by the Client or third parties in connection with the contract, such damages having been caused by the Contractor or the persons it has employed in the performance of its duties; in this regard, the Contractor shall release the Client from any third-party claims.

16 Liquidated Damages

Insofar as a delivery/service is delayed such that an applicable deadline is not complied with, the Client shall be entitled to demand liquidated damages above and beyond contractual performance; said liquidated damages shall amount to 0.2% of the net order value (including all order expansions) for each workday of the delay, but shall not exceed 5% of the net order value in total. This will not exclude the Client's right to assert additional claims for damages, on whatever legal grounds, in connection with the failure to meet the deadline. The Client will continue to enjoy this right until the final settlement of accounts / final payment, even if the Client did not expressly reserve said right at the time of acceptance.

17 Sureties

- 17.1** The Client is entitled to require the provision of sureties in order to guarantee the contractually compliant performance of the delivery or service (performance bond) and/or to fulfill any defect-remediation claims (warranty bond). Unless otherwise agreed, the amount of the respective surety shall be as follows:

- Where it concerns advance payments: the amount of the advance payments
- Where it concerns the contractual performance: 5% of the gross contract price,
- Where it concerns guarantee warranty obligations: 5% of the gross settlement amount.

- 17.2** Insofar as the Parties have agreed the provision of a surety for the remediation of defects pursuant to Clause 13, final payments shall be made only against the provision of said surety.

- 17.3** The surety shall be provided in the form of an unconditional, irrevocable, indefinite and directly enforceable bank guarantee from a major bank domiciled in Germany, from a German savings bank, or from a German credit insurer. This

bank guarantee must specifically exclude the right of lodgment as well as the legal defenses of voidability and of failure to pursue remedies. The guarantor shall be entitled to assert the legal defense of voidability insofar as payable counterclaims of the main debtor have been acknowledged or recognized by declaratory judgment. In all other respects, the legal defense of voidability must be excluded. The rights pursuant to Section 768 of the *Bürgerliches Gesetzbuch* (BGB, German Civil Code) will remain unaffected. The surety must also contain a declaration on the part of the guarantor to the effect that the claims arising from the surety will not lapse before the claims guaranteed by the surety, but that they will lapse within 30 years at the latest.

- 17.2** The surety bond shall serve to guarantee all claims and rights of the Client based on material defects or defects in title in connection with the Contractor's performance, specifically including claims asserted by the Client for final completion of a service, or claims asserted by the Client due to breaches of accessory contractual obligations.

- 17.3** Insofar as a surety guarantee for defect claims has not been realized by the Client by the expiration date of the agreed limitation period for defect claims, then said surety guarantee is to be returned to the Contractor. However, if any legitimate claims asserted by the Client remain unsatisfied at this time, then the Client shall be entitled to retain a portion of the surety bond, namely double the amount of the expected costs of remedying the defect.

- 17.4** The surety agreements concluded in this context must be governed exclusively by the laws of the Federal Republic of Germany. Insofar as legally permissible, the agreed place of jurisdiction must be Berlin, Germany.

18 Environmental protection

- 18.1** Insofar as the performance of services involves the use of materials that qualify as water pollutants, environmental pollutants, or other hazardous substances within the meaning of the *Gefahrstoffverordnung* (GefStoffV, Ordinance on Hazardous Substances), the Contractor hereby certifies, by way of including by reference the present contractual relationship in the contract, that it has the required expertise and experience in such matters, and that it will comply with the regulations serving to protect the environment as well as contractors during their work. Without any corresponding request needing to be made, the Contractor shall provide the Client with all certifications stipulated under the relevant regulations and technical norms pertaining to the activities to be performed. The Contractor is under obligation to inform the Client of its activities involving hazardous substances whenever these could potentially impact the Client's personnel or the personnel of other contractors working for the Client.

- 18.2** If hazardous waste is created in the course of the performance of services, the Contractor must, as a matter of principle, coordinate the mode of disposal with the Client and promptly provide the required certifications of disposal, unless the contract calls for such waste to be disposed of through the Client's channels. By virtue of including by reference these contractual provisions in the contract, the Contractor hereby confirms that it is familiar with the relevant laws on waste disposal and that it will comply with same.

- 18.3** Responsibility for the outbound shipment and/or return shipment (if applicable) of any substances and materials which the Contractor is to provide in the context of performing the contractually agreed services shall lie with the Contractor in its capacity as "recipient" and/or "dispatcher" (if applicable) within the meaning of the applicable regulations governing hazardous materials; such shipments must be addressed accordingly by the Contractor.

19 Insurance

- 19.1** In order to protect against typical contractual risks, particularly statutory liability claims due to personal injury, property damage, or financial loss, the Contractor is to maintain commercial general liability insurance coverage in a scope

commensurate to the order value and liability risk involved, and must provide proof of such insurance to the Client at the latter's request.

19.2 Insofar as the Client is entitled to further-reaching damage claims, i.e. ones not covered by the insurance, such claims will remain unaffected.

19.3 If the Contractor fails to provide proof of adequate insurance coverage despite the Client's request, the Client shall be entitled to rescind or terminate the contract.

20 Protected Privileges and Indemnification

20.1 Grant of rights

The Contractor hereby grants to the Client – and where it is not the copyright holder, the Contractor transfers to the Client – the exclusive right to use the subject matter of a given contract for the business purposes of the Client and/or the Client's Group companies without any restrictions in terms of substance, particularly for any and all forms of advertising and in any and all media. Said use specifically may comprise reproduction and dissemination, including lease-out, broadcasting, presentation, public performance and transmission, also via satellite or cable, via playback on image/sound/multi-media carriers, or via radio broadcasts or databases. This grant and/or transfer of rights applies to all forms of use, whether currently known or yet to be discovered.

This also includes the Client's right to process or otherwise modify the subject matter of an order, as well as its right to formally register any industrial property rights that it may deem appropriate with respect to the subject matter of a contract.

The Client is free to assign the rights granted to it under this provision to third parties, or to grant third parties a right of use in this context.

The Contractor shall ensure that the relevant copyright holders do not assert any rights to be named as author (Section 13 of the *Urheberrechtsgesetz* (UrhG, German Copyright Act), unless it has expressly advised the Client of such naming rights and of the form and procedure to be followed in such case.

20.2 Release

The Contractor hereby releases the Client – insofar as the Contractor bears culpable responsibility – from any and all third-party claims asserted on the grounds of rights existing in connection with identifying marks, design patents, utility models, patents, copyrights, or on the grounds of other intangible rights or personal rights.

In this context, the Contractor shall bear the costs incurred by the Client to mount an appropriate legal defense and/or to bring appropriate legal action vis-à-vis third parties.

21 References, Advertisement

Without the prior written consent of the Client, the Contractor specifically is not authorized to use information about the intended or existing contractual collaboration as a reference or for marketing purposes. Likewise, taking photographs on the Client's real estate, construction sites, and buildings is prohibited, or on those of the party accepting the services / deliveries, as are any publications in this regard of any kind, unless the Client has previously granted its written consent.

22 Clauses on Competition

22.1 Should the Contractor submit any bids that are based on arrangements made in restraint of trade in the sense of Section 298 of the *Strafgesetzbuch* (StGB, German Criminal Code), or should it be involved in inadmissible restraints of trade in the sense of the *Gesetz gegen Wettbewerbsbeschränkungen* (GWB, Act against Restraints of Competition), in particular based on arrangements with third parties as to the following: submission or non-submission of offers, prices to be asked, financial compensation (profit participation or other payments), and the determination of price recommendations, then the Contractor is to pay 10% of the net contract price to the Client (notwithstanding proof being obtained of a higher damage). The Contractor is permitted to submit proof of the damage being lower.

22.2 The same applies for the case in which it can be proven that impermissible advantages (Section 299, 333, 334 of the Criminal Code) were granted to the Client's employees or agents in the context of planning, awarding, and implementing a contract.

22.3 In the above cases, the Client shall be entitled to rescind the agreement for grave cause. The Contractor is to compensate the Client for all damages the latter has suffered directly or indirectly as a result of rescinding the agreement. The obligation to pay such compensation shall also be given where the contract is terminated or where it has already been fulfilled.

23 Confidentiality

23.1 The contracting parties mutually covenant to keep confidential as business secrets any and all knowledge they may gain, as a result of the business relationship, of business or technical details that are not in the public domain. Subcontractors are to be placed under the corresponding obligation.

23.2 The Contractor is under obligation to keep confidential and to not disclose any and all information concerning the Client's operations. This obligation shall continue in force also after the contract has ended. The Contractor is to protect any and all documents and files, of which it may become apprised in connection with fulfilling the contract, against unauthorized parties becoming aware of them. The Contractor is under obligation to hand over to the Client, at the latest upon the expiry of the contract's term, any and all documents of which it may have become apprised in connection with fulfilling the contract, including copies.

24 Data Protection

24.1 The Contractor revocably declares its consent as to the personal data it may make available to the Client in connection with the contract being processed or handled in observance of statutory provisions.

24.2 Inasmuch as the Contractor becomes aware, in performing the contract, of personal data of the Client's employees or customers, the Contractor hereby enters into obligation to keep such data confidential in accordance with statutory provisions. The Contractor assures that it will deploy only those employees, in performing the contracted work, who have been obligated in writing to confidentiality after having been familiarized with the provisions of data protection relevant to their work.

25 Equal Treatment

25.1 The Contractor enters into obligation to not forward or disclose any information arising or becoming common knowledge under the Client's control that may be commercially exploited in favor of the market participants' interests, or against their interests, unless it has previously obtained the Client's express consent. The term "market participants" in the sense of the present provision means gas traders including the GASAG trading companies, customers connected to the GASAG grid operation, parties interested in being connected, brokers representing the interests of traders and customers, or potential customers, as well as third-party grid operators.

25.2 All information is to be treated as confidential that concerns the following content:

- The identity and the purchasing behavior, in particular gas consumption and load curves, of customers connected to the GASAG grid operation,
- Information regarding ongoing gas supply contract negotiations, in particular vis-à-vis competitors of the gas supplier involved in the negotiations,
- A customer's or potential customer's interest in a connection and their access to the grid,
- The forwarding of grid use capacity of the GASAG network operations to gas traders or clients and the corresponding contract negotiations,
- The onward marketing of wheeling capacities, the expansion of the grid and its upgrade; the corresponding negotiations of the grid operator with gas traders or customers / potential customers,
- The location of inactive connections to buildings.

The Contractor enters into obligation to expressly notify its employees of the above obligations.

- 25.3** The Contractor enters into obligation to employ third-party contractors in the context of its contract with the Client only if the third party declares its acceptance vis-à-vis the Client as to the present Procurement Terms being a component part of the contract and places its subcontractors under the same obligations.

26 Final Clauses

- 26.1** Should individual provisions of the contract be or become invalid, or should there be an omission in the contract, this shall not affect the validity of the other provisions. In such event, the contracting parties undertake to make new arrangements the result of which corresponds, or comes as close as possible, to the economic result intended by the invalid provision. The same applies by analogy to the remediation of any omissions.
- 26.2** The place of performance for the entirety of all deliveries and services shall be the mailing address provided by the Client, or, respectively, the place of use.
- 26.3** While the resolution of a dispute is ongoing, the fulfillment of contractual obligations may not be suspended, neither as a whole or in part.
- 26.4** Exclusively the laws of the Federal Republic of Germany shall apply, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 26.5** The language of the contract shall be German. Should the contracting parties avail themselves of any other language, the German wording shall govern.
- 26.6** The place of jurisdiction for any and all disputes arising directly or indirectly from the contractual relationship shall be Berlin, Germany, insofar as an agreement in this regard is legally permissible.