

## INTRODUCTION

These General Terms and Conditions for Construction Services of Kieback&Peter GmbH & Co. KG – hereinafter referred to as "**GTC Construction**" – shall apply to all agreements and any other legal transactions based on which Kieback&Peter GmbH & Co. KG – hereinafter referred to as "**Kieback&Peter**" – in its relationship with its contractual partner – which hereinafter shall be referred to as "**Client**" –

- provides work services, whereby a physical structure is constructed, maintained, modified or demolished – hereinafter referred to as "**Construction Services**" ("Bauleistungen") – and/or
- supplies constructed or manufactured movable building and/or plant components – hereinafter referred to as "**Work Deliveries**" ("Werklieferungen").

### 1. NO OTHER TERMS AND CONDITIONS APPLY

1.1 For Construction Services and for Work Deliveries, these GTC Construction and the documents referenced herein shall apply exclusively, as shall any other of Kieback&Peter's general terms and conditions, if agreed with Client.

Any terms and/or other general terms and conditions of Client deviating from these GTC Construction shall not become an integral part of the agreement even if Kieback&Peter accepts an order, and even if Kieback&Peter has failed to object to such terms and conditions.

This constitutes an explicit rejection of the standard notice of Client's general terms and conditions.

1.2 The GTC Construction shall apply to all future transactions, even if the GTC are not expressly referenced elsewhere and even if such are not again enclosed with a proposal, an order acknowledgment or a contract.

### 2. OFFERS BY KIEBACK&PETER, CONTRACTUAL BASIS, OTHER APPLICABLE CONTRACT DOCUMENTS

2.1 Any general presentation by Kieback&Peter (e.g., on the websites or in advertising brochures) shall be non-binding and shall not constitute an offer to conclude a contract.

2.2 Kieback&Peter shall be bound by its offers and quoted pricing for a period of six weeks. Any obvious typos or miscalculations may be corrected by Kieback&Peter, including with retroactive effect.

2.3 Unless agreed otherwise, for all contracts issued to Kieback&Peter, the following shall be deemed integral parts of the agreement as amended at the time the agreement is entered into, and shall apply in the following order:

- the offer by Kieback&Peter in addition to the performance specifications in long text with preliminary remarks and enclosures;
- the minutes of the negotiations for subcontractor services in addition to corresponding enclosures;
- the Client's order document;
- these GTC Construction, and
- the German Construction Contract Procedures Part B and Part C (VOB/B and VOB/C) as valid on the date of contract conclusion.

2.4 The deliveries and services to be provided by Kieback&Peter are generally described with the integral parts of the agreement listed in Article 2.3 above. Documents that are part of the offer by Kieback&Peter, such as illustrations, drawings, etc. should only be viewed as approximately to scale and weight, unless the accuracy of scale and weight was expressly confirmed.

Kieback&Peter reserves any existing intellectual rights and copyrights to such documents. No third parties may be allowed access to such documents, nor may such documents be misused in any other form without the consent of Kieback&Peter. If a contract is not placed, any documents prepared for the Client specifically are to be returned without further request and in any other case without undue delay upon request.

## 3. TERM OF CONTRACTS ON RECURRING CONSTRUCTION SERVICES

3.1 Unless agreed otherwise, contracts on the provision of recurring Construction Services (such as work on mechanical and/or electrical/electronic equipment or parts thereof or within structural installations, which are intended to maintain the functional efficiency and capability of such mechanical and/or electrical/electronic equipment or parts thereof) shall generally be concluded for an indefinite period of time, with a minimum term of 12 months.

Upon expiry of the minimum term, the contract shall be extended automatically by consecutive 12-months-periods, unless it has been terminated upon expiry of the minimum term or upon expiry of the current extension period, with termination in each case to be given at three months' notice.

3.2 The right of either party to terminate the contract for cause shall remain unaffected. For Kieback&Peter, cause for immediate termination is given especially if Client, despite reminder, breaches Client's payment obligations.

## 4. EXECUTION

4.1 For deliveries to the construction site, Kieback&Peter expects that the unloading point can be approached by any fully loaded freight vehicles as well as heavy truck-mounted cranes. Client shall solely be responsible for any poor quality of access road and construction site.

Kieback&Peter shall not be held responsible for any damage to the pavement or above and/or below-ground equipment near the access road and construction site, unless a clearly defined special agreement on the protective and precautionary measures was made with Client in writing under which Kieback&Peter's relevant responsibility arises.

The recipient is to unload the delivery professionally and without undue delay. Downtimes lasting longer than 0.5 hours shall be invoiced separately.

4.2 Sections 377, 379 German Commercial Code (HGB) shall remain unaffected in relationship to merchants. If Client is a business, it shall verify without undue delay whether the delivered Work Delivery is free of defects and complete. Should there be any notice of deficiencies due to obvious defects, Client shall notify Kieback&Peter thereof in writing without undue delay after pick-up at the plant, delivery or unloading at the construction site, including of such defects that are not obvious promptly once they have been discovered.

4.3 Deficient Work Deliveries or such discovered to be defective may only be processed or installed after subsequent fulfillment has been executed. Otherwise, unless Kieback&Peter is in default of the subsequent fulfillment, any additional costs incurred for subsequent fulfillment at the construction site shall be borne by Client who shall allow Kieback&Peter use of any scaffolds, cranes and ladders required for the subsequent fulfillment at no charge.

## 5. COMMISSIONING EQUIPMENT AND/OR CONSTRUCTIONS

5.1 Where Kieback&Peter is required to commission (e.g., control) equipment and/or constructions, Client is to provide the necessary operating resources (such as hot water, cold water, warm/cold air, steam, power, data lines, data transmission routes, etc.) to the extent necessary.

5.2 Kieback&Peter is to be notified of the commissioning date within a reasonable period. During commissioning, Client's employees familiar with the equipment must be present, as well as an employee from the contracted electrical company assigned to wiring the equipment. Client is to ensure that the equipment being commissioned can be accessed.

5.3 Where equipment assembly and installation does not belong to the agreed scope of the order from Kieback&Peter, Client is to ensure that the necessary field devices are installed and wired and that the devices in the control cabinet have been installed in due time.

## **6. WORK DELIVERIES**

6.1 Deliveries of movable building and/or plant components – hereinafter collectively referred to as "**Objects**" – shall be made ex works against invoice and at the risk of Client. Unless expressly agreed otherwise, this shall also apply to partial deliveries, to which Kieback&Peter is entitled.

6.2 Packaging is invoiced separately. Evidence of proper packaging shall be deemed given once the Objects have been accepted by the shipping agent or freight forwarder without objection. Client shall be entitled to submit evidence to the contrary.

If Kieback&Peter is obligated to take back packaging used for transport in accordance with the German Packaging Ordinance, costs of the return of any packaging used shall be borne by Client. If Kieback&Peter takes back any Objects that were duly delivered, Kieback&Peter shall be entitled to invoice a reasonable administrative fee for the additionally incurred expense.

6.3 Provided merchandise planning has been duly managed, the correct and on-time delivery from own suppliers of Kieback&Peter shall remain reserved. Kieback&Peter shall notify Client without undue delay if any goods to be delivered are unavailable. Should Client choose to rescind from the contract in such event, Client shall be reimbursed the purchase price without undue delay.

## **7. DEADLINES**

7.1 Agreed contractual deadlines shall only be binding, if the observance thereof is not impossible due to circumstances beyond the control of Kieback&Peter. Such circumstances shall also be changes, such as missing documents (building permits, blueprints, or similar), which are required to perform the contract.

Should Kieback&Peter be in default of Construction Services, Client shall only be entitled to the process defined in Section 8 (3) VOB/B if a time for commencement and completion was agreed in writing based on a specific calendar date and where such date has expired, Client has granted Kieback&Peter a reasonable grace period, declaring that should such grace period expire without results, it shall rescind from the contract.

## **8. PRICING AND PRICE RESERVATIONS, MEASUREMENTS, WITHHOLDING AND OFFSETTING**

8.1 The offer prices are strictly net and do not include any applicable value-added tax, packaging, freight, customs clearance, insurance and installation charges. In the event of deliveries, the prices shall be deemed ex works.

8.2 Partial deliveries and services may be invoiced separately.

8.3 The offer price shall only apply if the Construction Services and/or Work Deliveries offered are awarded in full. If such orders are placed in part or as partial deliveries, Kieback&Peter reserves the right to amend the prices accordingly.

8.4 Kieback&Peter and/or Client may request a joint measurement ("Aufmaß") with regard to the deliveries and/or services provided by Kieback&Peter. If either Kieback&Peter or Client request such measurement, the measurement jointly established by both parties shall then be the binding basis for Kieback&Peter when calculating its compensation.

Where Kieback&Peter or Client reject to approve the request for a joint measurement and/or should Kieback&Peter or Client allow the reasonable deadline to create a joint measurement and/or to implement a joint measurement deadline set by the other contractual party to pass, the other contractual party shall be entitled to create its own – unilaterally valid – measurement and to make it the basis for invoicing the deliveries and/or services provided by Kieback&Peter. Should the party that failed to respond to the request to create a joint measurement dispute the accuracy of said measurement which the other party chose to use unilaterally and if verification of such unilaterally chosen measurement is no longer possible, the responsibility for the burden of proof that such unilaterally chosen measurement

is incorrect shall lie with the party disputing the accuracy of the unilaterally chosen measurement.

8.5 Client may only withhold payments or offset with such counterclaims that have been established with legally binding effect or that are undisputed.

## **9. PAYMENT TERMS, PAYMENT DEFAULT**

9.1 In the event of Work Deliveries, Kieback&Peter shall be entitled to issue an invoice on the date of delivery; in the event of agreed advance invoices on the day the Objects are ordered.

Unless otherwise explicitly agreed, Kieback&Peter shall invoice its Construction Services as follows:

- in the event of compensation on a time and material basis: monthly and/or upon conclusion of the work and/or service provided;
- in the event of recurring compensation: in advance as agreed (e.g., monthly or annually);
- otherwise, Section 16 VOB/B shall apply.

9.2 In the event of payment default by Client, a flat-rate default fee of EUR 40.00 plus default interest of 9 percentage points above the base rate will be charged by Kieback&Peter. Other claims arising from payment default shall remain unaffected.

Kieback&Peter reserves the right to prove higher default damage.

9.3 In the event of payment default by Client, including under other contracts with Kieback&Peter, any and all of Kieback&Peter's outstanding receivables against Client shall become due with immediate effect.

9.4 Once Client is in payment default, Client shall no longer be entitled to continue to process, combine or mix with other objects the Objects supplied by Kieback&Peter subject to retention of title, or to sell any such goods.

9.5 In addition, in the event of payment default, Kieback&Peter shall also be entitled, after having sent a reminder, to perform any outstanding deliveries and/or services only against advance payment. This shall also apply to any outstanding deliveries and/or services under other contracts with Client.

9.6 The assertion of its right to retention of title and any seizure of delivered Objects by Kieback&Peter shall not be deemed a rescission from the contract, unless expressly declared by Kieback&Peter in writing.

## **10. RETENTION OF TITLE**

10.1 Until all of Kieback&Peter's receivables from Client have been paid, the Objects delivered shall remain the property of Kieback&Peter. The same shall apply to orders against a line of credit.

10.2 All of the receivables to which Client is entitled after resale of the Objects subject to reservation of title and which it itself has also secured by way of a retention of title shall hereby be assigned to Kieback&Peter in advance. The assignment shall be made up to the amount invoiced to Client by Kieback&Peter in relationship to the resold Objects subject to reservation of title. Kieback&Peter hereby accepts said assignment.

Client shall be authorized to collect such receivables as long as it meets its payment obligations to Kieback&Peter. Client shall, however, not be entitled to dispose of the receivables in any other manner, such as by assigning them otherwise. Client agrees to notify Kieback&Peter without undue delay with regard to any existing or intended blanket assignments. Kieback&Peter shall refrain from collecting the receivables and disclosing the assignment for as long as Client meets its payment obligations as agreed.

10.3 If Kieback&Peter is entitled to reclaim the Objects and if such Objects have already been resold, Client hereby agrees to disclose the names of the buyers and the scope of the sales contracts and to send copies of the relevant correspondence so that Kieback&Peter is able to exercise its rights in relationship to the buyer. The buyer is to be notified by Client with regard to the retention of title and about the

assignment of the claims without undue delay. Client shall be obligated to store the Objects delivered under retention of title with the due care expected of a prudent and conscientious businessperson.

- 10.4 If the value of all collateral provided to Kieback&Peter that can be realized, in particular not only under the extended retention of title, exceeds the coverage limit, i.e., the value of the receivables of Kieback&Peter to be secured, by more than 20%, Kieback&Peter hereby undertakes, at its discretion, to release such securities up to an amount of the sum by which the coverage limit plus 20% is exceeded. Kieback&Peter shall duly account for any justified concerns of Client.

#### **11. CLIENT'S DUTY TO COOPERATE**

- 11.1 Client shall support Kieback&Peter in the performance of the agreed deliveries and services where necessary and reasonable for Client and shall ensure as part of its cooperation duty within its area of responsibility all the prerequisites for the proper performance of the agreement in a timely manner and free of charge for Kieback&Peter.

In particular, Client shall, to the extent necessary and reasonable,

- provide any and all documentation and information required by Kieback&Peter for proper performance of the deliveries and services in compliance with the contract;
- notify Kieback&Peter without undue delay of any defects, malfunctions, problems, etc. that Client may have determined while performing the deliveries and/or services;
- in case of the performance of deliveries and/or services on site at Client's premises, make available any infrastructure necessary to perform the deliveries and services in accordance with the agreement;
- allow Kieback&Peter or authorized representatives of Kieback&Peter access to the locations, Construction Services and Work Deliveries in question during normal working hours; and
- ensure that its staff and third parties engaged by Client cooperate with Kieback&Peter and its authorized representatives.

Further cooperation duties to which Client shall be bound may be referred to in the offer.

- 11.2 To the extent to which compliance with particular statutory, regulatory, or operating safety regulations is required, Client shall provide such regulations to Kieback&Peter in due time prior to commencement of service provisions.

#### **12. SUPPLIES FROM CLIENT**

- 12.1 All supplies to be provided by Client as agreed or that are necessary must be provided by Client in a timely manner, free of charge to Kieback&Peter and in the form and quality necessary for the performance of the deliveries and services in accordance with the agreement. The location of the supplies provided in each case shall be the construction site unless expressly agreed otherwise.

- 12.2 Client shall solely be responsible for the supplies. In particular, the supplies must not violate any applicable laws.

- 12.3 Where the supplies are protected by copyright or other protection statutes such as trademark law, Client shall grant Kieback&Peter a non-exclusive right, limited to the duration of the performance of the agreement, to use the supplies within the performance of the deliveries and services. Otherwise, any and all rights shall be retained by Client or the relevant holder of such rights.

#### **13. ACCEPTANCE OF CONSTRUCTION SERVICES**

- 13.1 Section 12 VOB/B shall apply to acceptance.
- 13.2 Kieback&Peter shall be entitled to be present during acceptance testing. Kieback&Peter shall support Client during acceptance testing in return for additional compensation.
- 13.3 Insignificant defects in the Construction Services shall not prevent acceptance.

- 13.4 Should Client notify Kieback&Peter of defects in the Construction Services preventing acceptance during the course of acceptance testing, Kieback&Peter shall be entitled to remedy such defects within a reasonable deadline.

Any defect notifications sent to Client from Kieback&Peter are to be reviewed without undue delay. Kieback&Peter is to be notified about the results of such review without undue delay.

- 13.5 Kieback&Peter may request the acceptance of partial results (e.g., closed service sections, completed parts of the subject matter of the agreement, or individual documents). The aforementioned provisions of this Article 13 shall apply accordingly to any such acceptance.

In case of the acceptance of partial results, defects that occur in any later partial acceptance, whose causes originate in the partial results already accepted, shall only prevent the acceptance of the later partial results if the defect prevents the interaction with the later partial results in a more than insignificant manner or has a significantly negative effect on the functionality and such was not noticeable in an isolated manner to Client within any previous partial acceptance.

#### **14. RIGHTS OF USE**

All use and exploitation rights regarding the Construction Services that are not expressly granted to Client shall remain with Kieback&Peter. In particular, Kieback&Peter shall be entitled to distribute and exploit any and all of the knowledge, designs, procedures, methods, expertise, processes, etc. derived from the Construction Services without limitation.

#### **15. CLIENT'S RIGHTS IN CASE OF DEFECTS**

- 15.1 Unless expressly agreed otherwise, declarations by Kieback&Peter (e.g., specifications) shall not comprise an assumption of a guarantee. Any assumption of a guarantee shall require an express declaration in writing from Kieback&Peter.

- 15.2 Where Kieback&Peter is obligated in its relationship to Client to rectify defects, Client shall be required to notify Kieback&Peter of such defects without undue delay and to describe them as precisely as possible.

- 15.3 In all other respects, Kieback&Peter shall take any measures necessary in the event of its liability for defects, where it shall be at Kieback&Peter's discretion to choose between any measures provided for by law.

Client must provide Kieback&Peter the necessary time and opportunity to do so and to ensure at its own cost that Kieback&Peter is given unlimited access to the (potentially defective) parts to allow an inspection and processing of such parts.

- 15.4 Where Kieback&Peter conducts inspections on the basis of Client's request to remedy defects, Client shall be required to reimburse any expenses if it becomes evident that the cause of the defect was outside of Kieback&Peter's scope of responsibility or that a defect in fact does not exist. In addition, Kieback&Peter shall also be entitled to compensation from Client for its inspection activities in accordance with pricing customary at such location.

#### **16. LIABILITY AND LIMITATION OF LIABILITY**

- 16.1 Kieback&Peter shall be liable only for its own fault and for the fault of its legal representatives, executives, and other vicarious agents, in accordance with the following provisions.

- 16.2 Generally, Kieback&Peter's liability shall be determined in accordance with Section 10 VOB/B and Section 13 VOB/B.

- 16.3 In cases of liability of Kieback&Peter under Article 16.2 hereinabove, the total liability per damage event shall be limited to an amount of EUR 250,000 and in total to an amount of EUR 500,000.

Kieback&Peter expects that the aforementioned sums of the limitation of liability are sufficient amounts with which to cover the foreseeable damage typical for this type of

agreement in the event of damage. Should Client feel that this limitation of liability is not sufficient to cover the foreseeable damage typical for this type of agreement, Client is to make Kieback&Peter aware thereof so that coverage can be obtained for higher liability risk, if any.

- 16.4 Liability for intent (including malice), gross negligence, personal injury and liability under the German Product Liability Act shall remain unaffected by the foregoing provisions, unless already covered by Article 16.2 hereinabove.
- 16.5 The aforementioned provisions shall also apply to Kieback&Peter's employees.
- 16.6 Any claims by Client based on violations of duty for Work Deliveries shall expire in 12 months after delivery.  
The period of limitation as defined under Section 13 (4) VOB/B shall apply to Construction Services. In addition to the foregoing, the following shall apply: Should the maintenance contract defined under Section 13 (4) No. 2 VOB/B not have been completed at the very latest by the time of acceptance of Kieback&Peter's Construction Services, the period of limitation of two years shall remain under the requirements listed otherwise therein in the event that maintenance of mechanical and electrical/electronic equipment is not assigned.  
In all other respects, the statutory periods of limitation shall apply.
- 16.7 Kieback&Peter hereby notifies Client that any maintenance work performed on existing systems may cause damage to the overall system being maintained even if such work is being properly conducted, e.g., in the event of a necessary power interruption.
- 16.8 Kieback&Peter shall not assume any liability for damage caused as a result or for properly conducted maintenance, repair or service work or programming work to hardware and software.

#### **17. NON-DISCLOSURE**

- 17.1 The parties shall be obligated to confidential treatment of any and all operating and business secrets and the technical and organizational information obtained in the context of contract performance – hereinafter jointly referred to as "**Confidential Information**". Information generally published by the party concerned or representing generally accessible knowledge shall not be Confidential Information.
- 17.2 Where Kieback&Peter employs the works and/or services of third parties for the performance of the Construction Services resulting from the contractual relationship in question, Kieback&Peter shall be entitled to provide such third parties with Client's Confidential Information insofar as is absolutely necessary for performance of the works and/or services in accordance with the agreement. Kieback&Peter shall obligate the third party/parties to treat the Confidential Information with utmost confidentiality.
- 17.3 Kieback&Peter shall also be authorized to disclose Client's Confidential Information where Kieback&Peter is obligated to do so by statutory provisions or official order and where third parties are concerned that are obligated to non-disclosure by virtue of their profession.

#### **18. APPLICABLE LAW, LEGAL VENUE, PLACE OF PERFORMANCE**

- 18.1 The laws of the Federal Republic of Germany shall apply to all legal relationships between Kieback&Peter and Client with the exclusion of the United Nations Convention on the International Sale of Goods (CISG).
- 18.2 Legal venue shall be the competent court locally responsible for the place of Kieback&Peter's registered office. Kieback&Peter shall, however, be entitled to file a complaint alternatively at the court competent for the place of Client's registered office.
- 18.3 Place of performance for both parties shall be the place of the registered office of Kieback&Peter in the case of Work Deliveries and the place of the construction site in the case of Construction Services.