

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 Performance of Services

Part B of the Contracting Rules for Services (except the German Construction Contract Procedures VOB)

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0. Preamble

The General Terms of Contract set forth hereunder are intended for contracts on services, especially for sales contracts, contracts for work and labour and contracts for work and materials, as well as contracts for shipment of movable goods to be produced or manufactured.

All privity of contract between ordering party and contractor are subject to German law.

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

1. The type and scope of services rendered by both parties is regulated by the contract.

2. Case of contradiction within the contract the following are valid in order:

- a) Description of Services
- b) Special Terms of Contract
- c) Eventual Complementary Terms of Contract
- d) Eventual Additional Terms of Contract
- e) Eventual 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 from the contractor are not part of this contract.
2. The contractor shall confirm receipt of a surcharge or order within 14 calendar days of submission.
The receipt shall be submitted to the ordering party in the form prescribed by the same. If the

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contractor delays the confirmation of receipt. The ordering party may withdraw from the contract upon expiration of the deadline.

3. The prices given in the order are – if not stated otherwise – fixed prices which satisfy all services provided by the contractor including freight, packaging, generation of operating, reference and user manuals and similar documents in German language and other costs and charges. The regulation PR Nr. 30/53 is the regulation valid for the prices of public orders.

2. Changes of Services (VOL/B § 2)

1. The ordering party may demand changes in the type of services within the service capability of the contractor, unless it is unacceptable to the contractor.
2. If the contractor has concerns against the change of services, he/she must inform the ordering party about it immediately and in writing. If the ordering party does not share the concerns of the contractor, he/she will remain responsible for his/her specifications and requirements. The contractor is only obligated to render an advisory opinion if a special proposal is produced.
3. If the change of the scope of services causes a change of the price basis for the services provided for within the contract, a new price must be agreed on under consideration of additional or reduced costs. The contract must consider any effects the change of service may have on the terms of contract, in particular with regard to the service execution deadlines. This agreement is to be entered into forthwith.

Regarding § 2 No. 3

1. Upon request, the contractor must establish proof of the additional or reduced costs due to the change of service. The new prices shall be agreed on prior to the execution of the changed services.
2. With regard to the marketable, off-the-shelf products which there are prices provided for within the contract.
 - the contractor is obligated to render additional services of up to 10 pc of the quantities set forth in the contract for the prices per unit set forth in the contract.
 - there will be is no demand for a change of the prices per unit set forth in the contract for reductions of up to 10 pc of the quantities set forth in the contract. New performance deadlines shall be agreed on upon demand.
4. (1) Services rendered by the contractor's own account by deviating from the contract, will not be compensated. The contractor must retract or remove these services upon request within an appropriate set period of time, otherwise they may be returned or removed at the contractor's expenses. The contractor will only be entitled to compensation if the ordering party accepts these services retroactively.
(2) Further claims of the ordering party unaffected.

3. Documents for the Execution of the Order (VOL/B § 3)

1. The documents necessary for the execution must be submitted by the contractor free of charge and in a timely matter, where they are not generally accessible.

Regarding § 3 N. 1

1. Only documents explicitly marked for the execution by the ordering party may be used as basis for the execution of the order.
2. The responsibility and liability in accordance with this contract, in particular in accordance with § 4 No. 1 Clause 1 and § 14 VOL/B, are not limited by No. 1.
3. The contractor must acquire DIN standards, regulations of the German Association of Electricians (VDE), the regulations of the commission for delivery terms and quality assurance (RAL) and similar universally valid technical regulations at his/her own expense.

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2. The documents the parties to the contract make available to each other may not be published, duplicated or used for another purpose than the one agreed one without prior consent of the other party to the contract. If not agreed on otherwise, the documents must be returned upon request.

Regarding § 3 No. 2

1. The approval by the other party to the contract must be made in writing.
2. Like the documents for the execution of the order, the samples received by the contractor are property of the ordering party and must be returned free of charge to the same upon completion of the order.

4. Performance of Service (VOL/B § 4)

1. (1) The contractor shall take the responsibility for the performance of service in accordance with the contract, and in due consideration of the recognised regulation of technology, as well as the legal provisions and official provision.
(2) The contractor is solely responsible for the performance of the legal and official obligations, as well as the obligations in accordance with the trade association.
toward his/her employees. It is solely his duty to reach and agreement and take measures that regulate his/her relationship to his/her employees.

Regarding § 4 No. 1

1. The contractor commits to only deliver goods which are in accordance with the accident prevention regulations (autonomous legal norms) enforced by the act accident insurance companies and valid in the Federal Republic of Germany at the time of delivery, as well as with the generally recognised technical, safety and occupational health related regulations.
2. The contractor is also responsible for the performance of service, if the plans, drawings and calculations necessary for the performance of service have been presented to the ordering party and he/she place the order according to these.
3. The contractor must make arrangements for the prevention of personal and property damages on his/her own account. This applies in particular to the precautionary measures required in accordance with the accident prevention regulations for the protection of employees provided by the employers' liability insurance associations.
4. When performing services in the facilities or on properties of the ordering party, the contractor shall coerce his employees to follow the instructions of the respective employees of the ordering party, and persons acting in opposition may be banished from the place of work. If violations are repeated, the ordering party may withdraw from the contract without appointment of a date or warning, or terminate the contract effective immediately.
5. The ordering party is only liable for property damages in case of deliberate or gross negligence of its acting organs (§§ 89, 31 Civil Code BGB) or subcontractors (§ 278 German Civil Code BGB). Liability without fault and liability for a simple negligence is ruled out; this also applies to simple negligence with regard to the choice, instruction or monitoring of vicarious contractors and with regard to the acquisition of equipment and tools (§ 831 Civil Code BGB). As long as the ordering party is not liable, his/her organs and subcontractors are also not liable. The same applies to subcontractors and vicarious contractors, unless they have acted with premeditated or gross negligence. Claims according to the basic principle of the official liability (Art. 34 Basic Law GG, § 839 German Civil Code BGB) remain as unaffected as the liability for personal damages (life, physical and health damages).
6. The contractor must care for the proper monitoring and storage of the implements, workwear, etc., as well as for the objects made available by the ordering party. This also applies if the objects are located in the rooms or on the property of the ordering party.
7. If due to legal provisions the ordering party is liable for personal or property damage which employees of the contractor incurred during the execution of the order, he/she is entitled to recourse against the employee, if the damages were incurred due to the contractor's or employee's fault.

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2. (1) If it is agreed with the ordering party that he/she may keep current on the progress of the performance in accordance with the agreement, it must be ensured that he/she has access to the work stations, facilities and storage rooms, in which the articles/objects or parts of them necessary to perform the service are being produced or stored for certain materials, during business and opening hours.
(2) At the same time, the ordering party is not entitled to disclose fabrication or business secrets of the contractor.
(3) All fabrication and business secrets made available through viewing, documents or other disclosure, are to be kept in confidence. In case of fraudulent use the ordering party is liable.

Regarding § 4 No. 2

1. The ordering party is entitled to be informed on the performance of the order in accordance with the agreement.
2. The contractor must inform upon request, whom he has assigned as representative for the conduction of the service performance.
3. If not agreed on otherwise, the ordering party is liable for the quality of the supply by the ordering party as well as for the performance of subcontractors agreed on. The contractor has the responsibility to inform the ordering party about recognisable defects incurred to the supplies from the ordering party or from subcontractors of the ordering party, on application of due diligence. If the ordering party omits this responsibility, he/she will take on liability.
4. The contractor may only assign the service performance or considerable parts of it to a third party upon approval from the ordering party. An approval is not necessary for insignificant partial performances or such partial performance that the establishment of the contractor is not prepared for. This provision may not be interpreted to the disadvantage of the business deal.

Regarding § 4 No. 4

The contractor shall

- a) Proceed in accordance with competitive aspects when conferring parts of the performance (subcontract).
- b) Name the subcontractor upon request to the ordering party.
- c) In general, not impose more unfavourable conditions on the subcontractor as already existing between the contractor and the ordering party – in particular with regard to the form of payment and the surety.
- d) Give preference to small and medium sized firms when soliciting quotations, as long as it is in accordance with the contractual performance of the order.
- e) Inform contractors that this is a public offer.
- f) In case of major orders, offer subcontracts to small or medium sized firms, as long as it is in accordance with the contractual performance of the service.

5. Interference with or Discontinuance of the Performance (VOL/B § 5)

1. If the contractor feels that the contractual performance of his service is being interfered, he must inform the ordering party about it immediately and in writing. The notice may be omitted when the facts and their impeding effect is obvious.
2. (1) The performance deadlines may be properly extended if the interference within the establishment of the contractor is caused by force majeure, other circumstances which are out of the contractor's control or caused by legally allowed lockout. The same applies to interferences of subcontractors and suppliers as long as the contractor is indeed prevented from procuring spare parts.
(2) If not agreed otherwise, the parties are entitled to withdraw from the Agreement or cancel it in its entirety or partially in writing within 30 days upon termination of this time, as long as the interference, which the contractor is not liable for according to Clause 1, will last longer than three months upon entry of the notice according to No. 1 Article 1 or occurrence of the obvious event according to No. 1 Article 2.
3. As soon as the interfering circumstance discontinues, the contractor must immediately resume the performance of his service upon written notice to the ordering party.

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

The contractor must, as long as the ordering party bears the shipment costs separately, to carefully preserve the interests of the ordering party under consideration of the terms of shipment of the ordering party. This applies in particular to the choice of the shipment route, the choice and utilisation of the means of transport and the most reasonable identification according to the tariff.

Regarding § 6

1. The contractor must ship the delivery items according to the data provided in the order.
2. The delivery items must be shipped free delivery to the point of use at the contractor's risk.
3. All packaging, shipment, freight and transport costs as well as additional costs arising from the shipment, the fees for the generation of consignment notes, weighting, counting, etc., and all freight costs incurred at the places of production and delivery and local costs (connection, train station, servo, transfer and transposition) are included in the performance price.
4. Eventual insurance costs as well as additional fees for registered mail and valuable goods shipments are included in the performance price if not agreed otherwise
5. Additional costs for the accelerated transportation are only reimbursed if such a transportation is agreed on.
6. Costs arising from the transportation of tools and instruments necessary for the instalment at the point of use are included in the performance price if not agreed otherwise.
7. Packaging materials will be passed to the ordering party without rights to special compensation, if not agreed otherwise.

It is hereby referred to the duty of redemption of the producer or the carrier of packaging material, transport packaging, outer packaging or sales packaging in accordance with the packaging regulations. In the event that the aforementioned packaging must be returned, the contractor will bear the costs.

If shipment is effectuated in rented receptacles, the contractor is not entitled to reimbursement of the rental fees, if not agreed otherwise.

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

1. In the case of breach of duty by the contractor the legal provisions will apply in accordance with the following terms subject to the regulations of § 14 VOL/B.
2. (1) The contractor must not make up for a loss of profit incurred by the ordering party if the damage was caused by the contractor through light negligence. The responsibility to make up for these losses is also excluded in the case of delay caused by the contractor upon provision by the ordering party.
(2) In addition, the liability to make up for losses can be limited in individual cases. Here, the customary terms of delivery should be considered, for example, if the liability is limited to sums, or to the restitution of additional expenditures for replacements.
(3) If the ordering party claims compensations for damages instead of the whole service or instead of reimbursement of expenses, the contractor is bound to immediately return all documents made available to him (drawings, calculations, etc.). The ordering party must inform the contractor immediately about the type of claims intended. The ordering party must inform the contractor about the additional costs for the performance of services by a third party within three months after payoff of the third party. The ordering party must inform the contractor immediately about the amount of the remaining claim.
(4) If the ordering party claims compensation for partially performed services instead of the service or the ordering party claims reimbursement of expenses regarding the receivable part of the service, the contractor must immediately submit a verifiable invoice on the partial service already rendered. For the rest, Article 3 applies.
3. If the ordering party exercises a right to withdrawal, No. 2 Article 3 (1) and (4) will apply. If the ordering party exercises a right to partial withdrawal No. 2 Article 4 (1) will apply additionally.
4. (1) If the contractor falls behind, the ordering party will communicate a deadline for the service or for later performance to the contractor, before exercising the right to withdrawal.

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(2) The ordering party must explain upon request of the contractor, if he/she is going to withdraw from the contract because of the delay of service or if he/she is going to insist on the performance of service. This request must be made before expiration of the deadline according to Article 1. Until the contractor receives a response he is entitled to this service.

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 were imposed on the assets of the contractor or if an imposition was applied for, or if this application was denied because of missing matters or if the proper processing of the contract is put into question or if he/she is going to suspend payments not only temporarily.
2. The ordering party may withdraw from the contract or terminate the contract effective immediately if the contractor has participated in an illegal competition limitation according to the law against competition limitations with regard to the award 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. Receivables of the contractor against the ordering party were impounded, unless the contractor immediately offers surety.
 - 1.2. The contractor acts contrary to the obligations according to § 4 No. 2 Article 1 or § 4 No. 4 VOL/B.
 - 1.3. The contractor offers benefits to persons who are involved in the preparation completion or performance of the contract on the ordering party's side, under consideration of their affiliation to the administration of the ordering party. Such acts by the contractor are equal with acts by persons who are involved in the preparation, completion or performance of the contract on the contractor's side, regardless whether the benefits of said persons of the ordering party are offered, promised or granted to them directly or in their interest to their relatives or another person close to them or in the interest of a third person.
2. Before exercising the rights according to Nos. 1.2 and 1.3, the contractor must be given the opportunity in accordance with § 19 No. 1 VOL/B and without prejudice to comment immediately on the circumstances of the case.
3. **In the case of cancellation, the service rendered so far - if the ordering party can make use of it - must be brought to account at contract prices or according to the rendered parts of the whole contractual service. Services which cannot be used must be returned to the contractor at the contractor's cost.**

Regarding § 8 No. 3

When withdrawing from or terminating a contract, the ordering party and the contractor are bound to disclose the information to each other, which are necessary to calculate the respective demands.

4. **Any other legal rights and demands of the ordering party remain untouched.**

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

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 fulfilment 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 fulfil his/her contribution, with the explanation that he/she 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 Article 2 of the German Civil Code.

3. Claims of the contractor because of culpable infringement of obligations to co-operate by the ordering party remain untouched.

10. Bailment (VOL/B § 10)

The contractor must preserve the services rendered by him and the goods handed over to him in order to fulfil the contract from damage or loss up to the transfer or risk.

11. Contractual Penalty (VOL/B § 11)

1. §§ 339 and 345 of the German Civil Code apply when contractual penalties are agreed on. An appropriate maximum limit must be determined.
2. If there is a contractual penalty agreed on regarding the violation of deadlines it may not exceed 0.5 pc of the value of the part of the service which cannot be used. This amounts to a maximum of 8%. If the contractual penalty is calculated according to days, only business days will count. However, if the penalty is calculated by weeks, each business day of a week that has already started will be counted 1/6 week. The ordering party may make claims from forfeited contractual penalty until the final payment.

12. Quality Inspection (VOL/B § 12)

1. The quality inspection is the verification of the performance regarding the fulfilment of contractual technical and organisational requirements connected to them by the ordering party or his/her appointee determined in the contract. The acceptance remains untouched by it.
2. If a quality inspection is determined in the contract, which must include provisions on type, scope and place for the performance, the following provisions apply if not agreed on otherwise:
 - a) Partial performance may also be inspected upon request of the ordering party or contractor, in particular in those cases in which the inspection would be made difficult or even impossible if the performance was carried out any further.
 - b) The contractor must communicate the time of the performance or partial performance for the inspection agreed on to the ordering party or his/her appointee in due time and in writing. The parties will then immediately set a deadline for the conduction of the inspection. If this deadline elapses unused on account of the ordering party, the contractor may set an appropriate deadline with the request that the inspection will be conducted within the period of grace or to explain whether the ordering party does without the quality inspection. If the ordering party does not conduct the inspection within the period of grace and the ordering party does not waive the inspection, he/she will have to pay compensation according to the regulations of debtor delay at the end of the grace period.
 - c) The contractor must provide the necessary manpower, space, machines, tools, testing and measuring equipment, as well as operating materials for the quality inspection
 - d) If, as a result of the quality inspection, the parties agree that the services or partial services must be rejected as they are not contractual, the contractor must replace these with contractual services or partial services.
 - e) If the parties do not come to an agreement regarding the rejection of services as a result of differences of opinion concerning the testing procedure applied, the contractor may demand a further inspection by a testing centre agreed on with the ordering party and which is going to make the final decision. The losing party will bear the costs arising from this inspection.
 - f) The contractor must issue a release endorsement for the delivery of the services. This is the precondition for the delivery to the ordering party.
 - g) The contractual price includes costs which the contractor incurs based on the quality inspection agreed on. Parts which are rendered useless by the quality inspection are not counted against the performance.

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Regarding § 12

1. The ordering party can determine type, scope and location of the quality inspection – preferably under consideration of the concerns of the contractor.
2. If a quality inspection is envisaged, the contractor must communicate the start of the production and – on request by the ordering party – further stages of production to the testing centre appointed by the ordering party for the quality inspection in due time and in writing. The quality inspection must be conducted within an appropriate period of time.
3. The contractor must make those performances available which he has pre-audited and judged as contractual.
4. The contractor must immediately finish performances which have been rejected by the quality inspection as not contractual.
5. The contractor must immediately remove all performances which have been rejected at the quality inspection as non contractual and replace them with contractual performances at the location of the quality inspection.

13. Acceptance (VOL/B § 13)

1. (1) If not agreed on otherwise, the legal provisions apply for the transfer of risk.
(2) If the shipment or the transfer of the completed performance are delayed beyond the deadline on demand of the ordering party, the risk transfers to the contractor for the delay period, if another time period is not agreed on.
2. (1) The acceptance is the declaration of the ordering party that the contract regarding the principal matter. If an acceptance is provided by law or agreed on within the contract, the ordering party must declare within the deadline if he/she accepts the performance.
If there is a non-essential defect, the ordering party may not reject the acceptance if the contractor explicitly recognises his/her responsibility to remove the defect.
In the event of non-acceptance the ordering party will communicate the reasons and set a period of grace for a new presentation for acceptance to the contractor as long as a later performance in particular is possible and reasonable for both parties, irrespective of the right of the ordering party arising from the non-compliance with the original performance deadline.
(2) With the acceptance the liability of the contractor for recognised defects is dropped, as long as the ordering party does not reserve the right to exercise rights regarding certain defects.
(3) If the ordering party has utilised the performance, the acceptance is regarded as at the time the utilisation started, if not agreed otherwise.
(4) The foregoing articles also apply to the acceptance of partial performance.

Regarding § 13 No. 2

1. Defects detected during acceptance can be claimed, irrespective of prior quality inspections.
2. Place of fulfilment and performance is – if not agreed otherwise - the point of use (*Verwendungsstelle* – ZVB-NRW No. 2 Regarding § 6), which is only open Monday through Friday from 08:30 am to 12:00 am and, when necessary, upon appointment, for acceptance of shipment or acceptance of performance.
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 most possibly while protecting the interests of the contractor at the expense of the contractor.

14. Claims for Defects and Statute of Limitations (VOL/B § 14)

1. If a defect is attributed to the wish of the ordering party after changing the nature of the performance (§ 2 No. 1), to materials provided or prescribed by the ordering party or to pre-deliveries demanded by the ordering party, the contractor is exempt from claims based on these defects, if he has issued the written notice in accordance with § 2 No. 2 or § 4 No. 3, or if the materials delivered by the ordering party are defect and which are not recognisable when applying the conventional care and attention.
2. The legal provisions with the following measures apply for defect claims:

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- a) if the performance shows defects the contractor shall be first given an appropriate period of grace for further performance. All partial performance or performance are to be repaired, delivered or provided, upon choice of the contractor and free of charge, which show material defects within the statutory period of limitations as long as the cause of the defect took place during the time of the transfer of risk.
After expiration of the period of grace, the ordering party may remove the defects or have the defects removed by a third party at the expense of the contractor.
The ordering party may set an appropriate deadline with the indication that he/she rejects to remove the defects after unsuccessful expiration of the deadline. In this case, the ordering party may, in accordance with the legal provisions:
 - 1. Reduce the compensation or withdraw from the contract, and
 - 2. Demand indemnity or replacement of unavailing expenditures.
- b) An indemnity claim by the ordering party refers to a damage of the subject matter of the contract, unless
 - aa) The damage incurred is caused by premeditation or gross negligence of the ordering party himself/herself, his/her legal representatives or his/her contractor (§ 278 of the German Civil Code),
 - bb) The damage is caused by a non-fulfilment of the warranty for the quality of the performance
 - cc) The damage results from vital damage, physical harm or harm of health.
 As long as the contractor is not liable according to aa) to cc) the claim for replacement of unsuccessful performance is limited to the value of the performance affected by the defect.
The indemnity and compensation liability according to aa) is dropped if the contractor shows proof of sabotage, or if the ordering party has provided the performance contractors, or of the contractor has not had any decisive influence on the choice of performance contractor.
- c) The ordering party must set an appropriate deadline for the contractor to remove defect goods. After expiration of the deadline, the ordering party may dispose of this good most possibly while protecting the interests of the contractor at the expense of the contractor.
- d) The contractor is not liable for changes or repairs made by the ordering party in an improper manner and without the consent of the contractor.
- 3. If not agreed otherwise, the legal deadlines of the German Civil Code apply for the statute of limitations on claims for defects. Other regulations must be provided for if it is necessary due to the nature of the performance, under consideration of the regulations usual in this economic branch. The ordering party must inform the contractor immediately and in writing about the defects.

Regarding § 14 Nr. 3

- 1. Due to the timely notice of defects the statute of limitations on claims for defects is slowed down until the contractor communicates the result of his/her inspection of the detected defects to the ordering party in writing or until he/she as definitely rejected the removal of defects. The statute of limitations on claims for defects starts again, if the contractor shows accepts this claim through his/her behaviour.
- 2. The ordering party may make claims of defects regarding infringements of provisions and regulations determined by ZVB-NRW No. 1 Regarding § 4 No. 1 during the whole time of customary usage, however up to a maximum of five years. If the statute of limitations enters into force in accordance with the regulations but later than provided for in the foregoing article, it will remain as agreed on.

15. Invoice (VOL/B §15)

- 1. (1) The contractor must bring his performance to account in a verifiable manner. His/her invoices must be concise showing the items in the order as determined in the contract, with the names as determined in the parts of the contract and, where applicable, fulfilling the requirements for

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invoice forms determined in the contract, as well as type and scope of the performance through receipts in the customary manner. The amounts of the invoice which must be paid for changes or additions, must be listed separately from the other items with reference to the arrangements reached and marked separately.

(2) If not marked otherwise, this invoice is regarded as closing invoice.

2. If a verifiable invoice according to No.1 is not submitted within an appropriate period of time, the ordering party may issue an invoice at the expense of the contractor, after giving the contractor notice.

Regarding § 15

1. The invoice must be issued to the entity or entities determined in the order
2. The invoice must be submitted in duplicate, if not agreed on otherwise. The second and, if applicable, further copies must be marked clearly as duplicates.
3. The invoice must list the performance in the wording and sequence used in the order in individual entries regarding items and quantity. Summarised details such as "produced", "repaired", "made passable" etc, without detailed description are unacceptable. Abbreviations referring to a performance index of the ordering party are acceptable if the fulfilment does not deviate from the performance description.
Contractors must issue the invoice with the contractual prices without value added tax (net prices). If the contractor resides in the Federal Republic of Germany, in case an award of contract, the value added tax at the tax index of the day the tax is incurred must be calculated and added to the invoice.
Contractors from other EU member states must consider the special legal taxation regulations acquisitions within the European Union when issuing the invoice.
4. Invoices must be marked according to their purpose as instalment, partial or closing invoice. The instalment and partial invoices must be numbered consecutively.
5. If an item price contains fractional amounts of the smallest currency unit, these amounts must be included in the calculation
6. If indications on the invoice were changed, the original indications must remain legible.
7. Delivery orders must contain:
Number and date
Number, date and order reference number
Serial number of a partial delivery
Type and scope of the delivery
8. A claim on payment of invoice is only given if the verifiably supporting documents of the delivery/performance are attached to the invoice. This usually happens through recognised time report, receipted delivery notes or proof of performance.
9. Payment delay as a result of incomplete invoices or missing supporting documents are charged to the contractor.
10. If not agreed otherwise, the invoice must be submitted the latest 18 business days after completion of performance.

16. Performance According to Hourly Rates (VOL/B § 16)

1. Performance is only paid according to hourly rates if the contract provides for it or if they were determined by the ordering party at the beginning of the performance fulfilment.
2. The ordering party must be informed about the start and finish of such performance. If not agreed otherwise, lists of the performance according to hourly rates must be submitted on a weekly basis, which must show the work hours fulfilled and the basic materials, auxiliary materials and operating supply items to be compensated separately as well as specially agreed on compensations for the supply of scaffolds, tools, hardware, machines and similar items.

Regarding § 16 No. 2

1. In the case of work according to hourly rates, the monitoring of which is contractually provided for by the ordering party, the contractor is obligated to have the time reports confirmed in writing by the entity agreed on in the contract.

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2. The approved time reports must be submitted together with the invoice. On demand, the first notes must be submitted for inspection.
3. The time reports must include all specifications necessary to inspect the invoice. If the performance according to hourly rates is connected to other performance, the issuance of a separate invoice is not necessary, but the hourly rates must be indicated at the end of the invoice.
The indications include date, definition of the location, name and qualification of the manpower (e.g. foreman, assistant, non-skilled worker, trainee), the hours fulfilled per worker, the type of performance.
3. If not agreed otherwise the invoices are to be submitted on a weekly basis, the first one 12 days after start of performance.

17. Payment (VOL/B § 17)

1. The payment of the invoice amount takes place upon fulfilment of performance. It may happen earlier according to the payment conditions agreed on. If such agreement is not give, the payment of the invoice amount must take place within a month of receipt of the verifiable invoice. The payment usually takes place cashless. Decisive for the timeliness is the receipt of the transfer order at the banking institution of the ordering party.
2. If instalments are agreed on, they must be paid upon application within appropriate deadlines corresponding to a justifiable value of the fulfilled performance. The performance must be established via verifiable itemisation. Instalments do not count as acceptance of partial performance.
3. If there are any differences of opinion regarding the closing invoice, the ordering party is entitled to receive undisputed value.
4. The unreserved acceptance of a closing payment marked as such excludes additional claims. A reserve must be expressed within two weeks of entry of closing payment. A reserve elapses, if a verifiable invoice on the requirements under reserve is not submitted within one further month, or, if this is not possible, the reserve is explicitly explained.
5. If, after acceptance of the closing payment, there are errors detected in the supporting documents of the invoice, the invoice must be corrected. Such errors are errors of performance identification, errors in the application of the general calculation rules including comma, endorsement and transfer of pages. Contractor and ordering party are obligated to reimburse the resulting amounts.

Regarding § 17

1. If not agreed otherwise, the payment will be made at the ordering party's choice within 14 days less discount agreed on or within 30 days without discount.
2. The payment and discount period starts with the entry of the verifiable invoice (see ZVB-NRW No. 8 Regarding 15) at the entity defined, however the earliest at the time of the transfer of risk according to ZVB-NRW Regarding § 13 No. 2.
3. Payments including advance payments and instalments may also be reduced by debit amounts of the ordering party toward the contractor if the debit amount is not based on the same contractual relationship.
4. In the event of overpay the contractor must reimburse the amount overpaid. If the contractor does not effectuate the reimbursement within 14 calendar days upon entry of the reimbursement request, the contractor is behind payment schedule from this time on and must pay interest on late payments pf 8% of the basic interest rate of § 247 of the German Civil Code BGB.
The contractor may not invoke loss of enrichment.
5. The contractor may only assign the claim upon prior written consent of the ordering party.

18. Surety (VOL/B § 18)

1. (1) If not agreed on otherwise, sureties are only permissible on condition of § 14 VOL/A starting at a contract price of 50,000.00 €. If a surety is agreed on, §§ 232 – 240 of the German Civil Code will apply, as long as other conditions do not arise from the conditions mentioned below.

The English version of the terms of contract is **only** for your information.
The German version is legally binding.

- (2) The surety serves to ensure the contractual fulfilment of performance and the enforcement of claims for defect.
2. (1) if not agreed otherwise in the contract, the surety may be provided via money deposit or via bond of a credit institution or credit insurance accredited in the European Union or in a state which is 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 about the suitability of the guarantor, the contractor must establish proof of the suitability of the guarantor.
(2) The contractor has the choice of the different types of surety; he may replace on surety with the other.
 3. If the surety is given by a guarantor other than an accredited credit institute or credit insurance, the guarantor must be approved by the ordering party as suitable.
 4. (1) The certificate of bond is issued in writing with the explicit stipulation that the surety is subject to German law, under abandonment of the exceptions or balance against each other, voidability and benefit of discussion (§§ 770, 771 of the German Civil Code), it may not be limited to a certain time and must be issued in accordance with the provisions of the ordering party. The surety must include the explicit agreement of a domestic competent court of jurisdiction chosen by the ordering party for all disputes on the validity of the certificate of bond and on the agreement itself.

Regarding § 18 No. 4 Article 1

Notwithstanding No.4 Article 1 the certificate of bond includes the amendment that the abandonment of objection of the balance against each other does not apply to the undefeated or enforced counter claim.

- (2) The ordering party may not demand a surety which obliges the guarantor to make a payment upon first demand.
5. If a surety is provided via money deposit, the contractor must deposit the amount on a blocked account of a financial institute agreed on, which both parties can dispose of. The contractor is entitled to any interest arising from this account.
 6. If not agreed otherwise, the contractor must pay the surety within 18 business days upon conclusion of the contract.
 7. The ordering party must immediately return a surety when the surety matter is abandoned completely or partially.

19. Disputes

1. In the event of disputes, the ordering party and the contractor must first try to come to an amicable settlement within two months.
2. If the conditions are given for a jurisdiction agreement according to § 38 of the code of civil procedure, the jurisdiction acts exclusively in pursuance of the location of the legal representation by the entity provided by the ordering party for all disputes on the validity of the contract and on the contractual relationship, if not agreed on otherwise. The ordering party is obliged on request to communicate the entity representing the ordering party in the legal process.
3. Disputes do not entitle the contractor to stop the performance transferred, if the ordering party declares that the performance must be continued due to special public interests.