



Purchasing Terms & Conditions for Work and Services

For use ('B2B') between

companies, legal persons under public law and special funds under public law

- Hereinafter '**Contractor**' -

and

Gebrüder Dorfner GmbH & Co. Kaolin- und Kristallquarzsand-Werke KG (Hirschau, Germany)

and

Dormineral Handels- und Speditions-GmbH & Co. KG (Hirschau, Germany)

and

Asmanit-Dorfner GmbH & Co. Mineralaufbereitungs-KG (Hirschau, Germany)

and

ISG Industriesteingesellschaft mbH (Hirschau, Germany)

and

Dorfner Analysezentrum und Anlagenplanungsgesellschaft (Hirschau, Germany)

- Each hereinafter '**Client**' -

1. Scope

1. These Terms and Conditions of Subcontract apply to the procurement of works and services of all kinds, provided that reference is made to these Terms & Conditions in the request for proposal, Purchase Order or in the Agreement. The Terms and Conditions of Subcontract supplement and are subordinate to the provisions of individual agreements entered into between Client and Contractor. These Terms and Conditions of Subcontract form the contractual basis for long-term business dealings with Client and, therefore, upon conclusion of the first agreement, will be acknowledged by Contractor for the entire duration of the business relationship, under inclusion of the following conditions.

2. In relation to Contractor's standard terms & conditions or other terms, solely these Terms and Conditions of Subcontract apply;

this shall also be the case even if Client does not expressly reject Contractor's terms. Any terms of Contractor that conflict with, or deviate from, the Purchase Order or these Terms and Conditions of Subcontract will not be recognised nor included, save where such inclusion has been expressly agreed.

2. Offers, Purchase Orders, Powers of Representation, Other Declarations

1. Contractor is obliged to accept Client's Order in text or written form within a period of 2 weeks. The agreement shall only arise upon confirmation of the Order by Contractor. Late confirmation of the Order shall be deemed a new offer by Contractor, which must be expressly accepted by Client in text or written form in order to be deemed contractually effective.

2. Offers and quotations provided to Client shall be free of charge

and not binding for Client. The non-reaction of Client to any offers shall not be deemed acceptance of such offers.

3. Legally binding declarations leading to the substantiation, amendment or termination of agreements shall be made exclusively by the Purchasing Department and shall require the written or text form. Verbal orders, commissions or other agreements by employees or other representatives of Client shall require confirmation by Client in written or text form in order to become effective. This shall not apply to the legal representatives of the company.

3. Scope of Work, Place of Performance

1. All of Contractor's work must correspond to the contractual scope of work and, in particular, the material properties stipu-

lated therein, be fully and without restriction suitable for the customary service life and must fulfil the contractual purpose or, where no such purpose is specified, the purpose for which they are customarily used, or, in the case of temporary workers, the employees must possess the individually required skills and knowledge. Decisive for the obligations stipulated in this Condition 3 shall be the agreed overall completion date, in the absence thereof, the date of acceptance.

2. The scope of work includes compliance with all mandatory technical and other regulations and knowledge existing at the time of service provision pertaining to the due performance, even where not explicitly and separately stated in the contractual documents, including, but not limited to, pertaining to occupational health & safety and environmental protection.

3. Contractor undertakes to perform the scope of delivery and work in accordance with statutory provisions, as individually amended.

4. Contractor is required to promptly and fully inform Client if any changes to the scope of work are necessary in order to fulfil the Agreement. Any concerns with regard to the execution of the work requested by, or contractually agreed with, Client must be raised promptly, and information supplied in such detailed written form that Client is able to fully assess in every regard the ramifications of not making changes to the execution of work.

4. Instructions on Facilities and Other Factors

1. Prior to entering into the Agreement, Contractor is entitled, or where Client so directs, required,

to inspect facilities, buildings and other factors, equipment and objects relevant to the execution of its work, to familiarise itself with the same and to clarify any ambiguities with Client before commencing work. Client will enable Contractor to carry out this inspection to the operationally feasible extent and will issue Contractor with the information required for submitting offers, to the extent this is possible using reasonable means. Nevertheless, if Contractor is still uncertain or recognises risks, Contractor must immediately state its express reservation.

2. If Contractor does not conduct the inspection set forth in Condition 4.1 above, it may not later plead circumstances that would have been recognised had it carried out such inspection. The same shall apply to failure to inform of any reservations.

3. Client will, if required in individual cases, instruct Contractor and/or the personnel Contractor employs or, where appropriate, subcontractors, with regard to special areas of risk, and identify and provide instruction on the protective measures and safety measures required. To this end, please use Form FB.000135 and FB.00136 and, if necessary, FB.00137, FB.00138. Where work is carried out that requires a permit under German mining laws, a company supervisor is to be appointed; for this purpose, please use Form FB.00010.

4. Where required in individual cases, Contractor shall independently and in its sole responsibility undertake measurement work and inspect drawings with regard to conformity to existing plant, equipment and buildings, and similar, required for execution of the Order.

5. Contractor must request from Client the agreed and otherwise requisite planning documents, declarations of approval and miscellaneous Client information in good time and in advance, generally two weeks prior to the date on which they will be required.

5. Prices and Pricing

1. Save where agreed otherwise, the prices are fixed prices. All prices shall be subject to statutory valued added tax, as applicable from time to time.

2. The prices shall include everything that Contractor must do to satisfy its obligations at the agreed place of performance.

6. Invoicing of Hourly Pay

1. If it has been agreed that the work will be invoiced per hour of work, Contractor will be remunerated for the effective hours of work performed and confirmed by Client after deduction of breaks and set-up times; the payment obligation shall, however, be limited to the number of hours objectively required for experienced and skilled employees. Travel time and expenses will only be reimbursed where expressly agreed. The minimum invoicing unit shall be each commenced 30-minute increment.

2. Hours of work shall be entered in the construction reports provided by Client (FB000203) and submitted to the designated representative of Client for countersignature every week, or in the case of shorter duration, after completion of the work, immediately after the end of the working time. The time sheets shall contain Client's Purchase Order number, the work performed, the work periods, along with the first and last name and job title of the deployed employee(s).

7. Contractual Deviations / Additional Work

1. Contractually deviating or additional work performed by Contractor shall require prior contractual amendment or supplement, for which the provisions in Condition 2.2 shall apply accordingly.

2. If Contractor ascertains that amendments to the work are required, or Client demands such amendments, Contractor shall promptly provide Client with the particulars thereof. The information provided by Contractor to Client shall be free of charge and not binding for Client. Client is entitled to amend the scope of work through a corresponding amendment or supplement to the Purchase Order. Contractor is obliged to accept Client's Purchase Order in text or written form within a period of 2 weeks. The amended Agreement shall only arise upon the confirmation of the Order by Contractor. Late confirmation of the Order shall be deemed a new offer by Contractor, which must be expressly accepted by Client in text or written form in order to become contractually effective.

3. Client shall give its consent to deviating performance through Client submitting a written/text agreement or written/text amendment to the Purchase Order.

4. Contractual performance times and deadlines and/or completion dates will be only influenced by an amendment to the Agreement when this has been agreed in writing.

5. Client retains the right to perform additional work itself or to award such work to third parties.

8. Execution

1. Any and all devices, tools and other materials, clothing, and

so forth, required for fulfilment of the Order shall be included in the contractually agreed prices and will not be separately remunerated, save where contractually agreed.

2. Any objects provided by Client may be used exclusively for the execution of the Agreement. Contractor shall be liable for excessive wear and tear or damage.

3. Client shall accept the execution documents of Contractor solely for inspection purposes. The initials or signature of Client shall merely confirm that it has taken note thereof. Client shall not accept any responsibility for design, execution and absence of defects. Proposals for modification, remarks and objections of Client shall not release Contractor from its sole responsibility for bringing about the contractually due success. Client is entitled to issue instructions to Contractor in order to ensure the achievement of the contractual purpose and defect-free fulfilment. For instructions, Client shall only bear liability within the meaning of Section 645 of the BGB [German Civil Code] when Contractor has promptly raised and substantiated its concerns in writing.

4. Notwithstanding the obligations of Contractor, Client reserves the right to inspect the execution of the work at the construction site or at the premises of Contractor or any subcontractors (express reference is made to Condition 9.3.), to object to improper performance and to reject defective parts. Client shall be granted access within business or operating hours to the respective workplaces, storage rooms, and similar, in which the work objects or parts thereof are manufactured or where the designated material is stored. Upon re-

quest by Client, the execution documents are to be submitted to Client for inspection and Client is to be given the required information, save where this involves industrial or trade secrets of Contractor.

5. Contractor must appoint an authorised representative. The substitution of such representative shall require the prior written consent of Client, which may be withheld for good cause.

6. Client may refuse certain persons working for Contractor entry to its premises for good cause (e.g., serious breaches of work safety regulations).

7. Contractor shall remain solely responsible for all objects brought on to the premises of Client or provided to Contractor by Client.

8. Where the contractual documents require that documentation be provided, this shall involve the surrendering of a version or counterpart of the same that is to be retained by Client.

9. Transfer of Agreement / Company Name / Subcontractor / Conditions for the Use of Employees

1. Contractor must promptly inform Client of any legal transfer of agreement and each change to its company name, legal form or principal place of business.

2. If an application for the initiation of insolvency proceedings with regard to the assets of Contractor has been filed or the commencement thereof has been refused due to lack of assets or there are clear indications that conditions for filing for insolvency proceedings have been met or no suitable assets are available, Client shall have the right to immediate extraordinary termination.

3. Contractor must strictly provide the contractual work through its own company, unless Client contractually permits the use of subcontractors by Contractor. With regard to the material components of its work, only the subcontractors set forth in the offer may be used. The substitution or involvement of additional subcontractors shall require the prior consent of Client. Client reserves the right to make its approval contingent upon certain qualifications, and to prohibit the use of subcontractors in the event of persistent unreliability or loss of a required qualification or in the case of commission of a criminal or non-criminal offence or disruption of operations. Contractor shall be liable for its suppliers and subcontractors in the same manner and to the same extent as for its own liability.

4. Contractor undertakes to comply with the following restrictions on the use of employees:

a) All employees of Contractor deployed for this Order must be properly registered for social insurance and be provided with a social security card.

b) Contractor undertakes to properly deduct income tax and all social security contributions for such employees.

c) Any foreign employees deployed must possess the required work permit.

d) At minimum, the foreman or master craftsman must possess good knowledge of the German language in order to ensure smooth communication with Client or its customers/clients.

e) Contractor hereby undertakes to comply with all legal requirements applicable to the Order, in particular the relevant trade control regulations, accident preven-

tion regulations and other safety regulations, including, for example, legislation regarding hazardous materials and goods, water resources, including federal state-specific regulations and working hours rules; Contractor hereby declares that it is familiar with the regulations pertaining to its performance and the employees of Contractor have been received instruction on pertinent occupational safety regulations.

5. Client may at any time demand proof of compliance with the above obligations.

6. If Contractor does not fully or partly comply with the above obligations, Client may revoke Contractor's Order in whole or in part with immediate effect and demand compensation for any damage incurred.

10. Employee Assignment Act, Minimum Wage Act and Working Hours Act

1. Contractor undertakes to comply with the provisions of the Arbeitnehmerentendegesetz [AEntG] [Employee Assignment Act] and the Mindestlohngesetz [MiLog] [Minimum Wage Act] and vouches for the safeguarding of the minimum working conditions arising under these laws and the corresponding statutory ordinances in conjunction with the applicable collective agreements, and, at minimum, the mandatory minimum rates are paid with regard to all personnel employed to fulfil the Order and regardless of whether the same are employees of Contractor, of a subcontractor legitimately commissioned by Contractor, or of a temporary employment agency commissioned by Contractor or by a subcontractor. Contractor further undertakes to ensure compliance

with the provisions of the Arbeitszeitgesetz [Working Hours Act] by its own employees and agency workers with regard to its operations, and to reliably and truthfully record and document the actual hours worked in accordance with statutory provisions.

2. Contractor shall indemnify and hold Client harmless against any claims asserted against it as a result of violation of the provisions of the AEntG and the MiLoG by Contractor, by a legitimately commissioned subcontractor or by an employment agency commissioned by Contractor or by the subcontractor.

3. If so requested, Contractor shall demonstrate and provide suitable evidence to Client both that it is ensuring compliance with the legislation stated in Condition 10.1 in its company as well as the manner in which it is doing so.

11. Withholding Taxes / Clearance Certificate / Employee Assignment

1. If, pursuant to Section 48 to 48 d of the EStG [Income Tax Act], Client is required to deduct the statutory applicable withholding tax of currently 15 % from each payment to Contractor under the respective agreement, it shall do so, unless Contractor presents an exemption certificate issued to Contractor by the competent tax office.

2. If Contractor is in possession of an exemption certificate from the competent tax office, Contractor must surrender the same to Client upon entering into the Agreement or inform Client upon contractual conclusion that it does not possess an exemption certificate. If the exemption certificate is limited to a specific Order, the exemption certificate will be surrendered to Client in the original form. In all other cases, the submission of a fully

legible copy of the exemption certificate shall suffice.

3. Contractor shall notify Client promptly if the competent tax office revokes a previously granted exemption certificate for the future, or has withdrawn such certificate with retroactive effect.

4. If Client so directs, Contractor shall be required to produce the corresponding contributions fulfilment certificate and clearance certificate to provide evidence that it has met its ongoing obligations towards the social insurance institutions and tax authorities.

5. Contractor further undertakes not to use temporary personnel within the meaning of the Arbeitnehmerüberlassungsgesetz [Temporary Worker Act] and/or personnel from non-EU countries who are not in possession of a valid work permit and/or a valid social security card. In this respect, Client shall be entitled to carry out checks to determine whether the personnel employed by Contractor are in possession of the aforementioned documents.

6. In this respect, Contractor further undertakes to comply with the minimum working conditions applicable to the personnel it employs, and that the applicable official collectively bargained minimum rates are properly calculated and paid, the social security contributions accruing on the remuneration of the employees of Contractor are properly calculated and paid to the relevant collection offices, including – in the case of commissioning construction work within the meaning of Section 1 a of the AEntG – any contributions due from Client to joint bodies of the social insurance companies of the parties to collective bargaining agreements in the construction industry.

7. In particular, Contractor shall be obliged to maintain at the workplace complete payroll evidence – also on salary components that are paid abroad – for the personnel employed by it or by its subcontractors. The same shall apply to residence and work permits as well as proof of the proper deduction of social security contributions, income tax and, in the case of commissioning of construction work within the meaning of Section 1 a of the AEntG, any contributions due from Client to joint bodies of the social insurance companies of the parties to collective bargaining agreements in the construction industry.

8. Contractor undertakes to indemnify and hold Client harmless from any claims, in particular in accordance with Section 1a of the AEntG, arising from culpable violation (within the meaning of Section 276 of the BGB) of the obligations stipulated under Section 17 and Section 18 of the AEntG by it and/or by any of its subcontractors.

9. In the event that Contractor violates the aforementioned obligations, Client shall also have the right to set Contractor a reasonable grace period to meet the aforementioned obligations, notifying Contractor that, subsequent to the fruitless expiration of the period of notice, the Order will be cancelled. If this reasonable grace period expires without result, Client shall also be entitled to cancel Contractor's Order without notice. Furthermore, Client shall be entitled to arrange for a third party to carry out the uncompleted portion of the contractual work at the expense of Contractor.

12. Dates, Impediments to Performance and Disruption

1. The contractually agreed acceptance or completion date and

other dates or deadlines, referred to as 'contractual dates' or 'contractual deadlines', shall represent binding dates and deadlines, the culpable exceeding of which constituting default.

2. If Contractor feels that it is hindered as a result of circumstances attributable to the sphere of performance or risk of Client, Contractor must immediately inform Client thereof in order to give Client opportunity for remedy. The provisions of Sections 642, 645 of the BGB shall remain unaffected.

3. If any circumstances attributable to Contractor's own sphere of performance or risk occur which will, or could have, an adverse effect on the performance of the work, performance of parallel work or the time schedule, Contractor shall notify Client promptly of such circumstances.

4. Customary or predictable weather influences shall have no impact on contractual dates and deadlines. In the event of completely unusual and unpredictable weather conditions that render it impossible to carry out work, the execution dates shall be prolonged by a reasonable extent. The provisions relating to force majeure in Condition 13 shall remain thereby unaffected.

5. Contractor must obtain any permits required to perform the Order, in particular with regard to work on Sundays and public holidays. Where demanded in individual cases, Client will obtain permits required under German mining laws.

6. The consequences of default shall be calculated in accordance with statutory provisions. Where the other requirements for the right of cancellation are met, Client may limit rescission to the

non-executed, or improperly executed, portion of the work, regardless of whether it is a self-contained or separable part of the work. Notwithstanding its further statutory claims, instead of exercising its right to cancellation, Client may terminate the Agreement for cause with regard to the outstanding work.

7. In order to facilitate Client's procurement of performance elsewhere, upon Client exercising its right to cancellation/termination, in return for a suitable fee, Contractor is required to surrender to Client the plans, drawings, calculations, software documentation, industrial property rights, documentation and specifications it prepared for execution of the work to be performed prior to the exercise of the right to rescission. Furthermore, upon Client exercising its right to cancellation, Contractor is required to provide Client information relating to the work it performed at no cost to Client and in the required scope.

13. Force Majeure

1. Events of force majeure shall entitle each Party to postpone the fulfilment of its obligations or, if the execution of the Agreement becomes wholly or partly unreasonable, in this respect to rescind the Agreement without giving rise to claims for damages from the other party. Force majeure means any events that occur unexpectedly and were not culpably caused by any of the Parties, in particular: natural disasters, fire, lightning, explosion, flood, general supply disruptions, acts of war, terrorism, tumultuous or similar actions and industrial disputes.

2. Force majeure also includes disruptions to operations which cause a restriction in, or suspension of, operations, and other circum-

stances that render the fulfilment of obligations unreasonable or impossible, irrespective of whether they are suffered by one of the Parties or by third parties; however, only if they are not attributable to the Party or to the third party.

14. Industrial Property Rights

1. Contractor warrants that no industrial property rights will be infringed through its work and the contractual and intended use thereof by Client. Upon written request thereto, Contractor is required to indemnify and hold Client harmless in the event of assertion of claims by a third party and, if necessary, to render it possible to use the contractual object through appropriate amendment to performance. However, the amendment to performance may not restrict the contractual and intended use of the contractual object.

2. Without prejudice to any statutory claims, Contractor shall indemnify and hold Client harmless from all third party claims and all damage, expense and other disadvantages incurred by Client thereunder. This shall, in particular, include disadvantages that Client incurs arising from any required modification to buildings, machinery, equipment and from delays in project plans or operational procedures. The foregoing liability obligations shall not apply if and so long as the infringement is not attributable to Contractor.

3. If Contractor cannot facilitate usage for Client, in particular, because the third party insists that the work object be decommissioned, and if a corresponding modification to the performance proves impossible, Contractor must remove the work object at its own expense and reimburse any remuneration received plus inter-

est in the amount of 9 percentage points above the base interest rate pursuant to Section 247 of the BGB. Further statutory claims shall remain unaffected.

15. Proof of Performance and Acceptance

1. Unless otherwise stipulated in the Agreement, Contractor's work shall require formal acceptance; for all agreements to which these Terms & Conditions apply, acceptance shall be the prerequisite for the payment of Contractor's claims for remuneration. Client will conduct acceptance of the work at the place of performance as soon as this is requested in writing by Contractor and all prerequisites for acceptance have been met. The acceptance shall require the mandatory preparation of a written record on Client's Form FB.000218, which is to be signed by both Parties. Oral acceptance or implied acceptance through entry into operation shall be excluded. This shall not apply if the work is in an acceptance-ready condition and Contractor has requested acceptance by Client in writing and Client's refusal to accept is unjustified.

2. Any defects established during acceptance shall be documented in Form FB.000212. Any minor defects established during acceptance shall be promptly removed by Contractor. The successful removal of defects must be documented and shall constitute the start of the limitation period.

3. Upon acceptance, the risk of accidental destruction, accidental deterioration and title shall pass to Client.

16. Defects

1. Contractor warrants that the contractual work is free of defects, dem-

onstrates the contractually agreed properties and is suitable for the intended purpose under normal operating conditions. Client is entitled to the full statutory warranty claims.

2. The limitation of claims for failure to perform, or improperly perform, work is governed by statutory provisions. Such limitation shall commence upon acceptance.

3. Client shall be entitled to the statutory rights relating to material defects and defects of title. Client will grant Contractor the opportunity for rectification. If the rectification work is unsuccessful upon the first attempt, the rectification shall be deemed wholly and conclusively unsuccessful.

4. Client shall be entitled to limit cancellation to the portion of the work that has not been executed or has not been executed in accordance with the Agreement; this shall be the case even if it is a self-contained or separable part of the work. Notwithstanding its further statutory claims, instead of exercising its right to cancellation, Client may terminate the Agreement for cause with regard to the outstanding work.

5. In the event that the surrendering of the work object after exercising the right to cancellation results in disproportionately major damage to Client or to its clients, Client may demand, by way of damage mitigation, that it be permitted to temporarily use the work object in return for a reasonable fee, but no longer than until the procurement or operational readiness of a replacement object (Gross disproportionality).

17. Liability Insurance

Unless otherwise determined on an individual contract basis, Con-

tractor must maintain a customary business liability insurance policy which adequately covers the risks of the performance of work – including processing damage – with a minimum limit of liability of €5 million for damage to property and unlimited coverage for personal injury, and maintain such insurance policy throughout the entire term of the Agreement, save where other levels of coverage are contractually determined. Upon request, the existence and the scope of the insurance coverage must be verified by means of a certificate issued by the insurer.

18. Invoicing

1. For each Order, including any supplementary orders, an invoice with the entire evidence of work must be submitted. This shall include the declaration of acceptance and, where appropriate, the timesheets countersigned by Client.

2. The invoice must meet the requirements of the Umsatzsteuergesetz [VAT Act], be verifiable and clearly and comprehensibly list the work performed, stating the Purchase Order number.

19. Payment

1. Contractor must submit an application for the respective amounts of the agreed payments. Payment shall be due 14 days following defect-free acceptance and receipt of invoice subject to a 3 % cash discount, or within 30 days of defect-free acceptance and receipt of invoice.

2. Client shall be entitled to rights of retention and/or set-off to the legally permissible extent without any impediment to the assertion of its rights. Set-off shall, in particular, not be limited solely to

uncontested and legally enforced claims of Contractor.

3. Client shall charge Contractor a reasonable processing fee for the processing of assignments, garnishee declarations, attachment and transfer orders, and attachment and collection orders, and shall deduct such fee from the amounts to be disbursed.

20. Assignment

Contractor is not permitted to assign its claims against Client nor arrange for such claims to be collected by third parties without the prior written consent of Client. This shall not apply in the event of the effective agreement of extended retention of title by Contractor.

21. Retention by Contractor

1. Contractor shall only be entitled to rights of retention to the extent that they relate to the same contractual relationship.

2. In the event of disagreement on additional or amended performance, Contractor shall be granted a right of retention or other right to withhold performance, in particular to suspend construction or installation work.

22. Confidentiality

1. Should Contractor and the servants and vicarious agents acting on its behalf (own personnel, subcontractors and their employees) gain knowledge of any execution documents of Client, irrespective of nature or origin, they and Contractor shall maintain the confidentiality of such execution documents. The same shall apply to all other technical knowledge and commercial information of which Contractor or the servants and vi-

carious agents acting on its behalf gain knowledge in connection with the performance of the Order, in particular, models, drawings, sketches, images and other information for which, by their very nature, Client has an interest in maintaining confidentiality. Without the prior written consent of Client, the aforementioned information may be neither published, reproduced, made available to third parties, nor be used for any other purpose than the originally intended purpose.

2. Contractor must communicate the above obligations to the servants and vicarious agents acting on its behalf.

23. Jurisdiction / Place of Performance / Governing Law

1. If Contractor is a merchant, Amberg Local Court, Germany, shall have exclusive jurisdiction. However, Client shall also be entitled to pursue legal action against Contractor at its principal place of business.

2. Unless otherwise stated in the Agreement (e.g., place of execution), the principal place of business of Client shall be the place of performance for the work of Contractor.

3. German law shall apply exclusively to all legal relationships between the Parties.

[Date: 21.10.2015]