

## General Terms and Conditions for Software Maintenance (ABSP) of RWE 08/2020

### 1. Scope / conclusion of contract

The following terms and conditions shall apply to the provision of work and/or services, in particular:

- a) Consultancy and support services of all kinds (including training services),
- b) Planning and organisation services,
- c) Programming and implementation services (including data migration).

Purchase orders by an RWE-Company – hereinafter referred to as “Client” - shall be placed according to these terms and conditions as well as any supplementary terms and conditions named in the purchase order or in the functional/technical specifications.

Any deviating terms and conditions of the Contractor shall not become part of the contract even if the Client has not expressly rejected them in the individual case or the delivery (goods/services) has been accepted. Any confirmations made by the Contractor with reference to its terms and conditions of business shall be herewith contradicted.

### 2. Contract conclusion, supplement agreements and written form

This contract comes into existence as a result of the Contractor accepting an offer of the Client, i.e. a written order or an SAP purchase order of the Client. An SAP purchase order can be submitted electronically or in writing. The declaration of acceptance shall be in the form in which the offer was made.

Additional agreements, changes and additions to the contract (hereinafter referred to as supplement agreements) come into existence as a result of the Contractor accepting an offer of the Client, i.e. a written order or an SAP purchase order of the Client. An SAP purchase order can be submitted electronically or in writing. In the case of a written offer, the acceptance by the Contractor also has to be in writing. Furthermore an SAP purchase order shall be deemed accepted, if the Contractor does not object the SAP purchase order within 30 calendar days as of receipt and was informed of this legal consequence in the respective SAP purchase order or if the Contractor begins with the execution of the ordered goods and services within this period without raising objections.

### 3. Subcontractors

If the Contractor would like to commission third parties to provide the services, this shall require the prior written consent of the Client. Correspondingly, this shall apply to the change of or the use of other subcontractors. The Client shall give its consent unless there are factual reasons for objecting to the use of specific subcontractors, or to any use of subcontractors, in a project. The Client explicitly reserves the right to award by itself any work to be awarded to subcontractors.

### 4. Observance of legal regulations for the protection of the employee

The Contractor shall comply with all legal regulations for the protection of the employee, in particular all regulations with regard to the payment of the minimum wage, and payment of holiday fund contributions pursuant to the German law on the secondment of workers (AEntG) and according to the German Act on minimum wages

(MiLoG) as well as to comply with the agreed collective regulations concerning its business.

The Contractor shall ensure that its subcontractors meet these requirements and are contractually obliged to do so. Where doubt exists or arises the Contractor is obliged to actively seek compliance with the legal regulations. The Contractor's subcontractors are its immediate and all subordinate subcontractors.

The Contractor shall indemnify and hold the Client harmless in their internal relationship from all possible claims, which are made against the Client because of a non-compliance of the Contractor or one of its subcontractors against the German law on the secondment of workers (AEntG), the German Act on minimum wages (MiLoG) as well as further legal regulations giving rise to a possible liability. In particular the Contractor undertakes to support the Client with regard to the defence of alleged claims against the Client in the best possible way and to provide the latter for example with the necessary information.

The Contractor shall provide the Principal Client with a certificate of safety issued by an auditor, tax consultant or the applicable social security fund in accordance with the collective bargaining agreement (“Soka-Bau, Soka-Dach or Soka-Gerüstbau”), with a date of issue of the last 3 months. This is to confirm that the general minimum wage, or if it does not exist, the legal minimum wage, is adhered. If no general minimum wage is applicable, this must be mentioned in the certificate of safety.

Alternatively, the Client will also accept the contractor's current extract from the commercial central register (<https://www.fuehrungszeugnis.bund.de/>), provided that it does not contain an entry for violations of the minimum wage law.

The contractor is obliged to ensure that all subcontractors are contractually bound by the contract. Corresponding evidence must be made available to the client within the framework of the proper application of subcontractors.

If the Contractor infringes the obligation to pay the minimum wage or if the Contractor of the obligation does not provide any evidence within a reasonable period set by Client, the Client shall be entitled to terminate the Contract without notice period for serious cause.

In the event of infringement of the obligation to pay the minimum wage by a subcontractor of the Contractor or the failure to provide any evidence the Client shall be entitled to terminate the Contract with the Contractor without notice period, unless the Contractor hasn't already immediately terminated the contractual relationship with the subcontractor.

In the event of termination for serious cause without notice period the Client shall be entitled to have the services, which have not been performed yet, carried out by a third party at the expense of the Contractor.

### 5. Code of Conduct

The Client expressly refers to RWE's Code of Conduct which applies within the RWE Group and may be viewed at the following web address: <https://supplier.rwe.com> (path: <https://www.group.rwe/en/the-group/compliance/code-of-conduct/>). The Client expects the Contractor to accept the principles of conduct included in the Code of Conduct as the basis for the partnership

and, in particular, to commit itself to supporting and implementing the principles on human rights, labour relations, the environment and anti-corruption laid down under the Global Compact initiative of the United Nations ([www.unglobalcompact.org](http://www.unglobalcompact.org)).

## 6. Applicable provisions

In the event of contradictions, the following shall apply in the order of precedence shown:

- a) The provisions of the individual purchase order together with the specifications and any supplements,
- b) Any framework agreement with appendices
- c) The provisions of these terms and conditions as amended on conclusion of contract,
- d) The supplementary provisions to clause 24 of these terms and conditions – Supplementary Industrial Safety Conditions – as amended,
- e) The Security Policy of the RWE Group as amended on conclusion of contract.

## 7. Contractual hierarchy

Service contract law shall apply, subordinated, to pure consultancy and support work for which no target result can be agreed. Otherwise the Contractor shall provide the specifically described result, or the result representing the purpose of the service described. Work contract law shall apply, subordinated, under exclusion of applicability of section 651 German Civil Code (BGB).

## 8. Contractor's duties

The Contractor shall provide the service on time and free of defects according to the specifications and the current state of technology. It shall hand over to the Client all the services and documentation required of it under the contract (e.g. expert reports, organisation charts, drafts, drawings, listings and calculations, IT systems and programmes) and transfer title for them to the Client.

The Contractor shall employ qualified personnel for all services. At the request of the Client, the Contractor shall replace individual employees insofar as the Client puts forward objective reasons for it to do so. Any additional expense related to such employee substitution shall be for the account of the Contractor.

Even insofar as services are provided by the Client, the Contractor shall exclusively retain the powers to instruct the employees it deploys. The employees shall not be integrated into the operations of the Client.

## 9. Collaboration requirements on the client

The Client shall support the Contractor's work to an appropriate extent. In particular, it shall grant to the Contractor and its deployed employees access to the information and premises necessary for their work. Where agreed, the Client shall make employees of its specialist departments available as contact persons to support the contractor.

## 10. Change request

Even after conclusion of contract, the Client may request changes to the scope of performance, in particular the agreed services, methods and deadlines.

In the event of a change request by the Client the Contractor shall report within 10 working days whether the requested change is possible and what effects it has on the contract, especially taking into account the timing, remuneration and any collaboration required. If no report is received within this period, the requested changes shall be deemed feasible without affecting

prices and deadlines. The Client shall then notify the Contractor in writing whether the changes should be made.

The Client may request that the work is suspended until a decision on the change request is made. Otherwise the work shall be continued under the current conditions.

## 11. Deadlines

The delivery times/deadlines of performance indicated in the purchase order shall be binding. The Contractor undertakes to notify the Client immediately if circumstances occur or are identified which indicate that the delivery time agreed upon or the deadline of performance agreed upon cannot be met.

Where a date is defined in the individual purchase order as attracting a penalty, failure to meet that deadline shall attract a penalty in the amount of 0.3% per working day of the total net annual maintenance charges, but with a maximum of 5% of the total net annual maintenance charges, except where the Contractor is not liable for defaulting the delivery times/deadlines. The Client is also entitled to assert a contractual penalty if it has not reserved this right upon acceptance of the relevant work/services. A contractual penalty claim may be asserted up to final payment. The right to assert further damages shall remain unaffected. However, the contractual penalty shall be offset against such claims.

## 12. Right to information

The Client shall be entitled at any time, following prior notice, to inform itself about the progress of the work. For this purpose, the Client shall be entitled at any time during normal business hours to visit the Contractor's premises to check adherence to the relevant rules and regulations.

Irrespective of the above, the Contractor shall be obliged to inform the Client about the work performed and the results achieved in regular intervals in writing. If no times are specified in the individual purchase order, including specifications, the Contractor shall be obliged to provide information on a monthly basis.

## 13. Right of use / industrial property rights / inventions

The Contractor shall permanently grant the Client a temporally and geographically unrestricted, transferable, non-exclusive, irrevocable right of use regarding the subject of the delivery and performance as well as any protective rights related to these subjects of the delivery and performance. The Contractor shall entitle the Client and the IT service provider to make the right of use available to the Group companies - and thus also the services specified in the contract. Group Companies within the meaning of this contract are besides the Client all those companies, which pursuant to sections 15 et seq. of the German Stock Corporation Law (AktG) are affiliated with RWE AG (collectively referred to as "Group companies").

The rights of use granted to the Client under this contract shall also apply to any new versions (e.g. updates, upgrades, releases, patches, bugfixes) of the subject of the delivery and performance and of any protective rights related to these subjects of the delivery and performance that are made available to the Client.

Insofar as work results eligible for patent/utility patent protection arise within the scope of the project work, the Contractor shall grant the Client property thereto, in-

cluding the right to file the patent application in his own name or by acting as an agent. The Contractor has to provide evidence if he pleads that the patent/utility patent has not been generated in connection with the scope of the project work.

Insofar as work results eligible for other property right protection arise within the scope of the project work, the Contractor shall transfer to the Client the exclusive, irrevocable, temporally and geographically unrestricted, sublicensable and transferable right of use. The Client shall have the right to use the work results in all types of use, including, but not limited to the right to reproduce, redesign and publish and exploit the work result. The Contractor has to provide evidence if he pleads that the work result has not been generated in connection with the project work. For programming work, the Contractor shall be obliged to hand over to the Client the source code for the software created.

#### 14. Acceptance / transfer of risk

Performance capable of acceptance shall be subject to formal acceptance. Acceptance of parts shall not be allowed. Formal acceptance shall be made after trial operation. A detailed procedure of the acceptance test (functional tests/utilisation of test or real data, etc.) shall result from the acceptance specifications that are agreed upon between the parties. The Contractor shall report readiness for acceptance with notice of at least 10 days to the acceptance date. The Client shall prepare an acceptance record in duplicate. The testing steps carried out and the test results shall be documented therein. Furthermore, all errors occurring during trial operation shall be recorded. The Client shall send the acceptance record to the Contractor for first signature. The second signature of the Client shall represent a binding declaration of acceptance. The Contractor then shall receive a copy for its files.

The use or commissioning of such services under contracts for work and services as part of test operation shall not be deemed acceptance. Acceptance shall be deemed to have taken place if the Client fails to perform the acceptance within six weeks, although the service was provided free of defects or only with insignificant defects. The notional acceptance regulated in § 640 subsection 2 BGB is only possible under the condition that the Contractor has already fulfilled all deliveries and services including the complete final documentation and has requested the Client to take acceptance giving a deadline of 14 days. Furthermore the Contractor is obliged to point out to the Client what the consequences are of not declaring acceptance or declining acceptance without naming the defect after such a written request for acceptance.

The risk of coincidental loss or coincidental deterioration shall also transfer to the Client when the Client delays the acceptance for reasons for which it is responsible. However, notwithstanding the provisions of para. 2, second sentence, a condition shall be that the delay continues so long that the Contractor has previously set a date appropriate to the circumstances by which the Client has failed to meet the relevant collaboration requirements.

#### 15. Remuneration

The prices named in the purchase order shall be lump-sum, fixed prices, except where invoicing by time and materials at certain daily rates has been agreed. All prices are net, VAT shall be added as applicable. Where no prices are stated, the Client reserves the right to recognition of the prices calculated subsequently. Ex-

cept where otherwise agreed in writing, prices shall be understood to be free delivery to the indicated delivery address/place of use, including packaging, customs duties and insurance. Insofar as the Client does not keep the packaging, this shall be returned at the expense of the Contractor and any packaging costs billed will be deducted; this also applies to pallets of all kinds, including interchangeable pallets.

Travel time and travel expenses for the Contractor and/or its employees to the regular place of deployment shall not be remunerated separately and shall be deemed reimbursed by the fixed price or hourly rates. Where the Contractor and/or its employees work outside the regular place of deployment, travel expenses shall be reimbursed at a flat rate of € 0.40 per km.

Other expenses of the Contractor shall only be reimbursed when agreed in writing in advance.

#### 16. Accounting and payment

The invoice shall meet the requirements of sections 14 (Ausstellung von Rechnungen), 14a (Zusätzliche Pflichten bei der Ausstellung von Rechnungen in besonderen Fällen) of the German Value-Added Tax Act (UStG). The invoice shall be transmitted to the invoice receiver stated in the purchase order and to the correspondingly stated invoice address, separately indicating the value-added tax at the rate applicable at the time of delivery/performance.

Prepayments/progress payments made shall be shown individually in the invoice. Any contractor providing building services shall indicate on the invoice the tax number assigned to it by the Tax Office. In case of fixed prices, the Contractor shall require a confirmation of the Client regarding the performed services.

Any payments of the Client shall be based on the following requirements:

1. Proper and complete delivery/performance or acceptance,
2. Provision of the securities/guarantees as agreed in the individual contract,
3. Receipt of a proper invoice in accordance with these requirements,
4. Receipt of proof of quantity and quality (joint measurement, time sheet, certificate of compliance with the purchase order, certificates, acceptance reports, etc.), insofar as they belong to the scope of delivery.

If the aforementioned payment terms are fulfilled, then payment - subject to any agreed deviating payment terms - shall take place 14 days following receipt of the invoice less 3% discount, or 30 days following receipt of the invoice less 2% discount. However, the discount period shall only start after actual fulfilment of these requirements. Discounts can be deducted from progress payments as well as advance payments and final payments. If a discount has already been applied to an advance payment or progress payment, then the discount base amount included in the final invoice shall be reduced by the amount of such advance payment or progress payment and the discount shall only be applicable to the remaining amount. Payments shall always be made subject to adjustment in the event that objections should be made subsequently.

The Client shall be entitled to invoice to the Contractor or to deduct from the agreed payments a time penalty or percentages of such time penalty. The Client is not

required to claim the time penalty on receipt of the deliveries and/or performance but may do so until final payment.

In case of accounting of hourly rates, input tax shall be deducted from the travel expenses (fares, accommodation costs, etc.) in accordance with the applicable tax regulations. Place of arrival and return shall be stated for calculation of fares. Any receipts shall be properly and permanently legible.

## **17. Securities / guarantees**

Securities and guarantees shall be arranged in the individual contract, unless such securities and guarantees can already be requested by the Client in accordance with applicable law.

## **18. Liability for defects**

The Client shall have full recourse to statutory warranty claims. The Contractor shall be liable for any defects in the goods/services with a warranty period of 24 months; this period shall commence with the acceptance of the respective service or full completion of service provision and handover in cases where an acceptance is not possible. This provision, however, shall only be applied where the contract or statutory regulations do not provide for a longer warranty period or period of limitation.

The aforementioned warranty period shall include a six-month period that can be used by the Client and the Contractor to agree on a notice of claim not yet settled and/or to request a decision of a third party, e.g. a court.

All errors or defects arising during the period of limitation – e.g. due to failure to supply according to the contract, inferior materials or breach of legal regulations or recognised engineering standards – shall be, at the discretion of the Client, eliminated by the Contractor at its own expense, or shall be provided retroactively according to the contract by a new delivery.

Where the Contractor fails, on first notification by the Client, to correct the errors and defects within the period set, the Client shall be entitled without further notification and without setting a further deadline to eliminate them itself or have them eliminated by a third party and to deduct the costs incurred from the Contractor's invoice amounts or to charge them to the Contractor.

In cases where efforts to eliminate defects fail, the Client shall be entitled to withdraw from the contract and reduce payment; rights to compensation for expenses and damages, in particular rights to damages in lieu of performance, shall remain unaffected.

## **19. Third-party property rights**

The Contractor undertakes that all goods and services to be provided by it are unencumbered by third party rights. In the event of an infringement of property rights of third parties, the Contractor shall, at the discretion of the Client, procure for the Client the rights to use of the entire system or change the entire system in such a way that it is no longer encumbered by third party rights.

Furthermore, the Contractor shall indemnify the Client among themselves against all claims asserted by third parties with respect to infringements of property rights. Further claims and rights to which the Client is entitled under law in this respect shall remain unaffected. Such obligation of exemption shall remain in force for a period of 10 years after time of performance.

## **20. Liability**

The Contractor shall be liable for any breach of duty and the resulting damage unless the Contractor proves that it is not responsible for such breach of duty. The Contractor shall be further obliged to release the Client from any claims for damages by third parties submitted to the Client by such third parties for reasons based on defective delivery (goods/services) by the Contractor, unless the Contractor can prove to the Client that the Contractor is not responsible for the circumstances that caused the loss. The foregoing provisions shall also apply if the Contractor employs a servant or vicarious agent.

## **21. Liability for cartel law offences (antitrust law violations)**

Should the Contractor in respect to the contractual services be demonstrably involved in an unlawful restraint of competition prior to this Contract and / or before or after this Contract act anticompetitively, it shall be required irrespective of the other liability rules to pay liquidated damages in the amount of 15% of the contract value, unless a damage has been accounted for in different height. This also applies if the Contract has been terminated or already been fulfilled. Other rights of the Client remain unaffected.

Unlawful restrictions of competition are in particular anti-competitive negotiations, recommendations or appointments with other bidders (tenderers) / applicants regarding

- submission or non-submission of bids (tender) including territorial agreements,
- pricing as well as profit arrangements or
- delivery quantities.

Such acts of the Contractor itself are equal to acts of persons appointed by it or working for it.

## **22. Insurance**

The Contractor undertakes to maintain at its own expense an employer's liability insurance and a financial liability insurance for IT risks, each with a coverage of € 5 million per insured event, for the duration of this agreement including the period of limitation for material and legal deficiencies, as well as for the duration of any maintenance agreements.

The specific amount of insurance cover shall not constitute a limitation of liability.

The Contractor undertakes, on first written request, to submit to the Client a confirmation of coverage from its insurer covering the scope according to para. 1. It furthermore undertakes, on first written request, to prove to the Client that it has paid the respective premiums to the insurer.

## **23. Termination**

In the event of a termination pursuant to section 648 German Civil Code (BGB) – with regard to the offsetting of expenses not incurred – the Contractor shall receive only the portion of the remuneration which corresponds to the proportion of the service so far provided, measured against the total service to be provided, except where the Contractor can demonstrate that its savings related to the service not provided are lower.

In the event of termination for serious reasons for which the Contractor is responsible, however, the latter shall receive only the portion of the remuneration which corresponds to the proportion of the service previously



provided, and usable for the Client, measured against the total service to be provided. Any further claim to remuneration of the Contractor shall be excluded in this case. The Contractor shall be liable for compensation for loss incurred by the Client as a result of the termination, including any consequential loss.

The mutual right to extraordinary termination for serious reasons shall remain unaffected by the provisions of this section. In particular, the Client may terminate the contract extraordinarily if the Contractor ceases payments or if insolvency proceedings have been filed or opened covering its assets, or such proceedings have been denied due to lack of assets.

#### **24. Rescission / Termination in case of antitrust violations**

The Client shall be entitled to terminate or withdraw from the contract without notice if the Contractor has demonstrably been involved in unlawful restrictions of competition at the expense of the Client. In the event of termination without notice, the Contractor shall be entitled only to that portion of the agreed remuneration for goods and services already rendered without defects. In the event of rescission, the legal stipulations shall apply.

#### **25. Assignment of receivables / setoff**

Without prejudice to an assignment of any financial claim per section 354a German Commercial Code (HGB), the Contractor shall not be entitled to assign receivables from the Client to third parties, or to have them collected by third parties, except with the prior written consent of the Client.

The Client is entitled to offset receivables, all or partly of the Contractor with falling due against the Contractor directed pecuniary claim of the group of companies RWE AG, RWE Power Aktiengesellschaft (Essen), RWE Supply & Trading GmbH (Essen), GFV Gesellschaft für Vermögensverwaltung mbH, RWE Generation SE, RWE Renewables GmbH and/or their affiliated companies.

#### **26. Safety stipulations**

In the course of contract execution and implementation, the Contractor undertakes to observe the applicable provisions and recognised engineering standards, especially with regard to occupational health and safety, as well as the provisions applicable under construction, trade and transport legislation (in particular, supervisory and road safety obligations on construction sites and in other working areas); this shall also apply to the applicable environmental protection and waste disposal regulations. Goods and services shall comply with the laws, regulations and directives prevailing at the time of the delivery and/or acceptance.

Machines covered by the German Machine Ordinance (Maschinenverordnung) or electrical equipment covered by the Low-Voltage Directive (Niederspannungsrichtlinie) shall be provided with a CE mark and supplied with operating instructions. The certificate of conformity and the operating instructions shall be delivered to the Client. Machines which are not ready for use shall be delivered with a manufacturer's certificate.

In addition to these provisions, the Supplementary Industrial Safety Conditions (ZB/A), as amended, shall also apply.

#### **27. Confidentiality**

The Contractor undertakes to treat as confidential all confidential information and business secrets of the Client obtained during fulfilment of the purchase order and to use such information only within the scope of order fulfilment. The services provided by the Contractor shall also be deemed business secrets of the Client.

The Contractor may make the object of a contract accessible to employees and other third parties only insofar as necessary to provide the service ordered; otherwise it shall treat all objects of contracts as confidential. It shall inform all persons to whom it grants access to the object of a contract in writing of the rights of the Client to such object and instruct them on the requirement for confidentiality. It shall also commit such persons in writing to compliance with the confidentiality requirements.

Other transmission of documents by the Contractor (reports, expert statements and the like) to a third party and any publications in connection with the results of the service provided shall require the written permission of the Client.

The obligation to confidentiality shall also apply after the end of the contractual term. It shall end ten years after the end of all business relations between the contractual partners based on this agreement.

#### **28. DAC6 reporting obligation for cross-border tax structures**

As a result of the amendment of the EU Directive 2011/16/EU on the reporting obligation for cross-border tax planning models, it is possible that the contractual relationship may result in a reporting obligation for you as an intermediary and, if applicable, also for [RWE Contractual Party] to the German tax authorities or those of other EU member states. To the extent that you are subject to such a reporting obligation, we agree that you - as the intermediary - shall report the arrangements concerned to the respective tax authorities. We release you from your professional duty of confidentiality in this respect. In this case you are obliged to inform [RWE Contractual Party] within 5 working days before the notification will be disseminated to the respective tax authorities. Please send your notification as well as the received registration and publication number to DAC6@rwe.com.

#### **29. Data Protection**

The Contractor is obliged to comply with the statutory provisions on data protection (in particular the General Data Protection Regulation (GDPR)). In case of processing of personal data on behalf of the client, the contractor will process personal data exclusively within the scope of the agreement reached and according to the client's instructions. A separate agreement shall be made for this purpose in the event of processing by order. The Contractor shall protect the personal data received from the Customer from access by unauthorized third parties by means of suitable technical and organizational measures in accordance with Art. 32 GDPR. The Contractor shall inform the Customer without delay in the event of serious disruptions in the course of operations, suspected violations of data protection or other irregularities in the processing of the Customer's data.

Any details shared by the Client shall not be used for the purpose of advertising or market/opinion research unless written permission has been given for this pur-

pose by the Client or the agreed service allows this explicitly.

### **30. References / advertising/ photography**

Without prior consent by the Client, the Contractor shall not be entitled to use information concerning intended or existing contractual cooperation for reference or marketing purposes. Photography in buildings, on the premises and/or construction sites of the Client, and any kind of publication in this respect, shall also be prohibited without the prior written consent of the Client.

### **31. Place of performance / jurisdiction / choice of law**

Place of performance for supplies and services provided by the Contractor is the shipment address/place of use indicated by the Client, or the agreed place of the provision of services.

Unless otherwise expressly provided for by law, the place of jurisdiction for all disputes arising under or in connection with the contractual relationship with RWE AG and its German affiliated companies is Essen.

To the contracts with RWE AG and its German affiliated companies German law shall apply exclusively. Application of the UN Convention on Contracts for the International Sale of Goods is excluded.