

**General Terms and Conditions of Purchase for Works and Services of DSV Group Germany 12/2014**

**1. Scope**

- 1.1. These General Terms and Conditions of Purchase for Works and Services of DSV Group Germany shall apply to all orders of DSV Road GmbH, DSV Solutions GmbH, DSV Air & Sea GmbH and DSV Stuttgart GmbH & Co. KG (hereinafter referred to as "DSV") of works and services with the contractor (hereinafter referred to as "AN") with the exclusion of orders with regard to exclusive transport services.
- 1.2. Any diverging or supplementary General Terms and Conditions of AN shall not apply unless accepted by DSV in writing.

**2. Integral part of contract**

- 2.1. Integral part of contract between DSV and AN are: (i) the individual order, (ii) if applicable the price agreement, (iii) if applicable additional agreements, (iv) these General Terms and Conditions of Purchase for Works and Services of DSV Group Germany.
- 2.2. In the event of any contradictions/discrepancies between these General Terms and Conditions and any of the aforementioned (2.1.) integral parts of contract, the particular integral part of contract shall prevail in the abovementioned (2.1.) order.

**3. Conclusion of contract**

- 3.1. The preparation of any offer for DSV is free of charge.
- 3.2. The offer of AN has to precisely meet the inquiry of DSV with regard to type, quality and execution. In the event of any deviation, AN shall explicitly notify DSV. DSV shall only be bound to any deviation, as far as DSV has explicitly accepted the deviation in writing.
- 3.3. Orders of DSV may be placed in writing, orally, by phone or by any means of electronic media.
- 3.4. Orders by DSV shall be confirmed by AN in writing immediately in any case.
- 3.5. Until the written order confirmation is received by DSV, either party may revoke or amend the order at any time free of charge without giving reasons.

**4. Service description**

- 4.1. On principle, AN provides the contractual services by himself or by his own, proper qualified employees and, if necessary with the aid of proper technical devices. For non-German employees, AN will provide evidence of existence of necessary work permits to DSV on request.
- 4.2. Without prior written consent by DSV, AN is not entitled to assign orders to a third party or subcontracting. Violation entitles DSV to withdraw from the contract in whole or in part.
- 4.3. AN shall ensure, that third parties as well as any other vicarious agent comply with the legal requirements and these terms and conditions, in particular compliance pursuant to no. 4.4., 4.6., 12.1., 13.1., 13.3. and 13.4. AN shall compensate DSV for any damage resulting from any breach of the aforementioned obligations.
- 4.4. For providing the works and services, AN is only entitled to deploy such employees, that are not listed in any of the German, European and/or American foreign trade sanction lists. This refers in particular but not limited to the terrorist lists of the EU as well as the US Denied Persons List ("DPL"), the US-Warning List, the US-Entity List, the US-Specially Designated Nationals List, the US-Specially Designated Terrorist List, the US Foreign Terrorist Organizations List, the US-Specially Designated Global Terrorist List. The AN further warrants, that he has no link to persons or organizations against which measures to fight terrorism or any other foreign trade sanction has been imposed upon.
- 4.5. AN is free to determine the actual working hours. AN will provide the contractual services only on the premises of DSV, as far as this is necessary for the due execution of the contractual service and this has been agreed on in advance in writing or by means of other electronic communication. In this event, DSV shall provide suitable premise to AN.
- 4.6. When contractual services are conducted on DSV premises, AN shall thoroughly comply and preventive contribute to compliance with the following operating and safety regulations of DSV: DIN EN ISO 9001 (Quality management), DIN EN ISO14001 (Environmental management) and OHSAS 18001 (employment and health safety). Unless the aforementioned regulations are not displayed publicly or available, AN shall request and DSV shall provide these. In the event of

any breach of the operating or safety regulations by AN or any third party deployed by AN, DSV is entitled to withdraw from the contract in whole or in part as well as to claim compensation for any damage resulting from the breach of regulation.

- 4.7. Each party appoints a competent person, which will assist with in the decision finding process of decisions with regard to the execution of the contractual obligations. The appointed person by AN shall receive all necessary and by DSV available text, documents, information and data from DSV, unless otherwise available to AN. AN will notify DSV in the event that information is insufficient.

**5. Duty to inform**

- 5.1. Unless stipulated otherwise, AN notifies DSV immediately about the progress of work, in particular troubles and interferences, threatening or existing delay, deviations from the original plan as well as any other disturbances and impairments, even in the event of force majeure or unavoidable events. In any of the aforementioned events, AN is obliged to contact DSV for instructions.
- 5.2. In the event of fire, theft or other criminal offence which could affect the works and services as well as accidents, with the exclusion of bagatelle-accidents, AN is also obliged to inform the local police.

**6. Liability; acceptance of work**

- 6.1. Unless stipulated otherwise in these General terms and Conditions, AN shall be liable pursuant to statutory provisions.
- 6.2. Following the allocation of works, DSV will undertake an acceptance inspection. Following the acceptance inspection DSV will notify AN in writing or by any other suitable means about the acceptance of works as far as the work is free of deficiencies.
- 6.3. In the event that the acceptance of works is excluded due to the quality of works, section 646 of the German Civil Code (BGB) shall apply accordingly.
- 6.4. In the event of works or services deficiencies, AN shall remedy the deficiencies within a reasonable period of time at his own expense or deliver the works or services again free of deficiencies at choice of DSV.
- 6.5. In the event that AN fails to remedy the deficiencies despite the fact that a reasonable time line was set or he fails to deliver the works or services free of deficiencies again, DSV is entitled to withdraw from the contract, reduce the payment by a reasonable amount, repair the deficiency at the cost of AN and claim for damage instead of the original works or service. Further claims remain unaffected.
- 6.6. Claims with regard to material deficiency become time-barred after three years, deficiency in title become time-barred after five years unless statutory provisions provide longer periods.
- 6.7. AN is obliged to maintain sufficient insurance cover for all risks with regard to the contractual relationship and he shall maintain the insurance cover for the duration of the contractual relationship. On demand of DSV, AN shall proof the insurance cover to DSV.

**7. Remuneration; terms of payment**

- 7.1. As remuneration for works and services as well as for the rights granted to DSV pursuant to no. 9.1., DSV shall pay the price agreed on after orderly and punctual rendering the works and services.
- 7.2. The price agreed on shall be deemed as fixed price.
- 7.3. Unless stipulated otherwise, the net payment is due 60 days following the date of invoice.
- 7.4. The payment period shall commence as soon as the works or services are rendered completely and the orderly invoice has been received by DSV. As far as AN is obliged to provide certificates, test protocols, quality documents or any other documents, the orderly rendering of works or services implies receipt of the aforementioned documents by DSV.
- 7.5. Payments do not imply acknowledgement of the contractual works or services as orderly rendered by AN.

**8. Default**

- 8.1. If a fixed date is agreed upon for performance of services, default automatically eventuates, when the services are performed incompletely or deficiently at the time of the agreed fixed date.
- 8.2. Recognizable delays of services or parts thereof resp. of supplementary performance shall be indicated to DSV immediately.
- 8.3. In the event of default of AN, DSV is entitled to claim payment of liquidated damages for each commenced day of default in the

amount of 0.3 % of the respective order total, limited to max. 5 % of the order total, and/or to withdraw from the contract.

- 8.4. The aforementioned provision on liquidated damages does not release AN from fulfilling his delivery and performance obligations.
- 8.5. Further legal claims and rights remain unaffected.

#### **9. Right of use; property rights of third parties**

- 9.1. The results of the services shall become ownership of DSV upon their creation. DSV shall have the exclusive, transferable, sublicensable, worldwide, temporal und contentswise unlimited right to use, reproduce, change and, also in a modified or processed state, make accessible to the public, disclose or utilize in any possible form the results itself or through third parties in any possible known or unknown way.
- 9.2. AN warrants that DSV does not violate copyrights, patents or other intellectual property rights of third parties due to the contractual use of the services performed by AN. If claims for damages or injunctive relief of third parties are brought against DSV due to violation of the aforementioned rights, AN is obliged to make all reasonable efforts to assist DSV in repelling such claims. If thereupon DSV is held liable towards a third party, AN shall indemnify DSV for all claims of the third party and all incurred costs of DSV.

#### **10. Assignment of claim**

Assignment of claim of AN against DSV shall only be permissible, if such assignment indicated by AN to DSV in advance and in writing and DSV approves such assignment in writing.

#### **11. Compliance with the Minimum-Wage-Act**

- 11.1. AN warrants that he and his vicarious agents comply with the provisions of the Minimum-Wage-Act (MiLoG), in particular the obligation to pay the minimum wage.
- 11.2. AN shall hold DSV harmless upon first demand against any and all claims by third parties arising out of or in connection with the violation of the MiLoG by AN or by AN's vicarious agents. Third parties in the meaning of this clause are in particular employees of AN or his subcontractors. The hold-harmless obligation also applies for any sanctions, fines or other measures or claims, which are filed against DSV by authorities or other organisations arising out of or in connection with the violation of the MiLoG by AN or by AN's vicarious agents as well as for any legal defence costs.

#### **12. Termination**

- 12.1. If not otherwise agreed upon, DSV is entitled to terminate the contract observing a notice period of 4 weeks to the end of a month.
- 12.2. In the event of premature termination, DSV remunerates provided services up to the date of termination of the contract as well as further provably arising and directly resulting costs, deducting spared expenses. AN is not entitled to further claims for performance or damages due to the termination of the contract.
- 12.3. The right to extraordinary termination remains unaffected. A reason for extraordinary termination for DSV is in particular given, if AN violates his obligations pursuant to the contract or insolvency proceedings are instituted with respect to AN's assets or if the institution of such proceedings has been rejected due a lack of insolvency assets. In this event DSV is entitled to make use of the existing installation or up to this point performed service in order to continue the service, in exchange for adequate compensation.

#### **13. Confidentiality**

- 13.1. AN is obliged to keep all information received from DSV in the course of cooperation confidential, the same applies for his subcontractors or other vicarious agents. If such information is unnecessary for the fulfillment of the contract, such information shall neither be used in AN's own business interest against DSV nor be forwarded to third parties.
- 13.2. The confidentiality obligations shall remain in force for a period of two years after termination of all contracts governed by this terms and conditions.

#### **14. Code of Conduct; safeguarding the delivery chain**

- 14.1. AN is obliged to comply with all applicable laws. In particular AN shall not participate in corruption, violation of civil rights or child labor in any way. Furthermore AN shall take necessary organizational measures to warrant the health and security of his employees at their place of work, to comply with environmental laws and to comply with

and support further provisions of the Code of Conduct ("CoC") (available at [www.de.dsv.com](http://www.de.dsv.com)). AN obliges any subcontractors equally.

- 14.2. Within two weeks upon conclusion of contract AN shall without request present DSV a signed copy of the CoC and the sustainability agreement.
- 14.3. AN shall perform all necessary organizational instructions and measures, particular in relation to security service, business partner-, personal- and information security, packaging and transport in order to ensure the safety of supply chain pursuant to the requirements of internationally acknowledged initiatives on the basis of the WCO SAFE Framework of Standards (in particular AEO). He shall protect deliveries and services to or on behalf of DSV or to a third party specified by DSV from unauthorized access and manipulation. For any of the aforementioned obligations AN ensures to only use reliable and trustworthy personal and he shall legally bind subcontractors to these obligations. AN is obliged to immediately present, without request, an original of the "Security Declaration for Authorized Economic Operators AEO" (available at: [www.de.dsv.com](http://www.de.dsv.com)), as long as AN is not certified according to AEO-S or AEO-F. This obligation does not apply if such declaration has already been presented to DSV.
- 14.4. In the event services of AN are associated with secure air freight, AN acknowledges his awareness of the applicable rules with regard to secure handling of air freight (Regulation (EC) No 300/2008 as of 11.03.2008, Regulation (EC) No 185/2010 as of 04.03.2010 as well as corrections and supplementary/additional regulations) and AN is obliged to comply with these rules. AN obliges any subcontractors equally.
- 14.5. DSV shall be entitled to check the AN for compliance with regard to the aforementioned obligations pursuant to no. 13.3. and 13.4. at any time.
- 14.6. DSV is entitled to terminate the cooperation with immediate effect if AN violates the aforementioned obligations pursuant to no. 13.1., 13.3. and 13.4.

#### **15. Written form clause**

Deviations from provisions of this General Terms and Conditions, alterations or amendments of the offer or order of DSV as well as verbal side agreements shall require written form in order to be effective. This also applies to deviations from or cancellation of this written form requirement.

#### **16. Severability clause**

In the event of individual provisions of the integral parts of contract are or become invalid or are or become unenforceable, or in the event that any integral part of contract has a loophole, this shall not affect the validity of the remaining provisions. The invalid, unenforceable or missing provision shall be replaced by a proper and legally valid provision which comes closest to the economic intent of the particular integral part of contract and which DSV and AN would have agreed upon knowing the invalidity, unenforceability or incompleteness of the certain provision. DSV and AN are obliged to confirm such provision in due form, at least in writing.

#### **17. Governing law, venue**

- 17.1. The law of the federal republic of Germany shall apply.
- 17.2. Exclusive jurisdiction for any dispute arising is Bremen.

**The English translation of the General Terms and Conditions of Purchase for Woks and Services of DSV Group Germany 12/2014 is provided for information purposes only. The legally binding text is only the German Version of the General Terms and Conditions of Purchase for Woks and Services of DSV Group Germany 12/2014 (available at: [www.de.dsv.com](http://www.de.dsv.com)).**