

1.) BASES OF THE ORDER

- 1.1.) The wording of the confirmation of order.
- 1.2.) The acknowledged legal and technical contractual terms and conditions of the main agreement between customer (CU) and builder / main contractor (BU/MC) to the extent they apply to contractor's (CO's) delivery of goods / provision of services for the present agreement.
- 1.3.) The tender documents including all completions and amendments made by CU.
- 1.4.) ÖNORM B 2110 and / or B 2117, the technical ÖNORMEN in the version as valid as well as the guidelines and regulations of the committees and professional associations (RVS) as amended from time to time.
- 1.5.) The current building and design plans approved by the authorities or to be approved by the authorities, the implementation and detail plans including all documents as well as the building permit including any obligations imposed by authorities.
- 1.6.) The relevant legal regulations, the accepted codes of practice, the state of the art, the processing specifications, the certificates of approval, the guidelines and recommendations of the manufacturers and suppliers of materials and components.

2.) TOTAL PRICE / ORDER VOLUME

- 2.2.) The agreed prices are invariable fixed prices for the construction period unless otherwise specified in the present agreement.
- 2.3.) If the start of CO's work changes as a result of circumstances due to the development of the building site, CO shall not be entitled to changes in prices.
- 2.4.) If the order is placed at a lump sum price, settlement shall take place independently for the quantities and / or services actually performed. CO is obliged to check the quantities of the specifications and / or plans before the placing of the order and shall declare to know and to have checked all factors determining the price. The agreed order volume constitutes an upper limit that cannot be exceeded. Errors in calculation found later, increases in quantities, other errors etc. - for whatever reason - do not result in an increase in the lump sum price and additional claims for these reasons will not be accepted. Increases and decreases in work due to expressly agreed changes in the order shall be determined separately and the costs shall be added to or deducted from the lump sum price. An increase in the lump sum price will only be taken into account for settlement if confirmed in writing by CU.
- 2.5.) If settlement takes place on account of the provision of services / delivery of goods actually performed at unit prices, dimensions and quantities will have to be determined jointly and proven by means of verifiable lists, settlement plans and delivery notes. If CU and CO have agreed on a joint appointment for site measuring and if CO misses this appointment without being prevented from participating by an inevitable and unforeseeable event, CO shall accept the dimensions determined by CU in this case. In case of settlement at unit prices, CO is obliged to inform CU of considerable excesses of quantities for the individual items before execution of the associated work in writing and to have the excesses of quantity approved by CU in writing as well. An excess of quantities shall be considered to be considerable if the order value of the item concerned is exceeded by 20%. If CO does not comply with this obligation to inform, CO will not be entitled to remuneration for the excesses of quantities under the present agreement.
- 2.6.) The quantities stated have been established on account of the tender documents for the above-mentioned building project. Increases or decreases in quantities, shifts within the individual items or removal of individual items and / or groups of service of whatever amount and for whatever reason shall not entitle CO to any change in the unit prices and / or extension of the performance periods. Any disadvantages that might result for CO through removal, cancellation or reduction of an item will not be compensated for by CU. In case of increases in quantities of individual contractual services, the lump sum prices for on-site overheads shall remain unchanged both for one-off and for time-dependent costs.
- 2.7.) The agreed prices shall include all deliveries of goods and provisions of services as well as components, work pieces and equipment required for the proper and professional execution of the work ordered even if they are not listed separately or described in detail in the specifications or in the tender documents. They include in particular costs for transport, insurance, packaging, taxes, customs duties, fees and charges associated with CO's provision of services and delivery of goods. CU shall only bear such costs that are expressly listed as CU's obligation. The prices shall include in particular the costs for all types of complications that may occur on account of the mutual interference of several companies or works of measuring or testing, maintenance of traffic, works on railway areas or in the area of high-voltage lines, transfer of cables, pipes, channels in compliance with the requirements made by the owners of these installations, unfavourable weather conditions, in case of blasting operations, protection of the environment as well as the removal of damage, conditions of the protection of monuments, that is all additional services unless separately stated in the specifications. The unit prices also include all expenses and costs for the compliance with the obligations according to item 9.3.) of the present agreement as well as any other provisions relevant in this context.
- 2.8.) CU expressly reserves the right to check the unit prices of optional / contingency items or items of changed quantities stated compared to the actual quantities executed for adequacy compared to other prices of this confirmation of order and / or competitive prices and, as the case may be, to reduce them afterwards. Excesses of quantities will only be accepted if communicated in writing by CO to CU as soon as possible before execution as defined by ÖNORM and demonstrably confirmed by CU.
- 2.9.) Only building materials, products and materials must be used that are included in the ÖA list of building materials according to the regulation of *Österreichisches Institut für Bautechnik (OIB, Austrian Institute of Construction Engineering)* and are marked with the ÜA sign or for which a valid European technical approval is available and that comply with the requirements of performance or terms of use of the federal states (e.g. building regulations) and bear the CE sign.
- 2.10.) Additional costs caused by continued work under unfavourable weather conditions, frost or snowfall as well as by necessary overtime shall not be remunerated and are included in the unit prices unless special items are created.
- 2.11.) Written supplementary offers based on the main offer have to be presented for all additional deliveries of goods and provisions of services arising during execution and it is understood as agreed that a separate written order by CU is required for these additional deliveries of goods and provisions of services - the terms and conditions of the present agreement applying identically - otherwise no remuneration can be granted for them. CU shall only be considered to have given their consent to work performed without order or contrary to the agreement if this consent is given expressly and in writing. Changes in the performance period resulting from modifications of the work and / or additional work have to be agreed with CU in writing before execution of this work. In case of supplementary offers, CO shall accept the result of the negotiation with BU/MC. Remuneration shall take place only to the extent and at that point in time as conceded to CU by BU/MC for CO's work.
If CO demands additional remuneration for work already ordered and / or remuneration for additional work to be performed, this shall not entitle to an interruption or non-execution of the work, even if the work is ordered on the merits only for the time being and the agreement on the remuneration by CU - for whatever reason - shall take place later only.
The discount granted according to item 2) shall also apply to any changes, additions to or extensions of the order.
- 2.12.) At all events, CO's deliveries of goods and provisions of services shall only be remunerated to the extent to which remuneration to CU takes place by BU/MC for these deliveries of goods and provisions of services.
- 2.13.) Force account work will be remunerated after written order and prior agreement on the prices for force account work only. In cases of imminent danger, CO has to have the number of hours worked and material expenses confirmed by construction management the next working day, otherwise they will not be remunerated. Regarding those services performed without written order or contrary to the agreement, CO shall not have the right to undo these services. Force account work stated in the specifications shall not constitute a claim to the actual execution of this work. If no prices for force account work have been agreed, the accepted prices of BU/MC less 15% allowance for overhead costs shall apply.
- 2.14.) Changes in the materials, products, manufacturers, suppliers, systems, production technologies etc. ordered shall require the express written approval by BU/MC and CU.
- 2.15.) If the contracting company charged by CO is changed, 2%, however not less than EUR 500.00 of the services invoiced by the succeeding company, shall be deducted as handling fee.

3.) DATES

- 3.1.) The dates stated shall be provisional dates. In any case, the services ordered have to be executed according to the instruction given by the local construction management (LCM) and / or according to the schedule of CU/MC, adapted to the progress of the construction site (if required, in several parts) without additional costs. The construction schedules agreed jointly are part of the agreement and the dates stated separately (such as e.g. intermediate deadlines) are penalised. The date of delivery / provision for deliveries of goods and provisions of services shall be the date of the complete and faultless execution of CO's corresponding obligation according to the present order including complete and correct documentation.
- 3.2.) The observance of the dates, in particular of the dates of completion, is of essential importance to CU. CO accordingly undertakes to execute the construction project with due care, quickly and without interruption and in such a manner to ensure completion within the period stated in the construction schedule.
- 3.3.) CO is obliged to comply with all dates. If company-internal events occur that make it impossible to continue the work according to contract, CU will have to be informed immediately. Extensions of periods require CU's express written confirmation.
- 3.4.) CU is entitled to postpone and / or to interrupt the execution of work at short notice on account of influences due to the weather and / or the progress of the construction without this being considered to be an extension of the agreed dates.

- 3.5.) If postponements of dates occur for reasons for which CU or BU/MC is responsible, CO will be obliged to accept these postponements. After being announced by CU, the new dates shall have the same legal effect as the initial dates.
- 3.6.) If the completion date is at risk on account of non-compliance with the fixed dates and non-execution of requested accelerating measures by CO, CU shall be entitled to provide staff themselves and / or to have the work performed by third parties. CO shall bear all associated costs.
- 4.) CONTRACTUAL PENALTY**
- 4.1.) In case of delay, CU shall be entitled to claim a contractual penalty according to item 4) instead of performance of the contract or in addition to the late performance.
- 4.2.) Generally, the total billing amount shall be used as basis of assessment. If the order volume exceeds the total billing amount, the order volume shall be considered as basis for the calculation of the penalty claim. This basis of assessment shall apply even if CO is behind schedule for a partial delivery and / or service only.
- 4.3.) The right to payment of an agreed penalty shall be created as soon as CO is in default and cannot prove that they are not responsible for the default. CO shall be deemed in default not only if the delivery of goods or provision of services has not been performed in due time, but also if the delivery of goods or provision of services is defective and if the contractually agreed documentation is submitted late.
- 4.4.) Contractual penalty shall constitute the minimum amount of damage. CU shall be entitled to assert further claims for damages. Moreover, CO understands that CU has undertaken towards BU/MC to strictly comply with all agreed dates and has entered into corresponding penalty obligations themselves that entitle CU to pass them on to CO in case of missed deadlines irrespective of the penalty agreements concluded and / or the penalty regulations mentioned.
- 4.5.) Damage exceeding the contractual penalty will have to be made good in the context of the legal provisions for damages if CO has caused the delay. CU shall also be entitled to demand further damages as well as the contractual penalty if CU accepts a delayed delivery of goods or provision of services.
- 4.6.) The contractual penalty shall become due for every missed (intermediate) deadline and is not subject to the court's right to reduce the damages payable. The contractual penalty may already be deducted from the invoice following the missed (intermediate) deadline.
- 4.7.) In case of postponements of dates approved or fixed by LCM or caused by BU/MC, the penalised deadlines shall be extended accordingly. In case of extensions of the construction time accepted by CU, the dates calculated anew on account of this delay shall be penalised.
- 4.8.) Damage exceeding the contractual penalty has to be made good even in case of slight negligence. Therefore, CU shall be entitled to damages according to ÖNORM B2110 item 5.47.1.1 in case of slight negligence as well.
- 4.9.) The payment of contractual penalties shall not release CO from their obligations to perform and from their other obligations.
- 5.) WARRANTY - ACCEPTANCE**
- 5.1.) Formal acceptance according to the provisions of ÖNORM B2110 shall take place. Acceptance by commissioning shall be excluded.
- 5.2.) LCM is not authorised to accept the delivery of goods and the provision of services. Any provisional taking over by LCM shall be for the documentation of the degree of performance for purposes of settlement only.
- 5.3.) However, acceptance shall exclusively take place when acceptance of the services to be performed by CU to BU/MC is carried out by BU/MC. The warranty period shall start on the day of the overall acceptance of the building project by BU/MC and shall exceed the period during which CU is liable for the services performed by CU by 2 months. CO shall be liable to CU at least to the extent to which CU themselves is liable to BU/MC with respect to warranty and / or damages.
- 5.4.) CO shall be liable for the maintenance of their delivered goods and performed services in undamaged condition until the day of the taking over of the entire work by BU/MC.
- 5.5.) CO shall have the right to choose between rescission of the contract, repair, replacement of the goods and reduction of the price, irrespective of the type of defects. The option of rescission of the contract, however, requires the existence of a not only minor unrepairable defect. If defects and damage found during the liability period are not repaired by CO within a reasonable period of time, they will be repaired at CO's expense. CU shall be entitled to execution by substitution even if repair of defect by CO was incomplete or insufficient. In case of defectiveness of goods delivered and / or services provided by CO, CO also has to refund the costs caused by the determination and / or evaluation of the defect e.g. services performed by other subcontractors, modifications of planning, additional supervising activities, additional site inspections with BU/MC, expert opinions etc.
- 5.6.) The assertion of claims based on warranty shall not limit CU's right to assert other claims, for example claims for damages.
- 5.7.) If the repair of the defect is absolutely required for the continuation of operations and / or CU's work or in case of imminent danger and if an immediate repair by CO is not possible, CU shall be entitled to repair the defect themselves immediately or to have it repaired by third parties. In this case, CO has to be informed immediately. CO has to refund costs and ancillary costs required for the repair of the defect, such as transport, customs duties, dismantling etc.
- 5.8.) As long as CO did not comply with CU's request for improvement before acceptance and / or partial and final payment, CU shall be entitled to withhold the entire remuneration still to be paid until the actual repair of the defect.
- 5.9.) In case a repair of defect is possible after expiry of the warranty period (before final acceptance) only, it is understood as agreed that CU is entitled to withhold the entire liability amount (and / or extension of and increase in the existing bank guarantee).
- 5.10.) If CU makes a warranty claim before expiry of the warranty period, the deadline for assertion of the warranty claim in court will be extended by 1 year.
- 5.11.) Costs incurred by CU directly or indirectly by the supervision of the repair of a defect and / or the securing of the construction site during both the period of execution and the liability period will be invoiced to CO. In addition, all additional costs incurred by CU on account of delays or non-compliance with the quality offered as well as costs of test certificates etc. with negative result shall be at CO's expense.
- 5.12.) The contracting parties assume that not more than two additional site inspections will be required after acceptance for achieving a final acceptance without defects. If further site inspections are required for the determination of faultlessness, the associated costs incurred by CU shall be borne by CO. In this context, the hourly rate for CU's representatives is fixed at EUR 100.00 plus expenses and VAT, however limited to a maximum of two persons.
- 5.13.) In derogation of ÖNORM, it is understood as agreed that the burden of proof for lack of fault for a defect present in CO's services at the moment of taking over shall remain with CO even after expiry of 10 years.
- 5.14.) CU shall have no obligation of immediate inspection and notification of defects. A notification of defect will be considered to be made in time if it is sent within 3 months after receipt of the goods or services in case of an apparent defect and within 3 months after detection of the defect in case of a hidden defect. Any notification of defect shall interrupt the warranty period.
- 5.15.) If the originator of a defect cannot be determined clearly and CO is not able to prove that the defect cannot be attributed neither to CO nor to their vicarious agents, CO will be liable for this defect without limitation as to the amount, however in proportion of their total billing sum to the total billing sums of the other tradesmen involved in the context of the entire building project that are not able to provide such an evidence as well. This regulation shall also apply to consequential harm caused by a defect.
- 6.) SECURITIES**
- 6.1.) The agreed retention to secure against excess payments shall be withheld in cash from the partial invoices and / or final invoice until the overall acceptance of the construction project and payment of the final invoice by BU/MC. The request for the release of the retention has to be made by CO.
- 6.2.) Subsequently, the agreed retention to secure for warranty claims is withheld in cash from the invoice amount for covering all claims to performance, claims based on warranty, claims for damages, claims on account of unjust enrichment and other claims from the overall acceptance of the construction project and payment of the final invoice by BU/MC on.
- 6.3.) The retention to secure for warranty claims can be replaced by a bank guarantee (see annexé) issued by a credit institute agreeable to CU, if this is admissible for CU towards CU/MC as well. The guarantee has to be limited to the last day of the month in which the warranty ends. Transfer of the liability amount shall take place according to the agreed terms of payment after presentation of the corresponding certificate of guarantee and receipt by CU of the corresponding payment made by BU/MC. The expenses incurred on account of the guarantee shall be borne by CO.
- 6.4.) In derogation of the agreed ÖKONORMEN, CO agrees that the retention to secure against excess payments and / or the retention to secure for warranty claims may be used for the offsetting of all of CU's claims, including claims arisen for other construction projects. The possibility of unlimited offsetting shall also exist in case of assignment and in case of pledging of CO's claims as well as in case of the opening of arrangement or insolvency proceedings. The same shall apply to group companies of CU and consortiums in which CU or one of their group companies is involved.
- 6.5.) In case of any execution of insolvency proceedings of CO (insolvency, arrangement, dismissal of insolvency proceedings for lack of assets, restructuring proceedings or other insolvency proceedings as well as in case of institution of reorganisation proceedings according to URG [Austrian Company Reorganisation Act]), both the agreed retention to secure against excess payments and the retention to secure for warranty claims shall increase to reach 25% or at least EUR 4,000.00. This security retention agreed separately shall be withheld in cash irrespective of a possible right of rescission of the liquidator in case of insolvency for securing all claims of whatever kind. If no retention to secure against excess payments and no retention to secure for warranty claims is agreed, a retention to secure against excess payments and a retention to secure for warranty claims according to item 6) amounting to 25% or at least EUR 4,000.00 shall be understood to be agreed for the entire period of warranty.
- 7.) INVOICING AND PAYMENT**

- 7.1.) All partial invoices or final invoices transferred to CU shall be issued as accumulative invoices and shall be in a verifiable condition, e.g. with enclosed evidence of delivery and provision of service (settlement schedules, measurement sheets, evidence of force account work) as well as any other evidence and certificates requested that have to be signed by CU's competent construction manager or foreman between the 23rd day and the last day of the service month and / or 10 days after completion of a (partial) service. New services compared to the last partial invoice shall be highlighted separately. Invoice amounts shall be rounded down to the second digit (tens). If CU establishes the measurement for settlement, a contribution to the costs amounting to 1% of the total billing amount shall be deducted.
- 7.2.) Construction managers and foremen shall only be entitled to provide a provisional, not binding examination of the evidence of delivery and / or services. Acknowledgement of these pieces of evidence shall be made exclusively by BU/MC and / or CU.
- 7.3.) The invoices have to correspond to the provisions of *USiG* [Austrian Value-added Tax Act] as amended from time to time and have to be received by CU monthly based on the services examined by CU until the 6th day of the month following the service period. Invoices received later can no longer be included in the work of the month and the 6th day of the month following the actual receipt shall then be considered as date of receipt. This shall not apply to invoices for services of a period of execution of less than 6 weeks.
- 7.4.) After completion of the work in accordance with the agreement and acceptance of the work without defects, the final invoice shall be issued within 1 month. However, if the final invoice has not been issued within 2 months after completion of the work ordered at the latest, CU shall be entitled to establish the settlement themselves against reimbursement of costs and / or will withhold a handling fee amounting to 1% of the final invoice amount for late presentation. Together with the final invoice, CO shall present a waiver stating that CO has asserted all claims and that no further claims will be asserted. This declaration constitutes an important part of the invoice.
- 7.5.) The agreements with respect to period of payment and discount period are net periods; payments are made once per week by bank transfer. Therefore, the above-mentioned periods shall be considered to be respected if payment is made on the next transfer date of CU after expiry of the above-mentioned period of payment. If this cycle of payment is complied with, no consequences of default shall result from the excess of the payment period.
- 7.6.) Payment shall be made by transfer to one of CO's accounts. Timeliness of the payment is determined by the date at which CU has given their bank instructions to carry out the transfer.
- 7.7.) Periods of company holidays or holidays of CU's construction manager shall extend payment periods and / or discount periods accordingly. Moreover, the period of examination / payment shall be extended by the number of days for which the examination of the invoice has to be interrupted for reasons for which CO is responsible.
- 7.8.) An invoice cannot become due as long as CU has not received the payment made by CU/MC in accordance with the work. A delay in payment by BU/MC shall entitle CU to extend the payment periods towards CO to the same extent.
- 7.9.) If any payment is not made within the agreed discount period, the lost discount shall apply to the payments made too late only. Therefore, every invoice has to be checked individually to find out whether a discount applies. Discount shall be granted also in case of offsetting against a due and undisputed counterclaim as well as in case of justified exertion of the right of retention.
If only a partial amount of the issued invoice is paid within the agreed discount period, the entitlement to deduction for the partial amount paid shall remain valid. In case of the final invoice, the right to discount shall be reduced by the discount amount of any invoice transferred too late. Missed discount periods have to be asserted to CU within 1 month after receipt of the corresponding partial or final invoices, otherwise the right will forfeit.
- 7.10.) If the partial or final invoice received is incorrect so that it has to be returned to CO, the discount period shall start upon presentation of the corrected invoice only. If the invoice documents turn out to be incomplete and not verifiable, the payment period shall be interrupted until the complete documents are available.
- 7.11.) If CU makes a deduction after presentation of the required documents for invoice examination, this deduction shall be considered to be justified and accepted unless CU receives an objection perfectly justified by the facts within 4 weeks after receipt of the correction of the invoice.
- 7.12.) CU shall be entitled to a right of retention of an unlimited amount with respect to the compensation to be paid if CO did not properly comply with their contractual obligations (claims to performance, warranty claims or claims for damages etc.). In particular, payment of the final invoice shall be made in any case only when the taking over of the overall work incl. any technical acceptance by BU/MC and repair of any defects has been completed. This will not result in the loss of any discount claim.
- 7.13.) The payment of invoices shall not be considered as acceptance or acknowledgement of the services invoiced (therefore, corrections can also be made later) and shall constitute no acknowledgement of the faultlessness of the goods delivered / service performed and thus no waiver of warranty claims and damages due.
- 7.14.) The acceptance of the final payment shall exclude any later claims for the services provided according to the agreement unless a reservation is made in writing within 4 weeks after receipt of payment. Reasons for the reservation have to be given in writing. After expiry of this period, even services not invoiced by mistake and / or any other claims can no longer be asserted.
- 7.15.) CO shall be authorised to assign claims against CU. CO is obliged to announce the intended assignment of a claim to CU in writing at least 4 weeks before the assignment. In case of assignment, a handling fee for increased administrative effort and other associated disadvantages for CU amounting to 2% of the assigned amount, however at least EUR 500.00 plus VAT, shall be withheld and / or set off. The same is understood as agreed in case of arrangement or insolvency proceedings.
- 7.16.) Any counterclaims existing against CO, company's of CO's group or consortiums in which CO or their group companies are involved shall be deducted in advance. This shall take place also in case of assignment and in case of pledging of CO's claims as well as in case of opening of arrangement or insolvency proceedings. The same shall apply to claims of companies of CU's group and for consortiums in which CU or CU's group companies are involved; CO expressly agrees to this provision. CO shall not be entitled to make any set-offs.
- 7.17.) On account of the amendments of section 19 subsection 1a *USiG* 1994 made in the 2nd amendment in 2002 as well as item 2 and 6 of the associated decree, value-added tax liability shall pass on to the person to whom the services are provided. Therefore, the invoices for the construction work listed in the present confirmation of order shall be issued without value-added tax and have to state CU's VAT ID number as well as the note 'Passing of tax liability to the person to whom the services are provided (Übergang der Steuerschuld auf den Leistungsempfänger)'. CO is obliged to provide the written evidence of VAT ID number (=confirmation by tax authority) upon invoicing.
- 7.18.) If delays in payment can be proven and are due to negligence, interest at the rate of 1.25 times the basic rate of interest as amended from time to time - published by the Austrian National Bank - shall become due for the unpaid amount from the end of the payment period on. The claim shall expire if it is not asserted in writing within 4 weeks after receipt of the invoice amount. Any damages shall be excluded. CO shall not be entitled to interest for default in payment up to 3 months.
- 7.19.) CO is obliged to state their employer number on all invoices. If the employer number is missing, the agreed payment period shall be interrupted until presentation of the employer number. CU shall make use of exoneration from liability by transfer of 20% of the compensation to the service centre (section 67c *ASVG* [Austrian Social Security Act]) if CO is not included in the HFU list [list of companies exonerating from liability] at the time of payment of compensation.

8.) SUPPLIES

- 8.1.) CU has taken out a construction project insurance for the construction project subject matter of the present agreement that covers CO's services. It releases CO for all damage covered by CU's contract. To this effect, a portion of the premium of the agreed amount and / or in case of damage plus the contractual excess shall be deducted from payments. Risks, excesses and exclusions of liability not covered by this policy shall be at CO's expense.
- 8.2.) The present order is not connected with a claim to (joint) use of construction site resources (power, water, accommodations, use of sanitary installations, winter heating, waste disposal, joint use of storage areas, proportional costs for advertising panels, key management, crane provision, telephone, fax etc.) for the execution of the services ordered. Supplies shall be charged according to the actual expense or, if this is not possible, 2% of the invoice amount shall be deducted from the payments as refund of costs.
- 8.3.) The ongoing cleaning of the construction site shall be charged according to the actual expense in proportion to the turnover and shall be deducted from the final invoice.
- 8.4.) In case of erection of a joint advertising panel by CU, CO will be obliged to put its name on it and to make a proportionate contribution to the costs.

9.) MISCELLANEOUS

- 9.1.) If a claim is made against CU for violation of government safety regulations or on account of national or foreign product liability regulations and if this claim is due to products delivered by CO, CO will have to indemnify CU for all resulting losses and to indemnify and hold CU completely harmless. The existence of a business liability insurance taken out by CO of an insured sum and scope of cover corresponding to the order volume has to be proven on request. This business liability insurance has to be maintained at least until the end of the warranty period.
- 9.2.) CO declares expressly to have obtained all authorisations required for the lawful execution of their deliveries (e.g. business licence) and shall present them to CU on request.
- 9.3.) CO is obliged to comply with all current regulations of environment, waste, construction, railway, forestry and water law and of the roads authority while executing the order and to bear all associated costs, fees and tollage and to indemnify and hold CU completely harmless. If claims are made against CU for non-compliance with legal or government regulations by CO (e.g. administrative penalty), CO will have to indemnify and hold CU harmless from and against these claims.
- 9.4.) CO is obliged in particular to sort any waste created according to regulations and to provide to CU any evidence required in case of shipment of waste within 14 days after completion of the order in writing. In case CO does not properly comply with this obligation, it is agreed expressly that CU is authorised to commission the work required for

- compliance with these regulations of environmental and waste law on behalf and for the account of CO. The use of CU's disposal units is authorised after separate agreement only.
- 9.5.) Instructions given by CU's construction managers (LCM) are binding for CO during the entire construction period. The construction manager and, in construction manager's absence, their substitute is authorised to take over CO's work on a provisional basis. Final taking over shall be made by BU/MC. The construction manager and the substitute of the construction manager are authorised to demand replacement or withdrawal of individual persons of CO from the construction site.
- 9.6.) Before starting construction works, CO has to obtain knowledge of the position of all cables, water pipes, district heating, channels etc., to protect and to maintain these installations, to apply to the construction management of CU and / or BU/MC in time for required transfers of these installations. This regulation shall apply to any provisional construction site installations as well.
Excavation permits obtained have to be presented to CU and / or BU/MC before the start of the work without being asked. Start of work without presentation of an excavation permit corresponds to gross negligence.
- 9.7.) CO shall bear all risks incl. accident until the formal taking over of the work. These risks include in particular destruction (loss), damage or theft. In case of damage by third parties to work already performed by CO, CO has to make their claims against the person who damaged the work, the damage caused having to be repaired immediately and free of costs for CU.
- 9.8.) In the course of confirmation of order, CU asks CO to nominate a construction manager. Replacement of this construction manager shall be authorised with CU's consent only; CO has to nominate a new construction manager immediately on CU's request or on request of BU/MC. Changes to authorities to sign or to represent have to be communicated in writing to CU, otherwise they cannot be cited to CU in opposition. Furthermore, CO is obliged to determine one or several authorised representatives for receiving and making declarations binding to CO in the context of the execution of the order.
- 9.9.) Any passing on of the deliveries of goods and provision of services ordered to subcontractors requires CU's express written consent. If CO wants to make use of one or several subcontractors, CO will have to inform CU in writing upon the signature of the contract indicating the volume of the subcontract, the subcontractor and a responsible person of subcontractor. If CU does not raise an objection against the subcontraction within 14 days, the subcontraction shall be considered to be approved. It is inadmissible to subcontract without approval and CO undertakes to pay a contractual penalty not subject to the court's right to reduce the penalty amounting to 10% of the order volume under civil law. It is not required in this context that CU provides evidence of damage. CU is entitled to terminate the contract with immediate effect in case of use of a not authorised subcontractor.
CO is obliged to compensate their subcontractors for the work performed by them immediately after receipt of payments on account. If CO does not meet their obligation to pay at all or not in time, CU shall be entitled to make payments with debt-discharging effect directly to the subcontractors. If CO does not satisfy justified claims made by their subcontractors for the construction project subject matter of this agreement or does not satisfy them in time and this results in disadvantages to CU, CU shall be free, after examination of the acceptability of the work performed, to take over the open claims and to deduct the amount transferred from CO's next partial invoice, the agreement with CO applying as terms of payment. CU's administrative expenditure is charged to CO at 10% of the gross payment taken over.
- 9.10.) CO has to make daily construction reports where in particular the work performed as well as the number of workers working on this construction site have to be entered daily.
- 9.11.) Access and delivery traffic in the area of the construction site must not be interfered with by CO, their employees, suppliers or other persons involved. Travel costs as well as waiting times in the area of the construction site will not be remunerated. Any obligations imposed by authorities later e.g. out of consideration for adjoining owners have to be met very exactly.
- 9.12.) CU does not assume any liability for materials and equipment stored by CO, CO's subcontractors and suppliers in the area of the construction site as well as for goods already delivered and for services already provided. All materials no longer needed have to be removed from the construction site and disposed of by CO immediately after their generation. If this obligation is not met, CU will have the right to charge third parties with the cleaning work and to deduct them from the invoice of the responsible CO. CO shall ensure sorting, removal and proper disposal of the materials no longer needed by CO and / or of the construction waste generated during CO's work according to *Abfallwirtschaftsgesetz* [Austrian Waste Management Law] and shall provide to CU evidence of lawful removal and / or proper disposal without being asked. The share in the costs for cleaning shall be charged according to item 8.3.)
- 9.13.) CO has to present and obtain approval of any samples in time before their placing, otherwise the removal of unapproved work has to be made at CO's expense. Sampling and removal of samples shall always be free of charge for CU.
- 9.14.) Any claims under other contractual relationship and / or construction projects shall not entitle CO to retain their own work.
- 11.) EMPLOYMENT OF (FOREIGN) WORKERS / INSTRUCTION OF CONSTRUCTION MANAGEMENT**
- 11.1.) With respect to the employment of workers, CO has to strictly comply with all provisions of collective agreements, labour law and social law as well as all occupational safety regulations, in particular *Arbeitnehmerschutzgesetz* [Austrian Protection of Employees Act] (incl. decrees), *Arbeitszeitgesetz* [Austrian Working Times Act] and *Arbeitsruhegesetz* [Austrian Act on Rest Periods], *Arbeitsinspektionsgesetz* [Austrian Work Inspection Act] etc. as well as all prohibitions (ban on alcohol, ban on smoking etc.).
- 11.2.) If foreign workers are employed, all applicable regulations will have to be complied with imperatively, in particular *Ausländerbeschäftigungsgesetz* [Austrian Aliens Employment Act], *Antimissbrauchsgesetz* [Austrian Anti-abuse Act], *Arbeitsvertragsrechts-Anpassungsgesetz* [Austrian Employment Contract Law Amendment Act], *Fremdenpolizeigesetz* [Austrian Aliens' Police Act], *Arbeitskräfteüberlassungsgesetz* [Austrian Law on Temporary Employment], *Fremdengesetz* [Austrian Aliens Act] as well as *Passgesetz* [Austrian Passport Act], and the foreign workers will have to have with them on the construction site all legally required documents and certificates (valid identity card with photo, valid employment permit, unrestricted work permit, certificate of registration issued by health insurance company) and to present the originals at any time and immediately on request. Employees and temporary workers as defined by *Arbeitskräfteüberlassungsgesetz* who are no EU citizens require exclusively the unrestricted work permit for admissibility of start of work. In case of a violation of these regulations, CO shall be liable for all resulting disadvantages, including consequential damage.
- 11.3.) Compliance with the provisions of *Ausländerbeschäftigungsgesetz* by CO is agreed imperatively (according to section 28 subsection 6). Violations against these provisions entitle CU to terminate the agreement with immediate effect and / or to assert claims for damage caused.
- 11.4.) If claims are made against CU on account of legal liability (e. g. claims for remuneration made by CO's employees) or criminal proceedings are instituted against CU in this context or costs for averting threatened penalties or legal liability arise for CU, CO will have to indemnify and hold CU completely harmless. CU is entitled to withhold remuneration.
- 11.5.) On CU's request, CO has to present a certificate issued by *Bundesministerium für Arbeit und Soziales* [Austrian Federal Ministry of Employment and Social Affairs] according to section 28 *Ausländerbeschäftigungsgesetz* (*AuslBG*).
- 11.6.) CO authorises CU to obtain the data of CO's employer's account from the competent social security authority for the purpose of verification of the registrations for social security.
- 12.) LIABILITY**
- 12.1.) CO is obliged before starting their work to examine the quality of the constructions erected by the customer regarding their usability for CO's purposes and to verify that CO can execute them without any damage and defect caused by other company's preparatory work. Any objections or complaints have to be communicated immediately in writing to CU before the start of the work. Objections made later will not be taken into account. If CO fails to perform this control measure, CO will have to bear all consequences such as e.g. in case of any differences in dimensions, as well as all damage caused in this context to CO as well as to BU/MC. When CO starts to perform their work, the existing constructions and preparatory works shall be deemed as having been approved.
- 12.2.) CO shall be completely liable for all personal injury, property damage and financial loss caused by CO or their vicarious agents or servants as well as for damage of any kind (direct and indirect damage) caused to CU, BU/MC or third parties. Moreover, CO shall be liable for all disadvantages created by delays caused by CO, their vicarious agents or servants or the quality of the equipment or materials used by CO and has to indemnify and hold CU completely harmless in this context.
CU shall be entitled to charge that CO with damage repair who provided the original service. Settlement of accounts (according to specifications item or as force account work) shall be agreed between CU and the CO charged in the individual case. CO expressly waives towards CU any objection against the amount of the repair costs.
- 12.3.) CO shall be liable for damage caused by collapse, coming off of parts of the building etc., however, to the extent only to which CO cannot prove to have taken all measures required for preventing such damage. CO shall be liable for damage caused that is generated by emissions when the locally permissible quantity is exceeded. In this context, CO shall be liable without fault as well.
- 12.4.) If several COs are working on the building site, all companies present on the building site at the moment of occurrence of damage shall be liable proportionately for the damage occurring on the building site. The costs of construction damage (the actually verifiable costs of damage repair) whose originator cannot be determined shall be shared among the subcontractors working on the building site in proportion to their final invoice amount and deducted from the final invoice. Contrary to ÖNORM, the fixed limit of 0.5 % is invalidated and CU shall be entitled to deduct site construction damage actually sustained on a pro rata basis against evidence.

- 12.5.) CO guarantees correctness of all declarations made in the context of the conclusion of the present agreement as well as of the execution of the agreement. CO personally guarantees and is personally liable for compliance with the regulations of environment, water, nature conservation, waste, construction, forestry as well as motor vehicle law as well as all regulations in connection with the employment of workers (such as e.g. *Arbeitnehmerschutzgesetz* [Austrian Protection of Employees Act], *Arbeitszeitgesetz* [Austrian Working Times Act], *Arbeitsruhegesetz* [Austrian Act on Rest Periods], *Arbeitsinspektionsgesetz* [Austrian Work Inspection Act], *Bauarbeiterschutverordnung* [Austrian Construction Workers Protection Law], etc.). In case of non-compliance with an occupational safety provision by CO (such as e.g. helmet requirement etc.), CU shall be entitled to provide the corresponding protective equipment. The associated costs will be invoiced and set off against the next partial or final invoice due.
- 12.6.) CU as general contractor shall be entitled to assign their warranty claims, their claims for damages and other claims against CO to BU/MC at any time.
- 12.7.) The construction site coordinator for security and occupational safety shall be appointed by CU and / or BU/MC. The activity of the construction site coordinator shall not release CO in any way from their responsibility for security and occupational safety in the context of their entire scope of supply and services. The respective employers of the workers working on the construction site shall expressly grant rights to issue instructions with respect to safety and health protection on the construction site to the coordinator and / or project manager (and / or construction manager). These instructions given by the construction site coordinator, in particular in connection with the *Sicherheits- und Gesundheitsschutzplan (SIGE-Plan*, safety and health protection plan), have to be complied with without any reimbursement of costs. In case of repeated breaches of security, a contractual penalty amounting to EUR 100.00 per day and breach will be withheld.
- 12.8.) CO shall not have any claims of whatever kind against CU under a contractual relationship if CO is turned down by BU/MC for whatever reasons.
- 13.) RESCISSION OF THE AGREEMENT**
- 13.1.) CU may rescind the agreement with immediate effect without granting an additional period of time in case of presence of a ground for rescission for collusive tendering, in case of gross breach of individual provisions of the present agreement, in case of deadlines missed by more than 6 working days (scope of services according to offer), for intermediate deadlines unless CO makes up for the delay within the following 6 working days after written request, if the work or services are not made professionally and according to the state of the art and / or using inadmissible material or not using the production method requested in the specifications (offer including documents), when CO does not follow a written request to start work or to increase the employment of labour, if CO does not provide evidence for the conclusion of the business liability insurance contract requested by CU, when arrangement or insolvency proceedings against CO's assets are applied for, when the award of contract to CO is not approved by BU/MC - even afterwards - and / or a given approval is withdrawn.
- 13.2.) Notwithstanding any other rights of rescission, CU may rescind the agreement by means of registered letter if the CU's construction agreement with BU/MC is annulled completely or in part or if, for whatever reason, the services agreed in the present agreement are no longer needed. In all cases of rescission, CO shall only be entitled to remuneration of the work already performed properly based on the conditions agreed, but not to any damages or lost profit. An agreed lump sum price shall not apply to this settlement in case of rescission. In this case, remuneration has to be calculated on a pro rata basis taking into account the degree of completion of services. CU shall have the right to discontinue the construction project despite the placed order. In this case, CO undertakes to stop work immediately, but to secure the construction site, so that the value of the work performed until the point in time of stoppage of work shall be preserved. In this case, CO shall be entitled to remuneration of the services performed demonstrably up to this point in time, but shall have no further claims, in particular no claims for damages.
- 13.3.) CO shall be obliged to pay back amounts already paid by CU for goods not yet delivered and / or for services not yet provided plus any costs of financing incurred. Any further claims of CU, in particular for penalties and damages, shall remain unaffected by the declaration of rescission of the agreement.
- 13.4.) CO has to bear all costs of any possible required execution by substitution, shall be liable for all resulting consequential damage and shall waive the defence of uneconomical execution by substitution.
- 14.) LITIGATIONS**
- 14.1.) In case of litigations, instead of having recourse to courts of general jurisdiction, CU may bring the dispute before a court of arbitration case-by-case to which the rules of arbitration ONR 22110 have to be applied.
- 14.2.) If disagreements regarding technical details occur, CU or CO may request the opinion of an officially appointed expert to be nominated by common consent. This expert opinion shall be binding to both contracting parties. The unsuccessful party shall bear the costs of the expert opinion.
- 14.3.) Differences or litigations with respect to the settlement of accounts shall not entitle CO to stop the work.
- 14.4.) The court having jurisdiction as regards the subject matter and locally competent for CU's head office is agreed as place of jurisdiction for all litigations under the present agreement.
- 14.5.) Austrian law shall apply excluding its conflict of law rules and excluding the rules of substantive law of the UN Convention on Contracts for the International Sale of Goods (BGBL [Austrian Federal Gazette] 1988/98).
- 15.) CORRESPONDENCE AND ACCEPTANCE OF ORDER**
- 15.1.) Documents of any kind have to be submitted in simple copy, partial and final invoices in duplicate.
- 15.2.) CU demands CO to sign and return a copy of the present confirmation of order within a period of 8 days for formal confirmation of order placement, otherwise the present agreement shall be deemed accepted in full. If CO starts the delivery of goods and the provision of services subject matter of the present agreement, the entire order and the underlying terms and conditions shall become effective even without confirmation. If no immediate delivery or service provision is intended, CU will expect CO's confirmation of order within 8 days. CU reserves the right to cancel the unconfirmed order after expiry of this period.
- 16.) FINAL PROVISIONS**
- 16.1.) Modifications, deletions or amendments made in the letter of response will not be accepted and may result in the cancellation of the order.
- 16.2.) Modifications and amendments of the present confirmation of order and its elements will require the written confirmation of both contractual parties in order to become legally effective if they oblige CU; the same shall apply in case of an agreement on deviation from this agreed written form. Oral agreements shall have no effect in the context of the present agreement.
- 16.3.) Oral declarations or silence as reaction to announcements of whatever kind made by CO, in particular to the announcements and notifications by CO required by ÖNORMEN, shall not be considered as approval or acceptance.
- 16.4.) CO waives the rescission of the present agreement for error or breach over or under half the true value.
- 16.5.) CU's inclusion in CO's list of references, in particular on the website or in various advertising material, requires CU's written consent. CO is not entitled to use the trademarks or other marks protected for CU or CU's affiliated companies.
- 16.6.) CO is obliged to keep strictly confidential all information received from CU or from third parties on CU's behalf or otherwise in connection with the execution of the agreement and to use them for the fulfilment of the contractual obligations only. Any breaches in this context entitle CU to immediately rescind the agreement and to demand a penalty amounting to 5% of the gross order volume. No evidence of actual damage is required for this contractual penalty. It is not subject to the court's right to reduce the penalty and does not exclude any further claims for damages.
- 16.7.) If individual provisions of the present agreement are ineffective, this shall not affect the correctness or validity of the other provisions. In this case, the parties are obliged to replace the ineffective provision by a clause that is not ineffective and does correspond to the economic purpose of the ineffective provision.