

Standard Terms and Conditions of Purchase of Open Grid Europe GmbH

(Version July 2012)

- Important: Permission to Process Personal
Data Granted in Section 12 ! -

1. Scope

Unless otherwise agreed, these Standard Terms and Conditions of Purchase of Open Grid Europe GmbH (hereinafter referred to as „Open Grid Europe“) shall apply to each contract for the purchase of goods and/or services (hereinafter referred to as „the Contract“) awarded by Open Grid Europe to the supplier and/ or contractor (hereinafter referred to as „the Vendor“) of the goods and/ or services which are the subject of the Contract. Open Grid Europe herewith expressly rejects the inclusion of all or any of the Vendor's standard terms and conditions.

2. Acceptance of Contract

The acceptance-of-contract form attached to the Contract awarded to the Vendor shall be duly signed by the Vendor and returned to Open Grid Europe within a period of eight (8) days from the date of receipt of said form. Subject to the provisions of Paragraph 3 of this Section 2, the Contract awarded shall not become effective until Open Grid Europe has received said acceptance-of-contract form duly signed by the Vendor or by a person authorised to represent the Vendor.

The execution of said acceptance-of-contract form shall be deemed to be the Vendor's agreement with and acceptance of these Standard Terms and Conditions of Purchase. No modification of or amendment to the Contract shall become effective unless accepted by Open Grid Europe in writing. Open Grid Europe shall in no case whatsoever be bound by any standard terms or conditions of the Vendor, even if Open Grid Europe does not expressly object to any such standard terms or conditions.

If the Vendor performs a contract without returning said acceptance-of-contract form unchanged and duly signed by the Vendor within the period of eight (8) days referred to in Paragraph 1 of this Section 2, such performance shall be deemed to be the Vendor's agreement with and acceptance of these Standard Terms and Conditions of Purchase. However, any non-objection to or acceptance of the goods and/or services under the Contract shall not be deemed to imply that Open Grid Europe accepts any modifications of or amendments to said acceptance-of-contract form received later than the period of eight (8) days referred to in Paragraph 1 of this Section 2 or that Open Grid Europe GmbH agrees to the conclusion of the Contract. In such case, the Contract shall not be deemed to have been concluded until the conclusion of the Contract has been expressly confirmed by Open Grid Europe in writing.

3. Delivery Date(s)

Each date agreed for the delivery of goods and/or the provision of services under these Standard Terms and Conditions of Purchase shall be strictly binding upon the Vendor. If the Vendor realises that it may be unable to meet a deadline agreed under the Contract, the Vendor shall notify Open Grid Europe promptly of any such delay in order to allow Open Grid Europe to make any arrangements necessary.

4. Deliveries, Shipping Documents

A letter of advice shall be forwarded by the Vendor to the Logistics Department of Open Grid Europe promptly upon the dispatch of each consignment shipped under the Contract. Each such consignment shall be accompanied by a delivery note in duplicate. Each shipping document for goods shipped under the Contract shall show the date and the number of the Contract as well as the item number(s) to which the shipping document relates.

For any and all deliveries under the Contract, the Vendor shall observe the conditions and/or identifications specified by Open Grid Europe and/or stipulated by law. In the event of non-observance of any such conditions and/or identifications by the Vendor, Open Grid Europe shall be entitled to reject the delivery for which such conditions and/or identifications have not been observed.

5. Invoicing and Payment

For each contract awarded by Open Grid Europe, a separate invoice shall be issued by the Vendor after the performance of the Contract and each such invoice shall show the date and the number of the Contract as well as the item number(s) to which the invoice relates. Any such invoice shall be submitted in writing or in text form in the sense of Section 126 b German Civil Code (BGB – invoice form with Vendor's printed company name at the end of the invoice text). Shipments under a contract shall not be accompanied by any invoices.

Payments due under the Contract shall be made within two (2) weeks from the date of delivery and/or acceptance of the services performed and receipt of the invoice made out for such delivery and/or acceptance less three per cent (3 %) discount or within thirty (30) days from said date net cash.

6. Warranty

Following receipt of a notice of defect from Open Grid Europe, the Vendor shall at its own expense remedy any defects in the goods delivered under the Contract either by repair or replacement as requested by Open Grid Europe and/or any defects in the services performed under the Contract promptly within the reasonable period specified by Open Grid Europe (subsequent performance by the Vendor). The limitation period for any and all warranty claims of Open Grid Europe under the Contract shall be two (2) years from the date on which the risk concerning any such defective goods and/or services passes to Open Grid Europe or from the date on which Open Grid Europe accepts any such goods and/or services, unless the applicable statutory limitation periods are longer.

If the Vendor refuses subsequent performance, or if the Vendor's first attempt at subsequent performance fails, or if subsequent performance by the Vendor does not occur within the period specified by Open Grid Europe for any other reason, Open Grid Europe shall be entitled to withdraw from the Contract or demand a reduction in price - or, in the case of a contract for work and services, to remedy any such defect itself at the expense of the Vendor or have any such defect remedied by a third party at the expense of the Vendor and receive from the Vendor a reasonable advance payment for any such remedial action - and Open Grid Europe shall further be entitled to claim and receive from the Vendor damages for and/or the reimbursement of any costs incurred in connection with a breach of duty by the Vendor under the Contract. Open Grid Europe shall be free from any obligation to request subsequent performance by the Vendor or grant a period for any such subsequent performance, if it is unreasonable to expect Open Grid Europe to make any such request or grant any such period or if any other circumstances justify the immediate enforcement and/or exercise of rights by Open Grid Europe, taking into consideration the interests of both parties to the Contract.

In the event of subsequent performance by the Vendor, the warranty period applicable under the Contract shall be extended by the period from the date on which any such defect was notified by Open Grid Europe until the date on which the defective part was successfully repaired or replaced and/or on which the defective service was successfully re-performed and accepted.

The provisions hereinabove shall apply mutatis mutandis to all goods which have been repaired or delivered in replacement of defective goods and/or to all services re-performed by the Vendor under the Contract.

The provisions contained herein shall be without prejudice to the statutory warranty rights of Open Grid Europe.

7. Liability

The Vendor shall be liable under all applicable statutory liability provisions.

The liability of Open Grid Europe created by statute or by contract for any violation of its obligations under or outside the Contract shall be limited to wilful acts and gross negligence.

Open Grid Europe shall also be liable in the event of slight negligence in its fulfilment of obligations which are of essence to the performance of the Contract. The liability limitations valid for Open Grid Europe shall also apply mutatis mutandis to the liability of its servants and agents.

8. Withdrawal from Contract

If any of the circumstances essential for awarding the Contract to the Vendor changes before the Contract has been fulfilled by the Vendor and if any such change is beyond the reasonable control of Open Grid Europe, Open Grid Europe shall be entitled to have the Contract performed by the Vendor at a date later than the date agreed under the Contract or to withdraw from the Contract either in whole or in part. However, this Section 8 shall not affect Paragraph 2 of Section 6 hereof.

9. Place of Performance

The place of contract performance shall be the place laid down in the Contract. The place of payment under the Contract shall be Essen, Germany.

10. Jurisdiction

The courts at Essen shall have exclusive jurisdiction in all questions arising from the Contract.

11. Applicable Law

The Contract between Open Grid Europe and the Vendor shall be governed and construed and interpreted in accordance with the laws of the Federal Republic of Germany, and UN sales law shall be expressly excluded.

12. Data Processing

If the Vendor is a natural person, the Vendor herewith grants Open Grid Europe permission to acquire and process its personal data as required in connection with the general purchase activities of and contracts awarded by Open Grid Europe. In all other respects, the acquisition and processing of any such data shall be subject to the Federal Data Protection Law (Bundesdatenschutzgesetz, Sections 27 ff.) and as admissible under other legal provisions.

The data so acquired and processed on the basis of the permission granted by the Vendor shall include, without limitation, the Vendor's particulars (name, address, telephone number, date and place of birth, occupation, company) and contract data (quantities ordered and delivered, volumes, costs, invoice data, payments, outstanding payments, secured claims with description of security).

Please send all correspondence to the main office of Open Grid Europe GmbH, Kallenbergstr. 5, 45141 Essen, Germany.

Flexible working hours / core time:
Monday to Friday 9.00 – 15.30 hrs.

For deliveries to the logistics centre, Dorsten, Germany:
Monday to Friday: 7.00 – 12.00 hrs and 12.30 – 15.30 hrs.

Place, Date

Signature of Vendor or Vendor's legal representative