

# Terms of Contract of the State of North Rhine-Westphalia

## Additional Terms of Contract of the State of North Rhine-Westphalia (ZVB – NRW)

with the

**General Terms of Contract for the Provision of Goods and Services in Germany  
Part B of the Procedures for the Awarding of Procurement Contracts (VOL/B) in Germany  
(excluding construction procurement contracts, procedures which are regulated under VOB/B)**

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## **0. Preamble**

**The General Terms of Contract set forth hereunder are intended for contracts for products and services, including particularly purchase contracts, work product contracts, work delivery contracts, and contracts for the delivery of movable goods to be produced or manufactured.**

**All contractual relationships between the ordering party and the contractor shall be governed by German law.**

## **1. Type and Scope of Goods and Services (VOL/B § 1)**

- 1. The type and scope of performance to be rendered by the two parties are regulated by the contract.**
- 2. In case of conflicting contractual provisions, the following shall govern in order of precedence:**
  - a) The Description of Services**
  - b) The Special Terms of Contract**
  - c) Any supplementary terms of contract**
  - d) Any additional terms of contract**
  - e) Any general technical terms of contract**
  - f) The General Terms of Contract for the Provision of Services (VOL/B).**

### **Regarding § 1**

1. Contrary terms of sale, delivery or payment of the contractor shall not be part of this contract.
2. The contractor shall provide confirmation to the ordering party of receipt of an awarded contract or order within 14 calendar days of its dispatch in the form prescribed by the ordering party. If the contractor is in delay of providing confirmation of receipt, the ordering party may withdraw from the contract upon expiration of a grace period set by the ordering party.
3. The prices stated in the order are –unless specified otherwise– fixed prices covering all services provided by the contractor, including expenses for freight, packaging, preparing operating, reference and user manuals and similar documents in German and other costs and charges. Prices stated in public procurement contracts are regulated under regulation PR Nr. 30/53.

## **2. Changes in Goods and Services (VOL/B § 2)**

- 1. The ordering party may demand changes in the type of goods and services within the performance capacity of the contractor, unless such are unreasonable for the contractor.**
- 2. If the contractor has concerns regarding changes in goods and services, the contractor must inform the ordering party thereof immediately in writing. If the ordering party does not share the contractor's concerns, the ordering party remains responsible for the specifications and requirements. The contractor may only be obligated to render an advisory opinion pursuant to a separate order.**
- 3. If the change in the scope of goods and/or services causes a change in the price basis for the contractual goods/services, a new price must be agreed under consideration of additional or reduced costs. The agreement terms must factor in any effects the change in products/services may have on the terms of contract, including particularly performance deadlines. This agreement is to be entered into forthwith.**

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### **Regarding § 2 No. 3**

1. Upon request, the contractor must provide proof of additional or reduced costs due to the change in products/services.

The new prices shall be agreed in writing prior to provision of the changed products/services.

2. For marketable, off-the-shelf products for which unit prices are stated in the contract,
  - the contractor is obligated to deliver up to 10 percent more than the quantities set forth in the contract at the unit prices set forth in the contract.
  - changes in quantity up to 10 percent of the stated contractual quantities shall not entitle a change in the unit prices set forth in the contract.

New performance deadlines shall be agreed upon demand.

4. **(1) Goods/services provided in a manner deviating from the contract without corresponding instruction to do so shall not be compensated. The contractor must take repossession of or remove such upon request within an appropriate deadline set, otherwise these may be returned or removed at the contractor's expense. The contractor shall only be entitled to compensation if the ordering party accepts the goods/services in question retroactively.**

**(2) Further claims of the ordering party remain unaffected.**

### **3. Documents Required for Performance (VOL/B § 3)**

1. **The documents necessary for performance must be provided to the contractor free of charge and in a timely matter, unless these are publicly accessible.**

#### **Regarding § 3 No. 1**

1. Only documents explicitly marked for execution by the ordering party may be used as basis required for performance.
  2. Responsibility and liability under this contract, including particularly pursuant to § 4 No. 1 Clause 1 and § 14 VOL/B, are not limited by No. 1.
  3. The contractor must obtain at his own expense information on DIN standards, regulations of the German Association of Electricians (VDE), regulations of the Commission on Delivery Terms and Quality Assurance (RAL) and similar generally valid technical regulations.
2. **The documents the parties to the contract make available to each other may not be published, duplicated or used for other than the agreed purposes without the prior consent of the respective contract counterparty. Unless agreed otherwise, these documents must be returned upon request.**

#### **Regarding § 3 No. 2**

1. The approval of the respective contract counterparty must be obtained in writing.
2. Similar to documents required for performance, the samples/models received by the contractor are property of the ordering party and must be returned free of charge upon completion of the order.

### **4. Performance of Contract (VOL/B § 4)**

1. **(1) The contractor shall be solely responsible for performance of contract in accordance with the recognized state of technology, applicable laws and official regulations.**

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**(2) The contractor shall be solely responsible for the fulfillment of legal and regulatory obligations and obligations imposed by employer liability associations vis-à-vis the contractor's employees. It shall be the contractor's sole duty to implement agreements and measures regulating the contractor's relationship to employees.**

**Regarding § 4 No. 1**

1. The contractor commits to only deliver goods which comply with the accident prevention regulations (autonomous legal norms) adopted by the statutory accident insurance institutions applicable within the Federal Republic of Germany at the time of delivery, and with generally recognized technical, safety and occupational health-related regulations.
  2. The contractor shall remain responsible for performance if plans, drawings and/or calculations necessary for performance have been presented to the ordering party and the ordering party placed the order on the basis thereof.
  3. The contractor must take necessary precautions to prevent personal and property damage at his own expense. This applies in particular to precautionary measures required under accident prevention regulations for the protection of employees imposed by employers' liability insurance associations.
  4. When performance takes place in the facilities or on properties of the ordering party, the contractor shall require his employees to follow instructions issued by the responsible staff of the ordering party. Employees who fail to comply with such instructions may be immediately expelled from the place of work. In case of repeated violations, the ordering party may withdraw from the contract without setting a deadline or issuing a prior warning or terminate the contract effective immediately.
  5. The ordering party may only be liable for property damage in cases of intent or gross negligence on the part of its acting governance board members (§§ 89, 31 Civil Code [BGB]) or vicarious agents (§ 278 German Civil Code [BGB]). Liability without fault and liability for simple negligence are excluded. This also applies to simple negligence with regard to the choice, instruction or monitoring of employees and with regard to the procurement of equipment and tools (§ 831 Civil Code [BGB]). As long as the ordering party is not liable, the ordering party's governance board members and vicarious agents are not liable. The same applies to the ordering party's employees unless they have acted with intent or gross negligence.  
Claims according to the basic principle of official liability (Art. 34 Basic Law [GG], § 839 German Civil Code [BGB]) remain unaffected, as does liability for personal damages (loss of life and bodily injury/harm).
  6. The contractor must ensure proper monitoring and storage of implements, work wear, etc., and of property items made available by the ordering party. This also applies if the property items are located in the facilities or on the property of the ordering party.
  7. If the ordering party is liable by law for personal or property damage suffered by employees of the contractor during performance of contract, the ordering party shall have recourse against the contractor if the damage was culpably caused by the contractor or the contractor's employees.
2. **(1) If it is agreed with the ordering party that the ordering party may monitor the progress of performance in conformance with contract, it must be ensured that the ordering party has access to the work stations, facilities and storage rooms where the performance items or parts thereof are being produced or materials for their production are being stored, during business and opening hours. Upon request, the documents necessary for instruction shall be presented to the ordering party for review and the corresponding information provided.**
- (2) In this context, the ordering party is not entitled to disclosure of production or business secrets of the contractor.**
- (3) All production and business secrets made available through viewing, documents or other disclosure are to be kept in confidence. In case of improper use, the ordering party is liable.**

#### **Regarding § 4 No. 2**

1. The ordering party is entitled to be informed regarding performance of the order in accordance with the contract.
2. The contractor must disclose upon request whom he has appointed as representative responsible for overseeing performance.
3. **Unless agreed otherwise, the ordering party is liable for the quality of products supplied by the ordering party and for agreed performance of subcontractors. The contractor has the responsibility to inform the ordering party of recognizable defects affecting supplies by the ordering party or the agreed performance of subcontractors of the ordering party, applying the principle of due diligence. The ordering party assumes liability if this responsibility is not fulfilled.**
4. **The contractor may only subcontract performance of the contract or considerable parts thereof to a third party with the approval of the ordering party. Approval is not necessary for insignificant partial performance or partial performance which the contractor's organization is not set up to provide. This contractual provision may not be interpreted to the detriment of commerce.**

#### **Regarding § 4 No. 4**

The contractor shall

- a. proceed in accordance with competition rules in subcontracting out performance elements.
- b. disclose the subcontractor to the ordering party upon request.
- c. not impose more conditions upon the subcontractor which are more unfavorable overall than already exist between the contractor and the ordering party –in particular with regard to payment modalities and surety.
- d. give preference to small and medium-sized firms when soliciting bids, as long as performance of contract is not thereby negatively affected.
- e. inform subcontractors that a public procurement contract is concerned.
- f. in case of large contracts, effort must be made to offer subcontracts to small and medium-sized firms as long as performance of contract is not thereby negatively affected.

#### **5. Impeded or Interrupted Performance (VOL/B § 5)**

1. If the contractor believes that performance of contract is impeded, he must notify the ordering party thereof immediately in writing. Such notification may be omitted when the facts and their impeding effect are obvious.
2. (1) Performance deadlines may be appropriately extended if the impediment affecting the contractor's operations is caused by force majeure events, other circumstances beyond the contractor's control or a legally allowed lockout. The same applies to impediments affecting subcontractors or suppliers as long as the contractor is prevented from procuring spare parts either de factor or de jure.  
(2) Unless agreed otherwise, if an impediment for which the contractor is not responsible per Clause 1 lasts longer than three months after receipt of the notification per No. 1 point 1 or occurrence of the obvious event per No. 1 point 2, the parties shall be entitled to withdraw from the contract or terminate it in either entirely or partially in writing within 30 days of elapse of that period.
3. The contractor must immediately resume performance of contract when the impeding circumstances no longer apply, providing written notice to the ordering party.

#### **6. Type of Delivery and Shipment (VOL/B § 6)**

The contractor must, as long as the ordering party bears the shipment costs separately, exercise due care to uphold the interests of the ordering party in accordance with the terms of

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**shipment of the ordering party. This applies in particular to the choice of shipment route, the choice and utilization of means of transport and the most cost-effective goods labeling.**

#### **Regarding § 6**

1. The contractor must ship the delivery items according to the specification in the order.
2. The delivery items must be shipped free delivery to the point of use at the contractor's risk. The contractor shall ensure at his own expense that any necessary unloading and transport equipment is provided.
3. All packaging, shipment, freight and transport costs are included in the performance price unless agreed otherwise, as well as additional costs arising for shipment, including fees for the generation of consignment notes, weighting, counting, etc. and all freight costs incurred at the places of production and delivery as well as local costs (connection, train station, depot, transfer and movement fees).
4. Any insurance costs and additional fees for registered mail and valuable goods shipments are included in the performance price unless agreed otherwise.
5. Additional costs for express shipment are only reimbursable if such shipment is agreed on.
6. Costs arising from the transportation of tools and instruments necessary for installment at the point of use are included in the performance price unless agreed otherwise.
7. Packaging materials become the property of the ordering party without entitlement to separate compensation, unless agreed otherwise.  
Advisory is hereby given that the producer or distributor of packaging material, transport packaging, outer packaging or sales packaging is obligated to accept returns thereof under packaging regulations. If such packaging is returned, the contractor shall bear the accruing costs.  
If shipment is made in rented containers, the contractor is not entitled to reimbursement of the rental fees, unless agreed otherwise.

#### **7. Breach of Duty by the Contractor (VOL/B § 7)**

1. In case of a breach of duty by the contractor, the statutory laws shall apply in accordance with the following terms, subject to the regulations per § 14 VOL/B.
2. (1) The contractor shall not be liable for lost profit suffered by the ordering party resulting from slight negligence on the part of the contractor. Liability for lost profit is also excluded in case of a delay caused by subcontractors which the ordering party required the contractor to utilize.  
(2) In addition, liability for damages may be further limited in individual cases. The customary terms of delivery should be applied, for example, if the liability total is to be limited or limited to paying compensation for additional expenditures for replacement purchases.  
(3) If the ordering party claims compensation for damages instead of performance in full or reimbursement of expenses, the contractor shall immediately return all documents made available to him (drawings, calculations, etc.). The ordering party must inform the contractor immediately of the nature of the claims asserted. The ordering party must inform the contractor of the additional costs for performance of contract by a third party within three months of settlement of accounts with the third party. The ordering party must inform the contractor of the amount of other outstanding claims without delay.  
(4) If the ordering party claims compensation for damages in case of partially performed services instead of performance or reimbursement of expenses only for the performance elements outstanding, the contractor must immediately issue a verifiable invoice for the partial performance already rendered. Article 3 furthermore applies.

3. If the ordering party exercises right of withdrawal, No. 2 Article 3 (1) and (4) apply. If the ordering party exercises right of partial withdrawal, No. 2 point 4 (1) will apply additionally.
4. (1) If the contractor is in delay of performance, the ordering party shall notify the contractor of a deadline for performance or subsequent fulfillment before exercising right of withdrawal.  
(2) The ordering party must declare upon request by the contractor any intention to withdraw from the contract due to delayed performance or to demand performance of contract. Such request must be made before expiration of the deadline per point 1. The contractor remains entitled to deliver performance until such declaration is received.

## **8. Dissolution of the Contract by the Ordering Party (VOL/B § 8)**

1. The ordering party may withdraw from the contract or terminate the contract effective immediately if insolvency proceedings or comparable legal proceedings are opened or filed for the assets of the contractor, if such a filing is rejected due to insufficient assets, if proper performance of contract is thereby put into question or if the contractor suspends payments non-temporarily.
2. The ordering party may withdraw from the contract or terminate the contract effective immediately if the contractor participates in illegal limitation of competition as per the law against competition limitations in connection with awarding of the contract.

### **Regarding § 8 Nos. 1 and 2**

1. The ordering party may withdraw from the contract or terminate it effective immediately if:
  - 1.1. claims of the contractor against the ordering party are attached, unless the contractor immediately offers surety.
  - 1.2. the contractor breaches the obligations per § 4 No. 2 point 1 or § 4 No. 4 VOL/B.
  - 1.3. the contractor offers benefits to persons associated with the ordering party who are involved in the preparation, completion or execution of the contract, under consideration of their administrative role at the ordering party. Such actions by agents of the contractor involved in the preparation, completion or execution of the contract shall be deemed actions on the part of the contractor himself. It is irrelevant whether benefits were offered, promised or granted directly to or for the benefit of the specified persons associated with the ordering party, their relatives or other related parties or to a third party for the benefit of any of the aforesaid persons or parties.
2. Prior to exercising the right per Nos. 1.2 and 1.3, the contractor shall be given opportunity to issue a formal response to such accusations without delay, in accordance with § 19 No. 1 VOL/B.
3. In case of termination, performance so far –if usable by the ordering party– is billable at contract prices or based on the portion of performance rendered relative to the total contract value. Unusable performance elements shall be returned to the contractor at the contractor's expense.

### **Regarding § 8 No. 3**

When withdrawing from or terminating a contract, the ordering party and the contractor are bound to disclose information to each other as necessary to quantify their respective claims.

4. Any other statutory rights and claims of the ordering party remain unaffected.

## **9. Delay by the Ordering Party, Dissolution of the Contract by the Contractor (VOL/B § 9)**

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1. In the case of delay by the ordering party as debtor or creditor the legal provisions will apply in accordance with the following terms:
2. (1) If the ordering party fails to contribute to the fulfillment of the contract independent of negligence and if this failure causes the contractor to fail to render his contractual service, the contractor may set an appropriate deadline for the ordering party to fulfill his contribution, with the explanation that he reserves the right to terminate the contract effective immediately if the obligation to co-operate is not being fulfilled by the deadline.  
(2) In the case of termination all services rendered so far must be brought to account at contract prices. The contractor also has the right to an appropriate compensation the amount of which will be determined in accordance with the appropriate employment of § 642 point 2 of German Civil Code.
3. Claims of the contractor because of culpable infringement of obligations to co-operate by the ordering party remain untouched.

## 10. Custodial Duty (VOL/B § 10)

The contractor shall protect performance elements rendered by him and goods provided to him for performance of contract from damage and loss until the transfer or risk.

## 11. Contractual Penalty (VOL/B § 11)

1. §§ 339 and 345 of German Civil Code apply to any agreed contractual penalties. An appropriate maximum limit must be set.
2. Any agreed contractual penalty for failure to meet deadlines may not exceed 0.5 percent of the value of the portion of the performance element which cannot be used, capped at a maximum 8%. If the contractual penalty amount is calculated based on the number of days, only business days are counted, and if based on the number of weeks, every business day of a week started counts as 1/6 of a week. The ordering party may assert claims for triggered contractual penalties up until rendering of the final payment.

## 12. Quality Inspection (VOL/B § 12)

1. The ordering party or his contractually appointed agent conducts quality inspections conducted to verify performance regarding the fulfillment of contractual technical requirements and connected organizational requirements. Acceptance remains thereby unaffected.
2. If the contract provides for quality inspections, provisions specifying the nature, scope and place of the inspections must be specified, and the following provisions additionally apply unless agreed otherwise:
  - a) Partial performance may be inspected upon request by the ordering party or the contractor, in particular when inspection would be difficult or impossible if the performance was carried out further.
  - b) The contractor must promptly notify the ordering party or his agent of the time of provision of performance or partial performance elements for the agreed inspection to be conducted. The parties shall then immediately set a deadline for the inspection to be conducted. If this deadline elapses unmet for reasons the fault of the ordering party, the contractor may set an appropriate grace period for conducting of the inspection, demanding that the ordering party otherwise declare waiver of the quality inspection. If the ordering party does not conduct the inspection within the grace period or waive the inspection, the order party shall pay compensation in accordance with the regulations on debtor delay at the end of the grace period.
  - c) The contractor must provide the manpower, space, machines, tools, testing and measuring equipment and operating materials necessary for the quality inspection.
  - d) If, as a result of the quality inspection, the parties agree that the performance or partial performance elements must be rejected as not contractually conforming, the contractor must replace these with such which are contractually conforming.

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- e) If the parties do not reach agreement regarding rejection of performance elements due to differences of opinion on the testing procedure applied, the contractor may demand a further inspection by an inspection provider agreed on with the ordering party which shall make the final decision. The party whose view is not corroborated shall bear costs for this inspection.
- f) The contractor must issue a release statement prior to delivery of the performance elements. This is the precondition for delivery to the ordering party.
- g) The contractual price includes costs incurred by the contractor for the agreed quality inspections. Items rendered useless through the quality inspection do not count toward performance totals.

#### Regarding § 12

- 1. The ordering party can determine the nature, scope and location of quality inspections, taking the interests of the contractor into account to the extent possible.
- 2. If a quality inspection is required, the contractor must provide prompt written notification of the start of the production and –on request by the ordering party– of further stages of production to the inspection provider appointed by the ordering party to conduct the quality inspection. The quality inspection must be conducted within an appropriate period of time.
- 3. The contractor may only provide performance elements for inspection which he has pre-inspected and deemed to be contractually conforming.
- 4. The contractor must immediately finish performances which have been rejected by the quality inspection as not contractual.
- 5. The contractor must immediately remove any performance elements rejected as non-contractual pursuant to a quality inspection and replace these with contractually conforming performance elements at the location of the quality inspection.

### 13. Acceptance (VOL/B § 13)

- 1. (1) Unless agreed otherwise, the statutory laws governing the transfer of risk apply.  
(2) If shipment or handover of completed performance elements are delayed beyond the deadline at the request of the ordering party, risk is transferred to the ordering party for the period of delay unless a deadline postponement is agreed.
- 2. (1) Acceptance is a declaration by the ordering party that the principal content of the contract is fulfilled. If acceptance is regulated by law or contract, the ordering party must declare whether performance is accepted within the deadline applicable thereunder.

In case of an insignificant defect, the ordering party may not refuse acceptance if the contractor explicitly recognizes responsibility to remedy that defect.

In the event of non-acceptance, the ordering party shall communicate the reasons and set a period of grace for reconducting of acceptance by the contractor if, in particular, subsequent performance is possible and reasonable for both parties, irrespective of claims accruing to the ordering party for non-fulfillment of the original performance deadline.

- (2) Upon acceptance the contractor no longer has liability for recognized defects unless the ordering party reserves rights regarding certain defects.
- (3) If the ordering party utilizes a performance element, acceptance is deemed given at the time of initial utilization unless agreed otherwise.
- (4) The foregoing provisions apply accordingly to acceptance of partial performance.

### Regarding § 13 No. 2

1. Claims may be asserted for defects identified during acceptance irrespective of prior quality inspections.
2. The place of fulfillment and of performance shall be –unless agreed otherwise– the point of use (*Verwendungsstelle* – ZVB-NRW No. 2 regarding § 6), which is only obligated to accept deliveries or performance Monday through Friday between the hours of 08:30 am and 12:00 am, or as otherwise scheduled by appointment.
3. The ordering party must set an appropriate deadline for the contractor to remove goods which the ordering party has rejected as non-contractual. After expiration of the deadline the ordering party may dispose of the goods at the expense of the contractor while respecting the interests of the contractor to the extent possible.

## 14. Defect Claims, Statute of Limitations (VOL/B § 14)

1. If a defect is attributable to a request by the ordering party to change the performance characteristics (§ 2 No. 1) to materials provided or prescribed by the ordering party or to pre-deliveries required by the ordering party, the contractor shall be exempt from claims for such defects if the contractor issues written notice in accordance with § 2 No. 2 or § 4 No. 3, or if the materials delivered by the ordering party have defects which are unrecognizable when exercising customary due care.
2. Statutory law governs defect claims, supplemented by the following provisions:
  - a) If performance defects are evident, the contractor shall be first given an appropriate grace period to remedy the defects. All performance elements evidencing material defects prior to elapse of the statute of limitations period must be repaired, replaced or re-provided at the contractor's discretion free of charge as long as the cause of the defect existed prior to the transfer of risk.

Upon expiration of the grace period, the ordering party may remedy the defects or have the defects remedied by a third party at the expense of the contractor.

The ordering party may set an appropriate deadline, stating that remedying of the defects will be rejected upon fruitless elapse of the deadline. In such case, the ordering party may, in accordance with statutory law:

    1. reduce payment or withdraw from the contract, and
    2. demand damages or reimbursement for fruitless expenditures.
  - b) The damage claim of the ordering party is for damage affecting the object of contract, except in cases of
    - aa) intent or gross negligence by the contractor or the contractor's statutory representatives or vicarious agents (§ 278 of the German Civil Code),
    - bb) non-fulfillment of warranted performance characteristics
    - cc) loss of life or bodily injury.

If the contractor is not liable for damages on the basis of the cases per aa) to cc), the claim to reimbursement of fruitless expenditures is limited in amount to the value of performance elements affected by the defect.

Obligation to pay damages and reimburse expenses per item aa) does not apply if the contractor is able to prove that sabotage occurred if the ordering party provided the vicarious agents in question or if the contractor had no decisive influence on the choice of vicarious agents.

- c) **The ordering party may set an appropriate grace period for the contractor to remove defective goods. After expiration of the deadline, the ordering party may dispose of the goods at the contractor's expense while respecting the interests of the contractor to the extent possible.**
  - d) **The contractor shall not be liable for improper changes or repairs made by the ordering party without the contractor's consent.**
3. **Unless agreed otherwise, the statutory deadlines per German Civil Code apply as the statute of limitations for defect claims. Other provisions shall be implemented as necessary in view of the specific nature of performance, which may be oriented around the regulations typical for the respective industry. The ordering party must inform the contractor of defects immediately and in writing.**

**Regarding § 14 No. 3**

- 1. The statute of limitations expiration period for defect claims is suspended when timely notice of defects is given until the contractor notifies the ordering party in writing of the result of his review of the identified defects or definitively refuses to remedy defects. The statute of limitations period for defect claims restarts if the contractor acts in a manner demonstrating acceptance of the claim.
- 2. The ordering party may assert defect claims on the basis of breach of the provisions and regulations named under ZVB-NRW No. 1 regarding § 4 No. 1 during the entire period of customary usage, subject to a maximum five years. If the statutory claims expiry period elapses later than pursuant to the foregoing provision, the statutory claims expiry period shall apply.

**15. Invoicing (VOL/B § 15)**

- 1. **(1) The contractor shall bill for performance in a verifiable manner. To do so, the contractor must prepare clearly structured invoices which state the items in the order agreed in the contract, use the designations defined in the parts of the contract and, where applicable, fulfill the formal invoice requirements defined in the contract, attaching customary documentation of the nature and scope of performance. Amounts invoiced for changes or additions must be specially designated or stated separately from other items, referencing the agreements made in either case.**  
  
**(2) Unless stated otherwise, this invoice shall be regarded as a final invoice.**
- 2. **If a verifiable invoice per No.1 is not submitted within an appropriate period of time, the ordering party may prepare an invoice at the expense of the contractor after notifying the contractor in advance.**

**Regarding § 15**

- 1. The invoice must be issued to the entity or entities named in the order contract
- 2. The invoice must be submitted in duplicate, unless agreed otherwise. The duplicate and any further copies must be clearly marked as duplicates.
- 3. The invoice must list the performance elements using the wording and sequence per the order contract with individual line items, stating the quantity. General descriptions such as "produced", "repaired", "rendered operable" etc. without detail explanations are not permitted. Abbreviations referring to a performance element index of the ordering party are permitted if the performance elements conform to the performance description.

The contractor must state the contractual prices before value added tax on the invoice (net prices). If the contractor awarded the contract is domiciled in the Federal Republic of Germany, the contractor must charge value added tax at the rate applicable (§ 13 of the Sales Tax Act/USTG) on the date the tax accrues and state this amount on the invoice.

Contractors from other EU member states must issue invoices conforming to the special tax regulations for inter-community acquisitions within the European Union.

4. It must be stated on an invoice whether the invoice is for an installment or partial payment or is the final invoice. Installment and partial payment invoices must be numbered consecutively.
5. If the price for a line item contains decimal amounts of the smallest currency unit, these amounts must be factored into the calculation.
6. If stated information on an invoice is changed, the original information must remain legible.
7. Delivery notes must state:
  - Number and date
  - Number, date and order reference number
  - Sequential number of a partial delivery
  - The nature and scope of the delivery
8. Claim to payment of an invoice only exists if the supporting documentation of delivery/performance is attached to the invoice. Such documentation typically includes approved timesheets, receipted delivery orders and/or performance records.
9. Detriment resulting from payment delays due to incomplete invoices or missing supporting documentation shall be borne by the contractor.
10. Unless agreed otherwise, the invoice must be submitted within 18 business days of completion of performance.

## **16. Work Billed at Hourly Rates (VOL/B § 16)**

1. **Work is only billable at hourly rates if such is provided for in the contract or if ordered by the ordering party prior to the commencement of performance.**
2. **The ordering party must be informed of the start and finish times of such work. Unless agreed otherwise, timesheets for work billable at hourly rates must be submitted on a weekly basis, stating the hours worked and the raw materials, production materials, the directly and indirectly production-related materials to be paid for separately and specially agreed payments for supplying scaffolds, tools, hardware, machines and similar items.**

### **Regarding § 16 No. 2**

1. If the contract provides for monitoring by the ordering party of work billable at hourly rates, the contractor is obligated to have timesheets approved in writing by the entity agreed in the contract.
2. Approved timesheets must be submitted together with the invoice. The original records must be submitted for review upon request.
3. Timesheets must state all information necessary to verify the invoice. If the work billable at hourly rates is related to other performance elements, separate invoices are not to be issued. Instead, the hourly rates are to be stated on the final invoice.

The stated information must include the date, designation of the location, names and positions of workers (e.g. foreman, assistant, unskilled laborer, trainee), hours worked per worker and type of work performed.
3. **Unless agreed otherwise, invoices are to be submitted on a weekly basis, starting 12 days after commencement of performance.**

## **17. Payment (VOL/B § 17)**

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1. Invoiced amounts are to be paid upon completion of performance or earlier if corresponding payment conditions are agreed on. If such are not agreed, the invoice amount must be paid within a month of receipt of the verifiable invoice. Payment is not made in cash, as a rule. The time of receipt of the payment transfer order at the banking institution of the ordering party applies for determining timeliness of payment.
2. If payment installments are agreed, these must be paid in appropriate amounts and within appropriate deadlines as requested and justified based on the value of completed performance. Completed performance must be established via verifiable itemization. Installment payments do not constitute acceptance of partial performance.
3. In case of differences of opinion regarding the final invoice, the contractor is entitled to receive the amount not in dispute.
4. Subsequent claims are excluded upon acceptance of a final payment designated without statement of a reservation. A reservation must be expressed within two weeks of receipt of the final payment. A reservation expires if a verifiable invoice for the claims subject to reservation is not submitted within one further month, or, if this is not possible, the reason for reservation is stated in detail.
5. If, after acceptance of the final payment, are errors found in the supporting invoice documentation, the invoice must be corrected. Such include errors in performance measurement, the application of general calculation rules including decimal errors and errors in amount carryover and continuation on the next page. Contractor and ordering party are obligated to properly settle out amounts from such identified errors.

**Regarding § 17**

1. Unless agreed otherwise, payment shall be made, at the ordering party's choice, within 14 days less the agreed early payment discount or within 30 days without such discount.
2. The payment and discount period starts upon receipt of the verifiable invoice (see ZVB-NRW No. 8 regarding 15) by the specified entity, though no earlier than the time of transfer of risk according to ZVB-NRW regarding § 13 No. 2.
3. Payments, including advance payments and installments, may be reduced by the amount of claims of the ordering party against the contractor even if the claim amount does not stem from the same contractual relationship.
4. In the event of overpay, the contractor must reimburse the amount overpaid. If the contractor fails to render reimbursement within 14 calendar days of receipt of the reimbursement request, the contractor shall be deemed in payment default from that time on and shall be charged default interest at a rate of 8% above the base interest rate per § 247 of German Civil Code (BGB).  
  
The contractor may not assert loss of enrichment as a legal argument.
5. The contractor may only assign his claims with prior written consent from the ordering party.

**18. Surety (VOL/B § 18)**

1. (1) Unless agreed otherwise, sureties under the conditions per § 14 VOL/A are only permissible for contracts valued at €50,000.00 or greater. If a surety is agreed on, §§ 232-240 of German Civil Code shall apply except as regulated in the provisions below.  
(2) The surety serves to ensure proper contractual performance and the enforcement of defect claims.
2. (1) Unless agreed otherwise in the contract, surety may be provided in the form of a deposited fund or a bond granted by a credit institution or credit insurer accredited in the European Union or a state that is a contracting party of the Agreement on the European Economic Area EEA, or in a member state of the WTO General Agreement on Trades in Services (GATS). If the ordering party has reasonable doubts concerning the

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The German version is legally binding.

suitability of the guarantor, the contractor provide proof establishing the suitability of the guarantor.

(2) The contractor has the choice of the different types of surety; he may replace one surety with another.

3. If the surety is provided by a guarantor other than an accredited credit institute or credit insurer, the guarantor must be approved by the ordering party as suitable.
4. (1) The certificate of bond is to be issued in writing with the explicit stipulations that the surety is subject to German law, that the rights to claim contestability and insist on offsetting or prior direct enforcement (§§ 770, 771 of German Civil Code) are waived. The bond must be non-expiring and issued as instructed by the ordering party. The surety bond must include explicit agreement to a domestic competent court of jurisdiction chosen by the ordering party for any disputes over the validity of the certificate of bond or the corresponding provision itself.

**Regarding § 18 No. 4 point 1**

Superseding No.4 point 1, the certificate of bond shall additionally state that waiver of the right to insist on offsetting shall not apply to counterclaims of the contractor which are uncontested or have been upheld by court judgment.

(2) The ordering party may not demand a surety which obliges the guarantor to make a payment upon initial demand.

5. If a surety is provided in the form of deposited funds, the contractor must deposit the amount to an escrow account at a bank to be agreed on which the parties can only access jointly. The contractor is entitled to any interest accruing in this account.
6. Unless agreed otherwise, the contractor must provide the surety within 18 business days of conclusion of the contract.
7. The ordering party must immediately return a surety or corresponding part thereof when the claims thereby secured are no longer outstanding, wholly or in part.

**19. Disputes (VOL/B § 19)**

1. In the event of disputes, the ordering party and the contractor shall first endeavor to reach an amicable settlement within a period of two months.
2. If the conditions are met for an agreement on place of jurisdiction pursuant to § 38 of the Code of Civil Procedure, the place of jurisdiction for any disputes over the validity of the contract or otherwise arising from the contractual relationship shall exclusively be that of the seat of the entity responsible for legal representation of the ordering party, unless agreed otherwise. The ordering party is obliged on request to notify the entity legally representing the ordering party.
3. Disputes do not entitle the contractor to halt contracted deliveries/services if the ordering party declares that the deliveries/services must continue due to special public interests.