



PHILIP MORRIS Manufacturing GmbH  
Neuköllnische Allee 80, 12057 Berlin

## Special Terms of Contract for Building Works

### 1. Prevalence

- 1.1 The present general terms and conditions for the carrying out of construction works are effective for our contractual relations with contractors, corporate bodies of the public law and special public assets according to § 310 Abs. 1 BGB.
- 1.2 Our general terms and conditions for the carrying out of the construction works are effective for all legal business relations we have now and will have in the future with respect to the construction works commissioned by us, as long as in individual cases not other variations are agreed upon in writing.
- 1.3 Deviating declarations and terms and conditions of the contractor do not bind us even if we do not object or if they do not explicitly contradict our general terms and agreement for the performing of the construction work, rather only if they are confirmed by us in writing. An acceptance of the service and delivery means in no way an understanding with other conditions of the contractor.

### 2. Orders and Contract Conclusions

Our orders are - as long as nothing else is agreed upon - to be confirmed in writing within 5 (five) days after order receipt from the contractor under specification of the binding date of completions and of the price. If there exists an ongoing business relationship and the contractor wants to decline the order, he has to declare this immediately, otherwise the order is considered to be accepted. In other cases we reserve the right to withdraw orders in case they were not confirmed in writing within the time limit.

### 3. Safety and Environmental Regulations, Construction Site Policy

- 3.1 For the carrying out of construction, our security regulations as well as our current regulations concerning the carrying out of construction works, respectively, and which were brought to the attention of the contractor and which we pointed out to him, are all in effect.
- 3.2 In as far as specifications, plans, drawings, process information, samples or data, construction records or data carrier and files, assembly or operating instructions, operating handbooks or similar explanation reports are required for the manufacturing, operating, and maintenance of the factory or parts of the factory, the contractor is obligated to deliver those in the German language. In as far as an EC conformity declaration with CE-designation or a certification, for example design check (GS), is required for the manufacturing or operating of the factory or part of the factory, the contractor is obligated, therefore, to deliver the underlying documentation in German to us. The contractor is to pay attention to the current status of technology, the applicable EC-regulations, all valid rules and regulations, and in particular EN standards, DIN standards, as well as VDE and VDI regulations.
- 3.3 The contractor is obligated to co-operate in the use of electrical, informational, and measuring technical instruments as consistently as possible in such a way that he makes arrangements with us ahead of time regarding the parts and accessories, for example the computer system software, motors, or switch and measuring equipment installed by him.

### 4. Prices and Terms of Payment

- 4.1 The agreed upon prices are firm prices; subsequent price increases will not be recognised. Regulations/Controls for customising payment by increased or decreased efficiency, contractual changes or additionally charged services remain unaffected.
- 4.2 The prices include, as long as nothing different is agreed upon in writing, inclusively the costs for delivery, packing and all building materials and incidental services. Sales tax is to be added to the agreed upon prices as long as nothing else is agreed upon.
- 4.3 If hourly wage work is planned, the number of hours calculated for that is not binding; § 2 Ziff.3



VOB/B therefore does not apply. Only the hours actually worked according to our orders will be paid.

- 4.4 Value-added tax, as well as other taxes, duties, and customs or assessments, if applicable, are to be shown separately on the bill. We are required to withhold the amount of the value-added tax as long as no certificate of exemption according to § 48 b EStG is presented to us from the contractor.

## **5. Assignments, Subcontractors, Right of Retention**

- 5.1 The contractor is not entitled without our prior written consent, which may not be inequitably refused, to cede his accounts receivable to us or let them be collected through a third party.
- 5.2 The contractor is not entitled without our prior written consent to cede the fulfilment of his contractual duties wholly or partially to a subcontractor. If we agree upon the awarding of sub-contracts, copies of all subcontracts are to be presented upon our request directly after being issued from the contractor to the project managers in charge, whose department is mentioned in the contract. The liability of the contractor for the fulfilment of his contractual duties through the subcontractor remains unaffected.
- 5.3 The subcontractor can exercise a right of retention only because of justified counter claims from the same delivery.

## **6. Insolvency**

Should the contractor cease payment or insolvency proceedings be filed for concerning his assets, we are authorised, as long as delivery has not yet been made, to back out of the contract for the unfulfilled portion, and for the case that partial deliveries have been made which are not of interest to us, we are also authorised to back out of the contract as a whole. A prerequisite is that the contractor, despite our request for step-by-step performance or provision of security, has not undertaken them within a reasonable grace period set forth to him.

## **7. Job Time Limits, Contractual Penalties**

- 7.1 The agreed upon completion date is to be strictly kept. If the contractor foresees hindrances regarding the on-time completion of work, then he must notify us of this immediately in writing stating possible completion dates. In case of our consent to this new completion date, which must take place in writing, the claims for damages because of delayed work performed remain unaffected.
- 7.2 With default of the contractor, we are entitled to withdraw from the contract and demand damages after an unsuccessful grace period of at least 2 (two) weeks.
- 7.3 The setting of a grace period is not needed if the date of completion is "fix" agreed upon as the contract period or if the contractor also declares within the grace period that he is unable to complete the work.
- 7.4 Neither of the contractual partners is responsible for the non-fulfilling of his duties of the contract, in as far as the non-fulfilment concerns matters beyond his control, such as war, natural disasters, fire, flooding, explosions, earthquakes, rioting and official decrees. The contractor can then effectively appeal to a case beyond his control if he has notified us concretely and in each individual case in writing by fax or e-mail of the case beyond his control at least 24 (twenty-four) hours before the agreed upon delivery date. If the notification does not take place before the point in time mentioned in clause 1, then the contractor can merely appeal to a case beyond his control if the case beyond his control occurred verifiably within the 24-hour time period and was the cause of the delay in delivery.
- 7.5 The contractor is to pay us a contractual penalty of 0.2% for each workday of the delay and at most 5% of the contract sum for the delay of the completion date.

## **8. Risk-Carrying, Execution**

- 8.1 The contractor carries the risk up until the final inspection of the factory, in so far as it is not vested in us due to delay of inspection according to § 644 Abs.1 S.2 BGB.
- 8.2 The contractor is obligated to carry out daily construction reports and to give over a copy thereof daily to our construction supervisor. The reports must contain all information which could be of importance for the execution or settlement of the contractual services, for example weather, temperature, amount and kind of labour force employed at the construction site, hourly expenses, amount and kind of large equipment put into place, plan entrances, the significant work progress (beginning and end of partial performances, cementing times, and so forth),



certain kinds of the execution or settlement, especially inspections, interruptions of the execution including shorter interruptions of the work time with stated reasons, accidents, hindrances and other occurrences.

- 8.3 As long as the contract is on both sides not completely fulfilled, the contractor is to directly inform us of each change in his affiliation to the workman's compensation board. At our request he is to submit to us at any time the membership certificate of the board and a statement of the board showing that he has fulfilled his dues and pay advancement duties.
- 8.4 The arrangement of living accommodations for labour forces of the contractor at the construction site is strictly forbidden. Exceptions in justified cases require our prior written permission.
- 8.5 The contractor is obligated to name a person who is continuously employed at the construction site as construction supervisor without our explicit request. Any change over in this person is to be reported in writing to us immediately. The construction supervisor oversees the compliance of the construction supervision regulations and everyone for the prevention of accidents, the occupational safety and health and for the security regulations in force; he is the authorised agent in the sense of § 4 of the construction site provision.
- 8.6 The construction site is to be vacated as soon as the contract is finished. Should the contractor not adhere to an order to that effect from us, we are entitled to have the construction site vacated at the expense of the contractor, provided that a reasonable grace period of at least 5 workdays allotted by us has expired in vain.

## **9. Liability, Notification of Construction Accidents, Employer's Liability Insurance**

- 9.1 The contractor is to carry out everything for the security of the construction site according to the measures and accident prevention regulations required by law in his own full responsibility and to arrange for these. He is liable for all damages which arise to the employer from the omission of such measures, so long as he is responsible for them. The regulation of § 10 Nr.2 Abs.1 S.2 VOB/B remains unaffected.
- 9.2 Construction accidents in which damage to persons or property occurs are to be reported to us by the contractor immediately. The notification is to be confirmed in writing within at least 2 workdays.
- 9.3 The supplier has to take out a general and product liability insurance with a coverage amount of Euro 4 million for bodily injury and property damage and Euro 4 million for pure financial loss, as well as coverage of Euro 100,000 for damage to work in progress, as far as nothing else is agreed upon. Further claims to damages that we are entitled to remain unaffected by this.

## **10. Acceptance**

After completion of the factory a formal acceptance protocol is issued on the inspection of the performances or partial performances (§ 12 Abs.2 VOB/B). The provisions of § 12 Nr.5 VOB/B do not apply.

## **11. Securities, Defect Liability**

- 11.1 As long as nothing otherwise is agreed upon, 10% of the established invoice amount instalment will be initially withheld as security for the carrying out of the work according to the contract. This security is paid out with maturity of the final payment as long as it does not have to be absorbed.
- 11.2 For the defect liability a security in the amount of 5% of the final settlement amount plus value-added tax is withheld. This security is paid out after the statutory period of limitation runs out for defect claims, as long as it does not have to be absorbed.
- 11.3 The contractor is entitled to discharge security withholdings through respectively an unconditional, unlimited, irrevocable and self-obligating bank guarantee, whereby the bank may not be entitled to exempt itself through lodgement.
- 11.4 The contractor assumes the warranty for his contractual performances pursuant to the regulations of the German Civil Code. The regulating of § 13 VOB/B is not valid.

## **12. Trademark Rights, Licenses**

- 12.1 All specifications, plans, drawings, process information, samples or construction records or data carriers and data files which we relinquish to the contractor in connection with the contract remain our property and all information derived therefrom or information in connection with the contract otherwise reported to the contractor is liable to the obligation to remain secrecy and may not be made public or passed on to a third party or be used by the contractor except for the purpose of carrying out the contract without our prior written consent. This applies as well if



the business deal is not carried out or not fully carried or if the contract is cancelled prematurely. We can demand at any time that these objects in our possession be released without the contractor being able to assert a withholding right.

- 12.2 In as far as the contract covers the delivery of software, the contractor is to make sure that required licences for the use of the software are issued to us, namely exclusively the use of newer versions and for using any various computers (central processing units / auxiliary equipment) used internally by us. Software license fees are included in the price, as long as nothing else is explicitly agreed upon in writing.

### **13. Advertising, Publications, Company Signs**

- 13.1 The contractor is not entitled, without our prior explicit written consent, to make use of our business relation for advertising purposes. Publications about the construction work require our prior consent. The contractor is not entitled to give any information concerning the construction work and the building to the press and others. This agreement also extends beyond the completion of the contractual relationship. The contractor is required to obligate his employees and auxiliary persons in the same way.
- 13.2 Commercial advertising at the construction site is permitted only with our prior written consent. Our agreement is necessary for the erection of company signs. We reserve the right to put up a board with a table of all contractors involved under the corresponding allocation of costs.

### **14. Nondisclosure**

- 14.1 The contractor assumes for himself, his employees and auxiliary persons the obligation concerning procedures, data and other facts from of our scope of business, which he became aware of on the occasion of our co-operation or occasional work, also to preserve the confidentiality beyond the length of the business relationship, unless we explicitly free him from this obligation. The contractor is also required to obligate his employees and auxiliary persons to a similar nondisclosure.
- 14.2 Upon request Philip Morris Manufacturing GmbH is allowed to assign these Special Terms of Contract for Building Works including contractual services with companies affiliated to Philip Morris Manufacturing GmbH.

### **15. Court of Jurisdiction, Applicable Law**

- 15.1 If the prerequisites of § 38 ZPO or Art. 17 EuGVÜ exist for a court of jurisdiction agreement, then the court jurisdiction for all argument arising out of the business relationship (even for bill of exchange or cheque suing) is the regional court Munich. We can also sue the contractor in the court of jurisdiction of his residence or place of business as well.
- 15.2 All legal relations and acts in connection between us and the contractor are liable exclusively to the law of the Federal Republic of Germany.