



## General Terms and Conditions for Purchase Contracts and Contracts for Work and Labour of E.ON IS GmbH

As of: 17th of December 2009

### 1. Validity of the Client's Terms and Conditions

These Terms and Conditions shall be taken as a basis for all purchase orders and apply exclusively as herein amended. If this English version conflicts with the German version, the German version shall be exclusively binding. Conflicting or additional terms and conditions of the Contractor are objected to. They shall only apply, if the Client has agreed to them, or to parts thereof, expressly and in writing.

### 2. Order of Precedence

In terms of their nature and scope, the mutual services shall be governed, in the following order of precedence, by:

- the stipulations in the purchase order,
- the further terms and conditions of contract set out in the purchase order, as well as specific and general technical terms and conditions,
- the Client's construction site rules,
- these Standard Terms and Conditions for Purchase Contracts and Contracts for Work and Labour.

### 3. Offer

- 3.1 In its offer, the offerer shall strictly adhere to the specifications and the wording of the request for an offer. Any and all deviations shall be expressly pointed out. The offer shall be made free of charge.
- 3.2 Subject to the prerequisites under section 48 of the German Income Tax Act [EStG], the Contractor shall, upon submitting the offer, present a valid exemption certificate as per section 48 b of the German Income Tax Act [EStG] in the form of a legible copy or, in the case of a certificate relating to the order, in the original. Otherwise, it shall not be possible to take account of the offer in the further contract award procedure. The Contractor shall, without undue delay, inform the Client of any revocation of a valid exemption certificate.

### 4. Purchase Order

- 4.1 Purchase orders must be in writing. Communication by electronic data transmission shall also comply therewith. Verbal collateral agreements re-

lating to a purchase order shall only be binding, if the Client confirms them in writing. This also applies to subsequent amendments and additions.

- 4.2 The purchase order shall be acknowledged by the Contractor within ten working days by signing, with legal validity, and returning the copy of the purchase order (purchase order acceptance) envisaged for this. Purchase orders which the Client communicates by electronic data transmission may be acknowledged by the Contractor in the same manner.

### 5. Subcontractors

- 5.1 Except with the Client's prior written consent, the Contractor may not, either in whole or in part, transfer its obligations arising from the contract to other parties or outsource to other undertakings the services and works assigned to the Contractor. This also applies to services which the Contractor's business is not geared to.

Outsourcing of partial performances by a subcontractor to another undertaking shall likewise be subject to the Client's prior written consent.

In respect of the tasks assumed by subcontractors, the Contractor shall impose upon the subcontractors all obligations which the Contractor has assumed in relation to the Client and shall ensure that the subcontractors comply with those obligations.

If subcontractors are appointed, the persons responsible at the Contractor and at the subcontractors appointed by the Contractor shall discuss the provisions under the law on on-the-job safety, particularly the applicable rules and regulations of the employers' liability insurance association [Berufsgenossenschaft], as well as further rules and regulations prescribed by the Client, and shall document this in a short protocol. The Client shall receive a duplicate thereof.

- 5.2 The subcontractors, or the services to be outsourced to subcontractors, shall be designated as early as upon submission of the offer.
- 5.3 In the subcontractor contract, the Contractor shall place the subcontractor under an obligation to hand over to the Contractor, for submission to the Client, the essential up-to-date certificates from the tax office, from the relevant social insurance institutions and from the employers' liability insurance association, as well as work permits if es-

sential. The Contractor shall impose upon the subcontractor all obligations concerning the tasks assumed by it and ensure compliance therewith.

- 5.4 The Contractor may not hinder its subcontractors from concluding with the Client contracts for other deliveries / services. Particularly impermissible are exclusivity agreements with third parties which hinder the Client or a subcontractor from procuring deliveries / services required by the Client itself, or by the subcontractor, for the handling of such orders.
- 5.5 If the Contractor appoints workers as subcontractors without prior written consent as required under subsection 5.1, or if the Contractor breaches the duties under subsection 5.3, the Client shall have the right to rescind the contract and/or demand compensatory damages for non-performance.

## **6. Execution, Environmental Protection, Safety, Health Protection and Quality**

- 6.1 The Contractor shall take account of the acknowledged rules of technology, the respective valid statutory and official regulations and the Client's company rules and regulations. In particular, the Contractor shall observe the rules and regulations of the employers' liability insurance association, the "Principles of Prevention" BGV A1 and the generally acknowledged rules on safety and occupational medicine. The Contractor shall take account of the content of the German Occupational Health and Safety Act [Arbeitsschutzgesetz] and the German Industrial Safety Regulation [Betriebssicherheitsverordnung]. This particularly includes the drawing-up of danger assessments for the activities to be carried out and the work resources used.
- 6.2 Deliveries of machinery and technical work resources shall include assembly and operating instructions, an EC declaration of conformity, a CE mark and, where appropriate, a design examination certificate in accordance with the German Equipment and Product Safety Act [Geräte- und Produktsicherheitsgesetz, GPSG] and the German Machinery Regulation [Maschinenverordnung]. Preference shall be given to delivering work resources which bear a CE mark. If no test mark is issued, compliance with the aforesaid regulations shall be proven by the supplier.
- 6.3 The Contractor shall be obliged to test the products in accordance with general German industrial standards and, on request, make the test results available to the Client free of charge. The Client shall also be entitled to test the products. Tests

within this meaning shall not be deemed to be an acceptance test.

- 6.4 In the case of delivery of hazardous materials within the meaning of the German Regulation on Hazardous Materials [Gefahrstoffverordnung], product information - particularly current EC safety data sheets in German - shall be sent to the Client in good time prior to delivery at the point of delivery. The same applies to information on marketing restrictions required by law. The stipulations laid down in the German Act on Carriage of Hazardous Goods [Gefahrgutbeförderungsgesetz] shall be complied with.
- 6.5 Use of materials which are carcinogenic, toxic to reproduction or mutagenic shall be generally avoided. If deviations herefrom are necessary, the Client shall be informed in writing prior to delivery / use. Protective measures resulting from this shall be jointly agreed upon.
- 6.6 If the Contractor maintains a quality assurance system, e.g. as per DIN EN ISO 9001 - 9003, the Client or a third party contracted by the Client shall be entitled to examine the system according to agreement with the Contractor.
- 6.7 In respect of replacement parts and spare parts, the Contractor shall state all characteristics clearly described, e.g.:
- manufacturer
  - type
  - order / article / identification number
  - dimensions
  - material
  - designations of standards, such as DIN, IEC, ISO etc.
- If articles / equipment to be delivered contain materials, or use operating materials, which are subject to the German Regulation on Hazardous Materials [Gefahrstoffverordnung], those materials shall be declared accordingly.
- 6.8 The Contractor shall, without undue delay, notify the Client of misgivings as to the envisaged method of execution or as to performance on the part of other contractors, in so far as this relates to the Contractor's scope of the order.
- 6.9 The Contractor shall adapt itself to the working hours applicable at the place where the service is to be rendered. The Contractor's authorised representatives and personnel shall be obliged to use the Client's attendance time recording system. Before work is taken up, the provisions customary at the site shall be agreed upon with the respective business establishment.

- 6.10 The Contractor and its subcontractors shall appoint personnel who are qualified, have been instructed and have been medically examined commensurately with the responsibilities to be executed and in accordance with the principles of the employers' liability insurance association. Corresponding up-to-date proof of qualifications and examinations shall be submitted at the Client's request.

The Client reserves the right to carry out, in the course of the works, checks as to compliance with occupational health and safety regulations by the Contractor and the subcontractors appointed by it.

- 6.11 The Contractor undertakes not to expose any person with whom it comes into contact, in connection with the performance of its responsibilities for the Client, to any unjustified discrimination or harassment. The Contractor further undertakes to expressly point this obligation out to its employees and place them under a corresponding obligation.
- 6.12 The Contractor shall be obliged to comply with the site's rules of conduct relating to emergency management which are made known to it.
- 6.13 For good cause, the Client shall be entitled to demand that personnel of the Contractor be replaced. In particular, this shall apply, if there are justified doubts as to possession of necessary experience or qualifications or if on-the-job safety stipulations / environmental protection stipulations are not observed. The Contractor undertakes to provide a qualified replacement in those cases. Agreed dates shall remain unaffected by this. Replacement of personnel by the Contractor shall be subject to the Client's prior written consent. The Contractor shall bear all extra costs in connection therewith.
- 6.14 The Contractor undertakes to indemnify the Client against all damage and costs (including costs relating to the pursuit of rights) resulting from breaching of legal standards which is attributable to the Contractor or any of its employees or subcontractors.
- 6.15 The Client shall record all accidents occurring at work, or on the way to or from work, in respect of its own personnel and external personnel working for the Client. Recording shall serve to improve on-the-job safety.

If an employee appointed by the Contractor or by one of its subcontractors suffers an accident on the way to or from the place of performance (accident occurring on the way to or from work) or at

the place of performance in the course of exercising agreed responsibilities (accident at work), the Contractor shall, without undue delay, give the Client's on-site safety specialist written notification of this and of further details regarding how the accident occurred. Reporting of an accident shall not release the Contractor from existing statutory duties to report, particularly in relation to the employers' liability insurance association.

## **7. "UN Global Compact" Initiative and EU Counter-Terrorism Regulations**

- 7.1 E.ON attaches overriding importance to social responsibility as part of corporate activities. Consequently, it participates in the "United Nations Global Compact" initiative. The initiative is based on ten fundamental principles intended to make globalisation more socially and ecologically beneficial and prevent corruption. The information sheet "E.ON Responsible Procurement Policy" refers to the UN Global Compact principles and can be downloaded from the Internet at [http://eon-procurement.com/terms/en/html/index\\_terms.html](http://eon-procurement.com/terms/en/html/index_terms.html). The Contractor shall be obliged to observe those principles.
- 7.2 For the purpose of counter-terrorism, the ban on the direct and indirect provision of monies and economic resources to certain individuals, legal entities, groups and organisations has been introduced by the European Union Council Regulation (EC) No. 881/2002 and (EC) No. 2580/2001, which apply directly in every member state of the European Community. The Contractor undertakes to observe this ban and check its business partners and employees as to whether their name and identity exist in the lists of named individuals, legal entities, groups or organisations published as annexes to the Regulations. If their name and identity exist in the said lists, implementation of transactions with those persons, groups or organisations shall be refrained from.

## **8. Insurances**

For the duration of the contract, including warranty periods and limitation periods for defect-related claims, the Contractor must maintain liability insurance cover with terms and conditions customary in the branch of business (minimum amount of cover: 1.5 million EUR per occurrence of damage). The Contractor shall prove this at the Client's request.

body or health.

## **9. Delivery Period / Performance Period**

- 9.1 Dates for delivery or performance stated in the purchase order are binding. The Contractor shall be obliged to inform the Client in writing, without undue delay, if circumstances indicating that the agreed date cannot be complied with occur or become evident to the Contractor.
- 9.2 The Contractor may only plead non-receipt of necessary documents to be supplied by the Client, if the Contractor has not received those documents within a reasonable period despite a prior written request.

## **10. Dispatch**

- 10.1 The transportation option which is most favourable for the Client shall be chosen, except where the Client has expressly stated certain carriage instructions. The consignments shall be packaged in such a manner that transport damage is avoided.
- 10.2 The purchase order particulars (purchase order number, purchase order date, point of delivery, name of consignee - where appropriate - and material number), along with the dispatch address, shall be stated in the transportation documentation.
- 10.3 The Contractor shall bear costs arising as a result of misdirected deliveries, in so far as the Contractor assumes responsibility for transportation or in so far as misdirecting is attributable to the Contractor.
- 10.4 The Contractor shall only be entitled to partial deliveries or performances with the prior written consent of the Client.
- 10.5 Signing of the delivery note shall not signify recognition that the goods delivered conform to the contract.

## **11. Entry to and Driving On the Factory Premises / Construction Site**

- 11.1 Entry to and driving on the factory premises / construction site shall be subject to timely registration. Instructions issued by the Client's specialist personnel shall be followed. Traffic law regulations shall be complied with. Regardless of the legal grounds, the Client and its employees shall only be liable for gross negligence and intent, also for ordinary negligence in cases of injury to life,

- 11.2 If services are rendered on the factory premises / construction site, the corresponding construction site rules shall apply. At the time the work is taken up, or on prior request, a copy of the construction site rules, including the schedule of appendices, shall be handed over to the Contractor's supervisors against signature. Knowledge of the content of the construction site rules, including the schedule of appendices, shall be confirmed by written declaration.

## **12. Changes to Performance**

- 12.1 The Contractor shall, without undue delay, give the Client written notification of changes to, or expansions of, the scope of delivery / performance which prove necessary in the course of execution. Implementation thereof shall require the Client's prior written consent.
- 12.2 Within ten calendar days from receipt of change requests from the Client, the Contractor shall examine them as to possible consequences and give the Client written notification of the result. In particular, effects on technical execution, on costs and on the time schedule shall be pointed out in this connection. If the Client decides in favour of implementation of the changes, the parties to the contract shall adapt the contract accordingly.

## **13. Waste Disposal**

In so far as waste arises in the course of the Contractor's deliveries / services, the Contractor shall, except where otherwise agreed upon in writing, recycle or dispose of the waste at its own expense in conformity with waste law regulations. Ownership, risk and responsibility under the law on waste shall pass to the Contractor at the time the waste arises.

## **14. Passage of Risk**

Risk shall only pass to the Client upon hand-over of the deliveries / services to the Client or upon acceptance of the deliveries / services by the Client.

## **15. Defect-Related Claims**

- 15.1 The Client shall be fully entitled to statutory defect-related claims. As supplementary performance, the Client may, at its option, demand either

elimination of the defect or delivery of an item free from defects or, as the case may be, production of a new work. Supplementary performance shall be effected in agreement with the Contractor, taking account of the Client's operational concerns.

- 15.2 The limitation period for defect-related claims shall be extended by the period between lodging of the defect-related complaint and elimination of the defects.
- 15.3 If parts of the subject of the contract are altered, or are replaced with parts of a different kind, within the framework of defect-related claims, the corresponding replacement parts and spare parts shall be altered or exchanged at the Contractor's expense.
- 15.4 In the event of rescission, the Client shall be entitled to continue using the Contractor's services free of charge until a suitable replacement is obtained.
- 15.5 In the event of rescission, the Contractor shall bear the cost of dismantling / removal, as well as return freight charges, and shall assume responsibility for disposal.

#### **16. Date-Independent Consistency**

The Contractor guarantees that the products shall show date-independent consistency. This means that, in respect of time-related particulars such as dates, periods and steps in time (hereinafter: date-related particulars), the products shall work, function and be usable in conformity with the contract, faultlessly and correctly, without limitation, also in interoperation with other products.

In particular,

- date-related particulars of the products must not cause any impairment of functionality, operational disruptions or interruptions of operations in respect of the products or other products;
- date-related particulars or the processing of date-related particulars must not lead to incorrect results;
- leap years must be correctly calculated and processed.

#### **17. Weights / Quantities**

In the event of deviations in weight, the weight determined by the Client in the advice of receipt

shall apply, unless the Contractor proves that the weight calculated by it was correctly determined in accordance with a generally recognised method. This also applies analogously to quantities.

#### **18. Complaint Relating to Defects**

In the case of delivery of goods which the Client is required to examine in accordance with section 377 of the German Commercial Code [HGB], the period for examining the goods and complaining of any apparent defect in the goods shall be two weeks from the time delivery was taken receipt of. The period for complaining of hidden defects shall be two weeks from discovery of the defect.

#### **19. Prices / Issuance of Invoices**

- 19.1 The prices stated in the purchase order are fixed prices. They include all discounts and extra charges and are subject to the addition of statutory value-added tax.
- 19.2 After delivery / performance has been effected, the invoices, which are to be issued in duplicate, shall be sent - separately according to purchase orders - to the invoice address stated in the purchase order or to the Client's administrative office. Purchase order numbers shall be stated, and all settlement documents (bills of materials, records of work performed, measurements etc.) shall be enclosed.
- 19.3 Invoices for partial deliveries or performances shall bear the note "Invoice for a partial delivery" or "Invoice for a partial performance". Final invoices shall bear the note "Invoice for a residual delivery" or "Invoice for a residual service".
- 19.4 Every invoice must separately show the value-added tax owed by law. No original invoices may be enclosed with the consignment of goods.
- 19.5 The Contractor shall be responsible for all consequences arising on account of non-compliance with the obligations stated in subsections 19.1 to 19.4.
- 19.6 The Client shall be entitled to rights of set-off and retention to the statutory extent.

#### **20. Non-Assignment of Rights and Duties**

Assignment and other forms of transfer of the Contractor's rights and duties outside of the scope of application of section 354 a of the German Commercial Code [HGB] are excluded. Exceptions

shall only enter into effect with the Client's prior written consent.

## 21. Termination

21.1 The Client shall be entitled to terminate the contract at any time in accordance with section 649 sentence 1 of the German Civil Code [BGB] or in application thereof mutatis mutandis. Notice of termination shall be given in writing, stating the relevant reason for termination.

If one of the parties to the contract gives notice of termination, the Contractor shall vacate the construction site and return it to the Client without undue delay and surrender all work documents essential for continuation of the services. If, in such a case, entitlements of the Contractor to residual remuneration are disputed and, for this reason, the Contractor asserts a right of retention at or around the time of notice of termination, the Client may avert any existing right of retention by providing security of sustainable value, at its option. The Client may fix the sum of this security in accordance with section 315 of the German Civil Code [BGB].

Contrary to the consequences of notice of termination provided for by law, the following applies:

21.1.1 If notice of termination is given for a reason attributable to the Contractor, the Client shall remunerate the Contractor, for the services which have been rendered in conformity with the contract up until receipt of notice of termination and which the Client is able to use, on the basis of the agreed price relating to the partial performances. Damage claims on the part of the Client shall remain unaffected.

In particular, the following reasons for termination shall be attributable to the Contractor:

- The Contractor fails to meet its contractual duties despite a written request and the setting of a reasonable time limit to no avail.
- In connection with the execution of deliveries or services, the Contractor violates, to a substantial extent, public-law regulations or directives which are subject to punitive damages and a civil fine.
- The Contractor definitively refuses to perform one or more of its contractual duties.

21.1.2 If the Client gives notice of termination for a reason not attributable to the Contractor, the Contractor shall be entitled to demand the agreed remuneration. However, the Contractor must allow deduction of expenditures which it saves as a result of nullification of the contract or of income which it acquires, or wilfully omits to acquire, by using its labour elsewhere.

21.1.3 The Client may terminate the contract, if the Contractor discontinues its payments or insolvency proceedings or comparable statutory proceedings are permissibly petitioned for or commence or their commencement is rejected due to insufficient assets. The Client shall, on a pro-rata basis, remunerate the Contractor for the services carried out. The Client shall be entitled to demand from the Contractor compensatory damages on account of non-performance of the remainder.

21.1.4 In so far as there is a reason for termination under both subsection 21.1.1 and subsection 21.1.3, termination under subsection 21.1.1 shall take precedence.

21.2 The right of termination for good cause, as well as the Contractor's right of termination under section 643 of the German Civil Code [BGB] remain unaffected.

21.3 Until the consignment is handed over, the Client may at any time rescind a purchase order for deliveries (section 433 of the German Civil Code [BGB]), if, as a consequence of decisions made by a government authority, the Client no longer has any interest in rendering of the services owed by the Contractor. The Client may likewise rescind, if insolvency proceedings or comparable statutory proceedings concerning the Contractor's assets are permissibly petitioned for or commence or their commencement is rejected due to insufficient assets. In the event of rescission on the part of the Client on account of this subsection, the stipulations above in subsections 21.1.1 to 21.1.3 shall apply in respect of the Contractor's entitlement to remuneration. The Client shall acquire title to the partial performances remunerated.

## 22 Rights of Use and Property Rights

22.1 Within its corporate group, the Client may use,

without limitation, the subject of the contract, including the underlying patent rights and other property rights. This right of use also gives entitlement to alter the subject of the contract and also covers illustrations, drawings, calculations, methods of analysis, recipes and other works made or developed by the Contractor in the course of the formation and/or implementation of the contract. The Client may make documents available to third parties for the purpose of reproducing replacement parts or spare parts. The Contractor represents and warrants that no rights of third parties, particularly of its subcontractors, conflict with granting of the right of use and shall indemnify the Client against claims to this extent.

- 22.2 The Contractor shall be liable that no third-party property rights or copyrights are infringed as a result of delivery and/or use of the subject of delivery or performance and/or as a result of delivery and/or use of the work produced. The Contractor shall indemnify the Client against any and all third-party claims on account of infringement of those rights and shall also otherwise hold the Client harmless. Repairs may be carried out by the Client or its authorised representatives, even if industrial property rights of the Contractor exist.

### **23. Maintenance of Secrecy**

- 23.1 The Contractor undertakes to treat with absolute confidentiality, and use exclusively for the performance of the contract, all information which the Client makes accessible to it in connection with the order. Confidential information within the meaning of this stipulation encompasses documents, particulars, data and other information which are designated as confidential information or are to be regarded as confidential by nature.
- 23.2 Moreover, in so far as confidential information contains person-related data, the use thereof shall be governed by the stipulations under section 24. In the event of conflict between the provisions in this section 23 and the provisions in section 24, the provisions in section 24 shall take precedence in respect of person-related data.
- 23.3 The duty to maintain secrecy shall not apply to information which was provably already known to the Contractor upon receipt or which the Contractor has otherwise acquired knowledge of (e.g. from third parties without reservation of confidentiality or through its own efforts). However,

this exception stated in the sentence above shall not apply to person-related data.

- 23.4 The Contractor undertakes to grant access to the Client's confidential information only to employees, subcontractors and suppliers who have been entrusted with rendering services under this contract and have undertaken to likewise maintain secrecy. On request, the Contractor shall prove to the Client that the obligation has been passed on.
- 23.5 All information handed over by the Client shall remain the Client's property. The same shall apply to copies, even if made by the Contractor. The Contractor shall have no right to retain the information, copies or data carriers.
- 23.6 After implementation of the contract, the information handed over by the Client shall, at the Client's request or no later than upon expiration of the limitation period for defect-related claims, be fully and automatically returned to the Client or, at the Client's option, be destroyed, unless statutory retention periods conflict therewith.
- 23.7 The Client may wholly or partly rescind the contract, if the Contractor fails to meet its duties under this section "Maintenance of Secrecy" within a set reasonable period. The Contractor shall be liable to the Client for all losses resulting to the Client from a breach of the Contractor's obligations.
- 23.8 The obligations under this section 23 shall survive the termination of the contract.

### **24. Data Protection, Data Security, Commissioned Data Processing**

- 24.1 The Contractor shall be obliged to observe the statutory provisions on data protection (e.g. the German Federal Data Protection Act [Bundesdatenschutzgesetz] and the Telecommunications Act [Telekommunikationsgesetz]) and ensure and monitor compliance therewith in observance of the provisions in this section 24.

24.2 The Contractor shall collect, process and use person-related data for the Client by way of commissioned data processing subject to directives, in accordance with section 11 of the German Federal Data Protection Act, (hereinafter referred to as "**Commissioned Data Processing**") only in so far as this is essential for the performance of the Contractor's duties arising from the purchase order. All appendices and documents which the purchase order refers to are also content of the purchase order within this meaning.

The type of data to be used by the Contractor within the framework of commissioned data processing, as well as the categories of persons concerned shall be specified in the purchase order and/or in an appendix to the purchase order (hereinafter referred to as "**Person-Related Data**").

Person-related data within the meaning of these GT&C also include person-related data which the Client processes itself on behalf of a third party and makes available to the Contractor, in so far as the Client uses the Contractor's services for the performance of its duties in relation to the third party.

The Client shall, also in the case of commissioned data processing, continue to remain the owner and "master" of the person-related data. The Contractor shall not have the right to retain person-related data or retain data carriers or documents containing such data.

Commissioned data processing shall, in respect of person-related data, encompass the acts which are essential for the performance of the Contractor's duties arising from the purchase order and are referred to in the purchase order. Access to data stocks and the right to process data on a commissioned basis shall be granted only in so far as, and to the extent that, such access is essential for the proper performance of the aforesaid duties. Use of the data by the Contractor beyond the foregoing shall not be permitted. In particular, the Contractor shall not be permitted to make any copies or duplicates of the data without the Client's knowledge and consent.

The duration of commissioned data processing shall be limited to the duration of the services to be rendered by the Contractor according to the purchase order.

The Client shall have the right to issue the Con-

tractor with directives concerning the type, scope and methods of data processing and concerning the data security measures to be taken in this connection. The Contractor shall solely be entitled to process person-related data within the scope of the Client's directives. If the Contractor is of the opinion that a directive from the Client contravenes the statutory provisions concerning data protection, it shall point this out to the Client without undue delay.

The Client's right to issue directives and its right of control arising from the purchase order and this section 24 may also be safeguarded by any other person mandated by the Client.

The processing and use of the data shall take place exclusively in the territory of the Federal Republic of Germany, in a member state of the European Union or in any other state which has signed up to the European Economic Area Treaty. Any relocation to a country other than the above shall require the Client's prior consent.

Changes to the subject, scope, type, duration or purpose of the commissioned data processing, or changes to the circle of persons concerned, shall require a corresponding written agreement between the Contractor and the Client.

24.3 Furthermore, the provisions on commissioned data processing shall apply mutatis mutandis, if the testing or servicing of automated procedures or of data processing systems is carried out by the Contractor for the Client and access to person-related data cannot be ruled out in this respect.

24.4 The Contractor warrants that its protection of data shall be adequate for ensuring the confidentiality, availability and accuracy of the data. Within the sphere of its responsibility, the Contractor shall monitor compliance with the essential technical and organisational security measures relating to data protection in accordance with section 9 of the German Federal Data Protection Act. In particular, the Contractor shall safeguard corresponding entry, admission, access, circulation, input, order and availability controls. The Contractor further warrants that person-related data collected for different purposes shall be able to be processed separately. Moreover, the Contractor warrants that the following data shall be processed separately:



- the Client's data,
- the Contractor's data and
- the data of other clients of the Contractor.

Prior to the commencement of commissioned data processing, and thereafter at the Client's request, the Contractor shall prove in writing that it is complying with the technical and organisational measures relating to data processing. If intervals of time for the furnishing of proof are stipulated in the purchase order, the proof shall, in addition to the stipulation in the sentence above, also be furnished at those intervals on a regular basis. In each case, the Contractor shall be obliged to furnish proof in such a manner that the Contractor hands over to the Client in each case written documentation in which the technical and organisational measures taken by the Contractor, within the meaning of this no. 24.4, are described in sufficient detail that the Client can meet the examination duties incumbent upon it under section 11 of the German Federal Data Protection Act. Owing to technical progress and developments in legislation which are to be expected, it may become necessary that the technical and organisational measures taken be adapted to technical progress and developments in legislation. In this respect, therefore, the Contractor shall be permitted, for adaptation to technical progress, to implement alternative adequate technical and organisational measures. The level of security of the measures agreed upon with the Client must not be fallen below in this respect. Material changes shall be documented and communicated to the Client without undue delay. Essential adaptations of the technical and organisational measures to changed statutory provisions shall be implemented by the Contractor without undue delay. Material adaptations shall be documented and communicated to the Client without undue delay.

24.5 The Client shall be responsible, as the data controller, for assessing the permissibility of the data processing and for safeguarding the rights of the persons concerned under the data protection laws. If the Client has caused person-related data to be corrected, deleted or locked in relation to the Contractor, the Contractor shall be obliged to wholly follow this directive. If a person concerned asserts rights in relation to the Client, particularly the right to information, the Contractor shall carry out, without undue delay, all acts essential for the per-

formance of the Client's obligations in relation to the person concerned.

24.6 No later than prior to the commencement of commissioned data processing, the Contractor shall appoint in writing a data protection officer as provided for in section 4 f of the German Federal Data Protection Act. This person must possess the essential expertise and reliability and use his influence to bring about compliance with the provisions on data protection. The Contractor shall inform the data protection officer about the commissioned data processing.

Further duties of the Contractor shall ensue from, in particular, section 11, subsection 4 of the German Federal Data Protection Act.

The Contractor shall be obliged to ensure that it passes on the Client's directives to all employees who have access to person-related data in connection with the performance of the Contractor's contractual duties according to the purchase order. Moreover, the Contractor shall be obliged to prohibit those employees, also for the period after their employment ends, from processing or using person-related data contrary to the Client's directive or for a purpose other than for the performance of the contractual duties in relation to the Client (data secrecy). The obligation of data secrecy shall be imposed upon the employees prior to the take-up of commissioned data processing. On request, the Contractor shall prove in writing to the data protection officer designated by the Client that this obligation has been passed on.

24.7 The contracting of subcontractors by the Contractor shall only be permissible in so far as this is expressly permitted by the purchase order in conjunction with section 5 of these GT&C.

The Contractor shall diligently select the subcontractor and, prior to contracting the subcontractor, satisfy itself that this subcontractor is able to comply with all duties laid down in this agreement for the Contractor. Moreover, the Contractor shall be obliged to impose upon the respective subcontractor the duties laid down in this section 24, with the provision that the subcontractor takes the place of the Contractor. Furthermore, the Contractor shall contractually ensure that all rights laid down in this agreement are, at the Client's option, able to be safeguarded either by the Con-

tractor in accordance with the Client's directive or by the Client itself. If the Contractor safeguards the rights in accordance with the Client's directive, the Contractor shall be obliged to pass on all information to the Client without undue delay, particularly documentation and results of controls. On request, the Contractor shall prove in writing to the Client's data protection officer that the duties laid down in this section 24.7, subsection 2 have been performed.

The provisions in the above subsection 2 of this section 24.7 shall also apply mutatis mutandis to other persons who are appointed for the performance of the Contractor's duties in relation to the Client and who have access to person-related data. The appointment of such persons shall only be permissible in so far as this is expressly permitted by the purchase order.

24.8 The Contractor's duties stated in this section 24 shall not be affected by discontinuation of the contractual relationship which has been established with the Client as a result of the purchase order. This particularly applies to the obligation to maintain data secrecy. After commissioned data processing has ended, the Contractor shall only be permitted to continue to store or otherwise retain the person-related data made available, in so far as statutory retention periods mandatorily demand further retention at the Contractor. Otherwise, the Contractor shall be obliged, upon discontinuation of commissioned data processing, to hand over all person-related data in its possession to the Client without undue delay or, according to consultation and agreement with the Client, destroy the person-related data without undue delay in conformity with data protection rules and provide the Client with written confirmation of destruction. The above also covers person-related data generated for data securing and logging. In the case of returning person-related data to the Client, the data mentioned in the above sentence, as well as any and all copies or duplicates of the data shall, following hand-over to the Client, be destroyed at the Contractor by the Contractor without undue delay in conformity with data protection rules and the Client shall be provided with written confirmation of destruction.

24.9 The Contractor grants the Client, particularly its data protection officer, the right to monitor at any time, and without hindrance, whether the data processing is being carried out in accordance with the provisions of the law on data protection, the contractual provisions and the directives issued by

the Client. The Contractor undertakes to support the Client in this connection to the extent necessary, particularly by making the necessary information available, carrying out all acts necessary in this connection and granting the necessary admission, entry and access rights. The Client shall be entitled to call in third parties (particularly supervisory authorities) for carrying out the aforesaid controls, in so far as the third parties are entitled to carry out the controls in relation to the Client. The Contractor shall also acquiesce to and support documentation of the results of the controls prior to the commencement of commissioned data processing and during commissioned data processing.

24.10 The Client shall be entitled to have a security check carried out on the Contractor's service providers in accordance with section 12b of the Atomic Energy Act [Atomgesetz], if they render services in connection with the handling or carriage of radioactive materials or in connection with the construction or operation of facilities within the meaning of section 7, section 11, subsection 1, no. 2, or section 9a, subsection 3 of the Atomic Energy Act. The Contractor undertakes to make available the essential data of those service providers in this connection.

24.11 The Contractor shall, without undue delay, give the Client written notification of all indications of a breach of the data protection provisions or of this section 24 or of the Client's directives. The duty to inform shall particularly apply in the case of indications of an event within the meaning of section 42a of the German Federal Data Protection Act. If the security or confidentiality of the person-related data at the Contractor is jeopardised by attachment or seizure, by insolvency or composition proceedings or by other events or measures of third parties, the Contractor shall inform the Client thereof in writing without undue delay. The Contractor shall, without undue delay, inform all persons responsible in this connection that the sovereignty over and ownership of the data lie with the Client.

24.12 The Client may wholly or partly rescind the contract, if the Contractor fails to perform within a set reasonable period its duties under this section "Data Protection, Data Security, Commissioned

Data Processing" or breaches data protection provisions with intent or by gross negligence. The Contractor shall be liable to the Client for all losses resulting to the Client from a breach of the Contractor's obligations.

24.13 The Client reserves the right to pass on to affiliates of E.ON AG, within the meaning of sections 15 et seq. of the Public Limited Companies Act [AktG], and to E.ON AG for the purposes of Group-wide procurement the Contractor's data made available in connection with the purchase order and the right to store those data, even after a contract has ended, within the scope of applicable data retention provisions or for possible further purchase orders.

## **25. Safeguarding Use of Information Free from Discrimination as per Section 9 of the German Energy Industry Act [Energiewirtschaftsgesetz]**

25.1 The Contractor undertakes not to pass on economically sensitive information, or information providing an economic advantage, which arises from the Client's sphere of influence, which come to its knowledge in the course of implementing the order and which could be of commercial interest to energy distribution, trading, production or generation organisations and/or undertakings.

25.2 Particularly subject to confidential treatment are:

- addresses and load profile data of connected customers
- names of supplying distributors
- information on the readiness of connected customers to change over
- information on potential new customers' interest in being connected
- information on measures for extending the grid and creating access to the grid
- information on inactive house connections
- information on cost-effectiveness criteria for assessing connections and grid extensions

25.3 The Contractor undertakes to expressly point these obligations out to its employees and place them under a corresponding obligation. The Contractor further undertakes to impose the obligation to comply with section 9 of the German Energy Industry Act [EnWG] upon subcontractors appointed within the framework of its order.

25.4 The provisions of the sections 23 and 24 above remain unaffected.

## **26. Reservation as to Intra-group Clearing**

26.1 The Client and E.ON undertakings shall be entitled to receivables of the Client, and of E.ON undertakings, as joint creditors. E.ON undertakings are E.ON AG and undertakings affiliated to E.ON AG according to sections 15 et seq. of the German Public Limited Companies Act [AktG] and undertakings at home and abroad in which E.ON AG holds a participating interest of at least 50 %.

E.ON undertakings may net / set off their receivables against the Contractor's receivables. All substantive and procedural rights which the Contractor has against one joint creditor in respect of a receivable shall also exist in relation to the other joint creditors.

26.2 Regarding the Contractor's receivables against the Client and against E.ON undertakings, the Client and E.ON undertakings may set off / net with receivables of the Client and receivables of E.ON undertakings against the Contractor.

26.3 The above provisions shall also apply, if cash payment on the one hand and submission of bills of exchange on the other hand have been agreed upon or if mutual claims are due on different dates. In this respect, however, settlement shall occur on the value date. In the case of running payment transactions, this entitlement relates to the balance.

26.4 In the case of a plurality of receivables, the Contractor shall waive its right to object to the Client's stipulation of the receivables to be netted.

26.5 On request, the Client shall make available a list of E.ON undertakings authorised to carry out intra-group clearing.

## **27. Publication / Advertising**

Evaluation or disclosure, in publications or for advertising purposes, of business relations existing with the Client shall only be permissible with the Client's express prior written consent.

## **28. Transfer Abroad**

The Contractor is aware that the transfer of docu-

ments and items of any kind is, in many cases, subject to a permit, e.g. under the German External Trade Act [Außenwirtschaftsgesetz]. In cases where the Contractor transfers abroad its own documents or items, or the Client's documents or items, the Contractor shall be responsible for checking whether a permit for such transfer is obtainable and - in so far as necessary - for obtaining in due time all essential permits and for compliance with all relevant legal regulations.

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

contract as a whole and the other stipulations in these terms and conditions shall remain in effect. From the commencement of invalidity / unenforceability, the parties to the contract shall be obliged to replace the invalid / unenforceable stipulation with a commercially equivalent stipulation in so far as possible, taking their mutual interests into account. The same applies mutatis mutandis to omissions.

## **29. Place of Jurisdiction**

In so far as the Contractor is a merchant within the meaning of the German Commercial Code [Handelsgesetzbuch], a legal entity under public law or a special fund under public law, the place where the Client's registered office is situated shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. Over and above the foregoing, the Client shall be entitled to bring an action before the court which has jurisdiction over the place where the Contractor's registered office is situated.

## **30. Contractual Language / Applicable Law**

30.1 The contractual language is German. German law applies.

30.2 If the Contractor's registered office is situated abroad, German law is agreed upon, excluding the law on conflict of laws and excluding the United Nations Convention on Contracts for the International Sale of Goods, of 11 April 1980. Trade terms shall be construed in accordance with the respective valid Incoterms - ICC, Paris.

## **31. Written Form**

Subject to the exceptions provided for in section 4., emails do not satisfy the written form within the meaning of these GT&C or within the meaning of individual contracts concluded on the basis hereof. Amendments or additions to these GT&C must be in writing. This also applies to the written form requirement itself.

## **32. Severability Clause**

If individual stipulations in these terms and conditions are or become invalid or unenforceable, the