1.1 These terms and conditions shall become part of the respective agreement and of all future agreements regarding construction work – last updated November 2018

1. General

1.1 The terms and conditions shall become part of the respective agreement and of all future agreements regarding construction work. Conflicting or deviating terms or other reservations of the Contractor shall not become part of the agreement if they are not confirmed by or notified to the Customer.

1.2 Other agreements, amendments and subsidiary agreements shall only be valid if the Customer agrees to them in writing.

2. Offer

2.1 The Contractor must adhere exactly to the inquiry of the offer and expressly point out any deviations. The offer of the Contractor shall not include any obligations on the part of the Customer. Cost estimates shall only be remunerated by special agreement.

3. Order

3.1 All changes and changes to orders shall only be made in writing. In case of doubt, the content of verbal and telephone meetings shall only be binding if confirmed in writing.

3.2 The Contractor shall not be obliged to check the order or accompanying documents for detectable errors, ambiguities, incompleteness and unavailability of the specifications selected by the Customer for the intended construction work. The Contractor shall immediately confirm the order and all accompanying documents.

3.3 Each order and order amendment must be confirmed in writing by the Contractor and handled separately in each individual case.

3.4 All documents shall include the following references: purchasing department, complete order number, date and reference of the purchaser.

4. Order of priority, rules of interpretation

The general terms and conditions of the contractor ("Contractor") shall not apply. The contractual components shall apply in the following order of priority:

- the order placed by the customer ("Customer");
- the record of negotiations and its annexes;
- the annexes listed in the order placed by the Customer, in particular the description of goods/services, terms and conditions for construction work, German Construction Tendering and Contract Regulations Parts B and C (Verpfl – AÜG) as well as all social security and collective bargaining regulations and occupational health and safety laws. The Contractor shall ensure that all necessary information is provided to the Customer at any time in order to allow the Customer to assess the goods/services provided.

5. Contractor’s obligations

5.1 Contractual performance, completeness

If the Contractor fails to meet the performance obligations, the goods/services to be provided by the Contractor shall include all goods/services required for the proper performance of the agreement and for the provision of the work owed under the agreement. The performance obligation shall be construed as meaning that the Contractor shall complete all the works and services in accordance with the agreement, including all derivative obligations.

5.2 General provisions for the execution of the contract

5.2.1 Generally accepted engineering standards and technical regulations

The Contractor shall comply with generally accepted engineering standards. The Contractor shall respect all applicable laws and laws of the Customer and comply with all agreed terms and guidelines.

5.2.2 Inspection obligations, reference requirements and information obligations

The Contractor shall immediately inform the Customer if data, information and documents as well as technical instructions issued by the Customer are incorrect, incomprehensible or inconsistent.

5.2.3 Reporting concerns

If the Contractor has technical concerns, it shall notify the Customer in writing of such concerns without undue delay and give detailed reasons. This applies, in particular, if the Contractor has concerns about a technical instruction issued by the Customer or about the manner of implementation specified by the Customer.

5.2.4 Monitoring rights of the Customer

The Customer is entitled to monitor the goods/services provided by the Contractor at any time and where necessary, without technically interfering with the Contractor's technical work, in order to ensure that the description of goods/services. The Contractor undertakes to ensure that all necessary information is provided to the Customer at any time in order to allow the Customer to assess the goods/services provided.

5.2.5 Approval of the Customer

The Customer is entitled at any time to require the Contractor to produce any plans, drawings, concepts, other documents and/or reports in connection with the provision of services (hereinafter in this clause referred to as "Document") for the Customer's approval and/or information. The Customer shall not be under an obligation to approve any Document.

At the request of the Customer, the Contractor shall provide Documents to the Customer without undue delay and make itself available to provide explanations. The Contractor must provide the Documents – including any explanations – to the Customer in good time to allow the reasonable time to carry out checks and decide whether or not to agree to the application.

An approval does not release the Contractor from liability regarding the accuracy and completeness of the Documents prepared and/or checked by the Customer. An approval does not entail any acceptance or partial acceptance.

5.2.6 Coordination, interfaces

The works shall agree to interfaces, which specifies the respective obligations of the Customer and the Contractor. Where the Contractor's obligations are concerned, the Contractor shall be solely responsible for interfaces, which are not covered by the Customer's obligations.

Coordination shall entail, in particular, proactively planning the involvement and engagement of other parties involved, providing information to them in timely manner, as well as the timely request and supervision of goods/services provided by them to the extent that the Contractor's own obligations are concerned.

The Contractor shall perform all coordination work and measures to coordinate the goods/services to be provided by them to the extent that the Contractor's own obligations are concerned, including the coordination of the interfaces, the engagement of other parties involved, providing information to them in timely manner, as well as the timely request and supervision of goods/services provided by them to the extent that the Contractor's own obligations are concerned.

5.2.7 Award of subcontractors by the Contractor

The award of subcontractors shall only be made to subcontractors who have not been named in the offer shall only be permissible with the Customer's prior written consent. The Contractor shall make a written application to the Customer for the approval of the subcontractor and may, at its reasonable discretion, make the consent conditional upon the submission of documents that are relevant to the contract, e.g. the business registration.

The Contractor undertakes to retain only commission competent and solvent subcontractors. The subcontractor must provide the Contractor with written undertaking to comply with all applicable laws and provisions pursuant to the German Commercial Code (HGB) as to their own and all third parties' legal obligations. The Contractor shall ensure that the subcontractor complies with all applicable laws and provisions as to its own and all third parties' legal obligations.

5.3 Daily construction reports

The Contractor is Obligated to prepare daily construction reports and provide a copy of these to the Customer. The Contractor may be entitled to require from the Customer at any time in writing the information required for the preparation of the daily construction reports.

5.4 Safety and occupational safety

The Contractor shall ensure that all goods/services carried out by the Contractor under the agreement are carried out in compliance with statutory provisions, official regulations and the Customer's safety and procedural rules.

If the German Construction Site Regulation (Bauaufsichtsverordnung) requires the preparation of a health and safety plan (Sicherheits- und Gesundheitsplan), the Contractor must participate in this with regard to the rules applicable to the Contractor's trade. The Contractor shall ensure that its employees comply with the aforementioned rules. Any health and safety instructions issued by the health and safety coordinator (Sicherheits- and Gesundheitskoordinator) must be complied with.

The Contractor shall appoint a coordinator pursuant to Regulation 1 of the German Social Accident Insurance Act (Deutsche Gesetzliche Unfallversicherung) and pursuant to the German Construction Site Regulation (Bauaufsichtsverordnung).

5.5 Construction products, construction materials, waste

The construction products and types of construction must comply with the respective construction regulation (Deutsche Gesetzliche Unfallversicherung). The Contractor must ensure compliance of the construction products with technical provisions. The certificates required in accordance with construction law must be available at the time of execution and must be handed over, in a complete and orderly manner, at the time of acceptance.

Unless otherwise agreed, e.g. in the CHEMPAK regulations, any construction waste, packaging and other locational waste do not constitute construction work and must be removed and correctly disposed of by the Contractor at regular intervals. The Contractor is entitled to require from the Customer at any time in writing the information required for the preparation of the daily construction reports.

5.6 Change by the Contractor.

The changes shall be limited to such changes that are necessary to achieve the agreed work owed (hereinafter the "Changes"). This also applies to demands that result in a change of the contractually agreed construction timeframe, e.g. acceleration measures. The right to make demands does not apply to changes agreed in writing or to acceleration measures if the Contractor cannot reasonably be expected to implement them. In particular if the Contractor's business is not equipped to provide such goods/services. The Contractor does not bear the burden of proof in that regard.

The provisions of the VOB/B regarding the commissioning of additional goods/services (sections 1(3), 4, 2B, 5 VOB/B) shall not apply.

If the Contractor is of the opinion that the execution of the Change is unreasonable for the Contractor, the Contractor shall notify the Customer of this fact without undue delay and no later than within 7 calendar days from receipt of the Customer's request for Change, together with detailed reasons.

In addition, the Contractor shall notify the Customer – without undue delay and no later than 14 calendar days from receipt of the Customer's request for Change – of the Contractor's complete, clear and verifiable supplementary offer which lists the cost and time implications of the Change conclusively and in detail. This applies even if generating the supplementary offer or the preparation of the Change is made at the Customer's request. The Contractor is entitled to require the Customer to prepare plans, for instance because its company is equipped to prepare such plans.

The Contractor shall prepare the offer in due consideration of the provisions of clause 3.3; estimates of any increased or reduced costs shall be provided accordingly. Furthermore, the Contractor shall inform the Customer of any consequences in terms of timing.

At the request of the Customer, the Contractor shall explain the details of the offer and, at the request of the Customer, the Contractor is entitled to make a Change against payment. In particular if the Contractor's business is not equipped to provide such goods/services. The Contractor shall not bear the burden of proof in that regard.

The supplementary agreement must be executed in writing. If the parties fail to reach an agreement regarding the increased or decreased fee, the Customer may demand the implementation of a Change in writing. Such demand shall generally only come into effect after 30 days, calculated from the date of receipt of the request for a Change by the Contractor.

In addition – in acute cases in which the execution is urgent or, if due to specific circumstances, it can be assumed that the tasks have failed to reach an agreement, or if interest of the Customer in the immediate provision of the goods/services is justified, the Customer is entitled to request the performance of the Change without prior expiration of the 30-day period for any reason for the Contractor – the Customer may, at any time in advance of the expiry of the expiration period of the 30-day period, request the performance of the Change.
9.2 Other employees deployed by the Contractor
The Contractor shall ensure that if work is carried out by it or by its subcontractors are only subject to the managerial authority of their respective employer.

9.3 Language
The execution of agreement and any communication, whether oral or written, must be carried out in German or, after consulting the Customer, also in English. Any documents to be produced must be prepared in German or, after consulting the Customer, also in English.

9.4 Date and delivery, contractual penalties
The Contractor shall ensure that all goods/services in accordance with the general schedule and the detailed schedule as updated from time to time.

At the request of the Contractor, the Customer shall provide a detailed schedule taking into account the specific circumstances of the particular project, to be agreed between the parties. The Contractor must ensure that any changes in the main programme are notified to the Customer in the event of any such delays. Any updates specified shall explicitly outline all agreements and timeframes that are subject to uncertainty or are subject to modifications in any way due to delays.

The rights of the Customer pursuant to sections 3 (3) (request for remedial action) and 5 (4) VOB/B (damages and termination) shall apply without restriction.

In the case of default, the Contractor shall be liable in accordance with the statutory provisions. The limitation of liability pursuant to section 6 (6) sentence 1 VOB/B to cases of intent or gross negligence shall not apply. There is no limitation of liability for damages for personal injury in case of default.

The Customer reserves the right to declare acceptance or refuse acceptance. The Customer's right to make declarations or refusal of acceptance is in no way derogated by the valid acceptance of the goods or services by the Customer.

The Customer is entitled to retain 5% of the net final invoice for any claims for defects. Following acceptance, the Contractor shall be responsible for any costs incurred in the correction of defects.

The Contractor shall be charged the Currenta service fee for each worker deployed in the provision of the goods/services to which the termination relates and may not use the resulting amount for the benefit of the Contractor or its personnel. Different rules may apply at sites of the Contractor that are not operated by Currenta GmbH & Co. OHG. The Contractor shall be required to comply with such rules.

The Contractor shall be liable to the Customer for any claims for defects as per sections 11 (3) (request for remedial action) and 11 (4) VOB/B, with the exception of claims for defects of construction that have been made in accordance with this provision.

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In view of orderly project management, the Contractor shall ensure that all modifications and changes to the contract are notified to the Customer in writing. Any changes to the contract shall be explicitly labelled as a "modification notice" and shall be acknowledged in writing by the Customer. The Contractor shall ensure that all obligations arising from the contract and any modifications and changes to the contract are fulfilled as agreed.

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The Contractor shall be liable to the Customer for any claims for defects as per sections 11 (3) (request for remedial action) and 11 (4) VOB/B, with the exception of claims for defects of construction that have been made in accordance with this provision.
They will mutually take all steps within their area of influence to prevent any integration of the Contractor's workers into the operational organisation of the Customer. Besides the Customer, the Contractor shall also be responsible for preventing such integration from occurring and for preventing its workers from accepting any instructions from the Customer's employees. At the request of the Customer, the Contractor shall notify the Customer without undue delay.

20 Compliance with the German Minimum Wage Act
The Contractor warrants that when carrying out contracts on behalf of the Customer it will comply with the provisions of the German Minimum Wage Act (Mindestlohngesetz – MiLoG). The Contractor further warrants that it will ensure that any subcontractors and employment agencies engaged by it are subject to the same obligations.

The Contractor undertakes to indemnify the Customer against third-party claims – in particular claims of their own employees and subcontractors as well as claims of employees of the subcontractor or an employment agency engaged by the Contractor or a subcontractor – which are asserted in connection with the provisions of the MiLoG and which arise from the performance by the Contractor of contracts awarded by the Customer.

The Contractor shall indemnify the Customer against all third-party claims – in particular claims of their own employees and subcontractors as well as claims of employees of the subcontractor or an employment agency engaged by the Contractor or a subcontractor – which are asserted in connection with the provisions of the MiLoG and which arise from the performance by the Contractor of contracts awarded by the Customer.

21 Payment of legally prescribed social security contributions and taxes
The Contractor warrants that it pays the legally prescribed social security contributions and taxes in relation to the employees deployed in the context of this agreement and that there will be no additional demands.

22 Final provisions
22.1 Transfer of the contract, assignment
The Contractor may not transfer the contract in whole or in part to third parties without the Customer's consent. This shall also apply to individual rights and obligations arising from this contract.

The Customer is entitled to transfer its rights and obligations arising from this contract without the consent of the Contractor within the COVESTRO group (i.e. to a company affiliated with Covestro AG in the meaning of sections 15 et seq. AktG). The customer reserves the right to assign rights in whole or in part.

22.2 Applicable law
The substantive laws of the Federal Republic of Germany shall apply exclusively to all legal relationships arising for the contracting parties and their legal successors from this contract, to the exclusion of the UN Convention on the International Sale of Goods (CISG).

22.3 Jurisdiction
The exclusive place of jurisdiction for all disputes arising out of or in connection with this contract shall be Cologne, Germany.

22.4 Written form, amendments to the contract
Amendments, supplements or the amicable cancellation of this contract including its appendices must be made in writing and signed by both contracting parties on the same document in order to be effective, unless they are based on an express, individual contractual agreement.

Notices of termination and other declarations of the contracting parties which are necessary to establish, safeguard or exercise their rights must also be made in writing in order to be effective, but only with the signature of the declaring contracting party.

The written form requirement may only be waived by a declaration signed by both contracting parties, unless the waiver is based on an express individual contractual agreement.

The acceptance or acceptance of orders, freight documents, order confirmations or any other type of document (including General Terms and Conditions) which deviate from the provisions agreed in this contract shall not lead to an amendment and/or supplement of this contract without compliance with the written form requirement in accordance with the above paragraphs of this provision.

22.5 Offsetting
The Contractor may only offset if the respective claim with which the offset is to be made is undisputed or has been legally established by a court of law.

The Contractor shall be entitled to set-off and/or retention in accordance with the statutory provisions.

22.6 General issues
Applicable safety and regulatory provisions, the applicable QM guidelines for companies involved in implementing contracts on the Covestro premises and corresponding provisions of affiliated companies of Covestro and the Covestro Supplier Code of Conduct are an integral part of the terms and conditions of the individual contracts/orders. These will be handed over when work begins.