

# Standard Terms and Conditions of the OWS Group

OWS Off-Shore Wind Solutions GmbH, OWS Logistik GmbH,  
OWS Natalia Bekker KG, OWS Windlift 1 Charter KG,  
Bard Schiffsbetriebsgesellschaft mbH & Co. MS Ozean Zephyr KG



## 1 Scope of application

1.1 The following terms and conditions are applicable to business transactions between the OWS Group (hereinafter "OWS") and legal entities under public law and special funds under public law (hereinafter "Suppliers").

1.2 Supplier's standard terms and conditions that deviate or supplement these Standard Terms and Conditions are not binding on OWS even if OWS has not expressly objected thereto or the Supplier declares that it will deliver goods only at its own standard terms & conditions or has attached same to its acceptance of order or the delivery or order slip.

1.3 The following standard Terms and Conditions apply for the delivery of goods and the performance of works and services.

## 2 Purchase orders

2.1 All orders of OWS and any amendments of or supplements to these orders must be made in writing in order to be effective. This shall also apply to the cancellation and/or amendment of this written form clause. The written form requirement is also deemed complied with if communications are sent by remote data transmission or facsimile transmission.

2.2 OWS has the right to cancel its order without charge if the Supplier fails to confirm the order without changes to OWS in writing within two weeks of receipt thereof.

2.3 The acknowledgement of acceptance of the order must include all essential order data, including, but not limited to, the exact designation of the ordered goods or services, the order number and the order and delivery dates.

2.4. Should the acknowledgement of order deviate from the order, OWS shall be bound to the order only if OWS has agreed in writing to such deviation.

2.5 Release orders on the basis of a contract or an order release planning entered into between OWS and the Supplier shall become binding at the latest two weeks after receipt of the release order unless the Supplier opposes any such order within said period.

## 3 Prices, terms of payment

3.1 The prices agreed upon are fixed prices before VAT. The service rendered will be calculated on the basis of the actual expenditure of work unless otherwise agreed in the acknowledgement.

3.2 Unless agreed otherwise, payments are made within 30 days with 3% discount or within 45 days without discount, in each case from receipt of an auditable invoice by OWS.

3.3 Supplier's invoices must be issued in duplicate and itemize for each delivery the information requested in the order and all other requirements of para 14 German Value Added Tax Act (UStG). The value added tax must be shown separately on the invoice.

3.4 In the event the information pursuant to Subsection 3.3 above is missing, incorrect or incomplete, or the invoice cannot be audited for any other reason, Supplier's claim does not fall due. In any case OWS is entitled to withhold the value added tax part, if the Suppliers invoice does not fulfil the requirements of para 14 German Value Added Tax Act (UStG).

3.5 Payments made by OWS do not imply OWS's acknowledgement that the goods delivered or services provided are in conformity with the contract. In the event of defective or incomplete delivery of goods or services, OWS shall be entitled, without prejudice to any further claims and rights it may have, to withhold to a reasonable extent payments and claims resulting from this business relationship pending proper performance. The rules and regulations of para 377 and 378 of the German Act of Commerce (HGB) shall not apply.

## 4 Delivery, place of performance

4.1 The agreed-upon delivery- and performance dates are binding. If no dates for the delivery of goods and/or performance of services have been agreed upon with the Supplier, the latter must deliver the goods or perform the services within the customary and reasonable period of time without delay. Any delivery of goods or performance of services in advance or after the agreed date is subject to OWS's consent. The same regulations shall apply for the delivery of parts or deviations in the amount. Deviations in the amount are not deemed to be complete, even if OWS does not object immediately after receipt of the deliverables. In the event of force majeure, both OWS and the Supplier shall be released from their respective duties of taking delivery/acceptance and delivery of goods/performance of services, provided that the party affected by the event of force majeure notifies the other party thereof immediately after its occurrence and provides the expected duration of the event preventing such party from fulfilling its obligations or duties.

4.2 Each delivery must be accompanied by a delivery slip stating OWS's order number and the description of the contents specifying type and quantity.

4.3 The place of performance for the delivery of goods or performance of services by the Supplier is the destination specified in the order. If no such destination is provided, then the corporate seat of OWS stated in the order shall be the place of performance.

4.4 Unless agreed otherwise, deliveries are based on Delivered At Place (DAP) D-26725 Emden, Am Freihafen 1 according to INCOTERMS 2010 unless otherwise agreed in these General Terms and Conditions.

## 5 Contractual penalty

5.1 If the Supplier is in default with the delivery of goods or the performance of services, OWS shall be entitled to a contractual penalty of 0.1% of the agreed-upon net price per calendar day of default; this amount, however, is limited to 5% of the agreed-upon net price. The limitation of the contractual penalty to 5% of the agreed-upon net price shall apply even if the Supplier is culpably in default with several agreed-upon delivery dates under one contract.

5.2 The assertion of a contractual penalty can be reserved even after final payment.

5.3 Payment of the contractual penalty by the Supplier does not release the Supplier from fulfilling its contractual obligations and from any further (damage) claims against it. The contractual penalty, however, shall be set off against claims OWS is entitled to due to default.

5.4 If contractual dates are changed by mutual consent, this clause 5 shall also apply to these new dates.

## 6 Passing of risk, transportation, title

6.1 The Supplier must properly pack, ship and provide sufficient insurance coverage for the items to be delivered and comply with all relevant packing and shipping rules and regulations. The Supplier is liable for any damage suffered by OWS due to improper or insufficient packing, shipping or insurance coverage.

6.2 Shipping documents, such as delivery and packing slips must be attached to the delivered items. The order numbers and the description of the items requested in OWS's order must be provided on all documents.

6.3 Any additional costs that are incurred by OWS due to the non-observance of the rules stipulated above shall be at the Supplier's expense.

6.4 Irrespective of the agreed-upon pricing terms, the risk for items without installation or assembly shall pass to OWS upon receipt at the delivery address specified by OWS, and the risk for items with installation or assembly shall pass to OWS upon successful conclusion of acceptance. This clause shall apply even if it deviates from the regulations in clause 4.4.

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6.5 The title to the goods delivered shall pass upon OWS upon payment. Any prolonged or expanded retention of title is excluded.

## 7 Warranty (defects liability)

7.1 The Supplier warrants that the delivery item/service has the contractually agreed-upon quality, corresponds to the state of the art at the time of passing of risk, and does not have any defects which cancel or reduce its value or suitability for its usual purpose or that specified in the contract. The Supplier is liable for the fact that neither the delivery nor the use of the delivered item/service infringes third party rights, including, but not limited to, patents or other industrial property rights.

7.2 The period of limitation for defects under a purchase agreement or a contract for work and services shall be 24 months starting to run upon passing of risk.

7.3 OWS will notify the Supplier of any defect as soon as it has been detected in the ordinary course of business.

7.4 OWS is entitled without limitation to any and all statutory warranty claims and rights. OWS, at its own discretion, is entitled to claim from the Supplier either the rectification of performance, elimination of the defect or delivery of an item free from defects, or the creation of a new deliverable, as the case may be. In the event of rectification of performance, OWS is in particular entitled to claim transportation costs as well as the costs of installation and dismantling incurred due to such rectification. The right to claim damages, including, but not limited to damages in lieu of performance, is expressly reserved.

7.5 In the event that the supplier does not commence rectifying the defect immediately after our request to remedy it, in urgent cases, especially to ward off acute danger or to prevent greater damage, we are entitled to undertake such rectification ourselves or to have it undertaken by a third party at the expense of the supplier.

7.6 Further claims and rights of OWS shall remain unaffected. If the supplier performs its obligation to effect supplementary performance by supplying a substitute product, the statute of limitations of the goods delivered in substitution shall in accordance to clause 7.2 start to run at new after delivery thereof.

7.7 OWS shall be entitled to claim the rights under this clause 7 even when the defect of the deliverables has not been objected immediately after receipt.

## 8 Liability of OWS

Claims for damages and for compensation of expenses (hereinafter referred to as "Damages") by the Supplier against OWS – regardless of the legal basis thereof – are excluded unless such Damages arise from deliberate or grossly negligent breach of duty by OWS. This clause does not apply for liabilities under the Product Liability Act, or injury to health and bodily injury of the Supplier or its staff due to a breach of duty for which OWS is responsible, the non-compliance with a warranty for a specific quality or the violation of essential contractual obligations by OWS. In the event of violation of essential contractual obligations by OWS, the Supplier's claim against OWS for damages shall be limited to the compensation for damage that is foreseeable and typical of this type of contract. Damage that OWS must typically expect when any specific obligation has been violated is deemed foreseeable and typical of this type of contract. A violation of obligations by OWS's legal representative or person employed in performing its obligation is deemed a violation of obligations by OWS. The foregoing provisions shall not be associated with a reversal of the burden of proof at the expense of the Supplier.

## 9 Provision of material

9.1 Material provided by OWS shall remain OWS's property and must be stored by the Supplier free of charge and with the diligence of a prudent businessman separate from its other items, and marked as OWS's property. This material may be used exclusively for the performance of work ordered by OWS. The

Supplier has a liability for damage to and impairment of the material provided.

9.2 If and to the extent that items provided by OWS are processed or remodeled by the Supplier to become a new movable object, OWS shall be deemed the manufacturer thereof. In the event of combination or inseparable blending with other objects, OWS shall acquire the co-ownership of such new item on a pro-rata basis of the value the items had at the time of combining or blending. If the Supplier's item is to be considered the main item due to the manner of combination or blending, it shall be agreed that the Supplier assigns co-ownership of such item to OWS on a pro-rata basis and stores the co-owned product free of charge for OWS. OWS accepts this assignment in advance.

9.3 Any models, matrixes, templates, samples, tools, other means, documents and data made available by OWS to the Supplier, or in the production of which OWS has a major share with a cost contribution of at least 50%, may be used by the Supplier exclusively for processing the proposal concerned or the execution of the order for goods or services. The Supplier must keep them in safe custody and protect them against third party access; any use of these items for the Supplier's own purposes or for goods and/or services destined for third parties shall be subject to OWS's written consent. All items provided and specified in this section must be returned to OWS - together with any transcripts or copies thereof – without delay and without further request after handling of the inquiry or after delivery of the item ordered.

## 10 Special obligations of the Supplier

10.1 The Supplier must prove to OWS upon request that it has complied with the quality requirements set forth in the order and agreed upon in each individual contract by providing proper documentation thereof (e.g. certificates, description of the production process, etc.).

10.2 Any modification of the delivery item and/or the production/manufacturing process agreed upon with OWS is subject to the written consent of OWS in each and every case.

## 11 Regulations concerning export control and foreign trade data

11.1 The Supplier is responsible for complying with all applicable national and international customs and foreign trade rules and regulations. OWS states that the deliverables of the Supplier or the services possibly will have to be rendered in the German Exclusive Economic Zone (EEZ). Due to this circumstance the Supplier has to observe all custom duties related to the deliverables or services and to make sure that all customs liabilities regarding the deliverables can be fulfilled. No later than two weeks after the order and immediately upon each amendment, the Supplier must provide OWS in writing with any information and data that OWS needs for compliance with foreign trade law upon exporting, importing and re-exporting goods. For the fulfilment of those requirements, Supplier cannot claim for additional costs.

11.2. In the event that the Supplier violates its obligations under 11.1 above, it shall compensate OWS for any expenses and damage suffered by OWS due to such violation, unless it is not the responsibility of the Supplier.

## 12 Right of withdrawal and termination

12.1 In addition to the statutory rights of rescission OWS has the right to withdraw from or terminate the contract with immediate effect if

- the Supplier has stopped supplying its customer,
- there is or threatens to be a fundamental deterioration to the financial circumstances of the Supplier and as a result of this the performance of a supply obligation to OWS is in jeopardy,
- the Supplier meets the criteria for insolvency or over-indebtedness, or

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- the Supplier stops making its payments.

Supplier has to inform OWS immediately if one of the above mentioned circumstances occurs.

12.2 OWS also has the right to withdraw from or terminate the contract if the Supplier files an application for insolvency or comparable debt settlement proceedings to be initiated with respects to its assets.

12.3 If the Supplier withdraws from or terminates the contract by virtue of the foregoing contractual rescission rights or respective termination rights, then he must compensate OWS for the loss or damage incurred as a result, unless the Supplier was not responsible for the rights arising to withdraw from or terminate the contract.

12.4 Other statutory rights and claims shall not be limited by the regulations included in section 12.

## 13 Spare parts, availability

13.1 The Supplier is obligated to provide OWS with spare parts at reasonable terms for the duration of the customary service life, but at least for ten years after the last delivery/acceptance.

13.2 If the Supplier discontinues delivery of the goods upon expiration of or during the period specified above, it must provide OWS with the opportunity to place one last order at reasonable terms.

13.3 If the Supplier doesn't comply with the term of capacity and delivery he has to reimburse OWS for the additional expenses incurred by the replacement. Should OWS be made liable for compensation by third parties due to the non-delivery or late delivery, the Supplier has to hold OWS harmless, in their internal relation, from all claims for damages including the costs of legal action.

## 14 Product liability

Should a claim for damages be asserted by a third party against OWS as a result of a defect in the product, the Supplier shall hold OWS harmless and indemnify OWS against such claims and costs (all costs and expenses, including the costs of any legal action) insofar as the defect in the product is due to a defect in the items delivered or work performed by the Supplier. In all other respects, the Supplier is liable in accordance with the statutory provisions.

## 15. Occupational safety and environmental protection

OWS applies the certified management systems according to DIN EN ISO 14001 and OHSAS 18001 to improve the impact on the environment, health and safety.

For this reason OWS lives by and acts according to the principles reflecting this fact. Further OWS expects its service providers and suppliers to respect the relevant regulations regarding occupational safety and environmental protection even if they are above the statutory requirements. Additionally service providers have to comply with the OWS's HSEQ directives and regulations on the wind farm "Bard Offshore 1" and on the company premises of OWS. The Supplier will be provided on demand with the respective regulations of OWS. The Supplier cannot claim for additional costs caused by the fulfilment of those regulations.

## 16 Confidentiality

16.1 The Supplier will treat as confidential all illustrations, models, drawings, calculations and other documents and information received from OWS in connection with the execution of the order. This information may not be disclosed to third parties unless expressly authorized by OWS. This shall apply even if OWS and the Supplier did not enter into a separate non disclosure agreement.

16.2 Production for third parties, exhibit of products specifically made for OWS, in particular those manufactured according to plans, drawings or other individual requirements of OWS, publications regarding the orders and the services performed, as

well as reference to such orders vis-à-vis third parties are subject to OWS's express written authorization.

16.3 In connection with its advertising materials, when giving references, or issuing other publications, the Supplier is not allowed to provide, show or use in any other manner the name or trademark of OWS unless the Supplier has obtained OWS's prior written consent.

## 17 Right of use and proprietary rights

17.1 OWS may use, modify and transfer the subject matter of the contract without limitation to third parties including any industrial property or proprietary rights of the Supplier. The Supplier hereby assigns OWS a non restricted, transferable, timely unrestricted license. The Supplier warrants that its deliverables are free of intellectual property rights of third parties.

17.2 Should OWS be held liable by any third party for the infringement of any rights of use or proprietary rights, the Supplier shall be obligated to indemnify and hold OWS harmless against such claims upon first request in writing and to compensate every damage caused by a breach of those third parties intellectual property rights..

## 18 Set-off

Set-off with counterclaims of the Supplier is effective only insofar as these claims are not disputed and due or have been established as final and absolute.

## 19 Miscellaneous

19.1 Any and all legal relationships between the Supplier and OWS are subject to German law to the exclusion of the UN Sales Convention (CISG).

19.2 The exclusive place of jurisdiction with regard to all disputes arising from and/or in connection with any of the contracts entered into with OWS, which include these terms and conditions as an integral part thereof, is Emden (courts of the City of Emden).

18.3 Any amendments of and/or supplements to these Standard Terms and Conditions and of the contracts of which they are an integral part must be made in writing in order to become effective. This shall also apply to the amendment or cancellation of this written form clause.

19.4 Should any of the provisions of these Standard Terms and Conditions for Purchases and Contracts or of any contract of which they are an integral part be or become ineffective or incomplete, the effectiveness of the remaining provisions shall not be affected thereby. In lieu of the ineffective provision, the parties hereto shall agree upon a provision that achieves the economic goal desired by the parties to its full extent or to the extent legally possible.