

General Terms and Conditions of Procurement and Contracts ("GTCPC- HMS Infra" issued February 2022)

Some points of these GTCPC (GTCPC-HMS Infra) only apply when nothing is specified otherwise in overriding contractual terms (see provision on order of precedence in the contract or precedence provision B.2 of GTCPC- HMS Infra).

A) Terms of bid submissions

1. By submitting a bid the bidder unrestrictedly acknowledges these GTCPC and the further terms and contractual elements of the call for tenders or invitation to submit bids (request). The bidder's own contract terms shall only become an integral part of the contract if the client (HMS Infra GmbH; referred to hereinafter as the CL) expressly agrees to them in writing.
2. The bidder undertakes to inspect the tender documents carefully and inform the CL in writing of recognisable defects as soon as possible, at the latest on submission of its bid. This inspection must relate in particular to the completeness of the performance which has been requested or is being tendered (economic evaluation) and the technically flawless feasibility of the performance (technical evaluation). Omissions in this respect shall come under the sphere of risk of the contractor (hereinafter referred to as the CN).
3. The bidder (later contractor, hereinafter referred to as the CN) must inspect the local conditions. It must inform itself sufficiently about the expected circumstances of the provision of the performance and take account of these circumstances in its pricing. Omissions in this respect shall come under the sphere of risk of the CN.
4. The bidder undertakes to inform the CL immediately of all circumstances which from the perspective of the law on public procurement (e.g. Bundesvergabegesetz [*Federal Procurement Act*] - BVergG) argue against the bidder being nominated as a subcontractor (e.g. insufficient suitability, lack of reliability, etc.).
5. The bidder undertakes in the event of price enquiries and requests for an explanation of prices from the client of the CL (hereinafter referred to as the principal) to provide a detailed calculation immediately at the CL's request. It is forbidden to contact the principal directly.
6. The bidder is not permitted to pass the entire contract on to subcontractors. If the bidder intends to pass parts of the contract to subcontractors, the subcontractors which come into question for this must be named in the bid stating the part of the performance to be taken over by them. If no subcontractors are named in the bid, or if during the execution of the contract there is no written consent by the CL to the use of subcontractors, the CN must provide the performance itself.
7. The bid shall be submitted free of costs for the CL. No claims can be asserted on account of the contract not being awarded.
8. The bidder shall be bound by its bid for six months from the date of receipt of the bid by the CL (deadline for acceptance of bids). If in respect of the award of a public contract (e.g. in accordance with the BVergG, VOB/A or similar) the period for acceptance of bids applicable to the CL is extended, the bidder shall also be bound by this extended period if it exceeds the 6-month binding period.

B) Terms of contract

1. Contractual basis

The terms and contractual bases set out in the invitation to submit bids (request) apply. The price stated by the bidder must include these terms and contractual bases.

The following further contractual bases apply in any event, and in descending order or precedence in the event of contradictions:

1. all the standards with technical content which are included in the list of ÖNORM standards and come into consideration,
2. in the case of construction projects on bridges, the applicable Guidelines and Regulations for Planning, Construction and Maintenance of Roads (RVS),
3. all the ÖNORM standards which include standardized terms of contract (standards for contracts for work and services of the series B 22xx) for individual subject areas, insofar as the performance or even just parts thereof (individual items) concern these subject areas,
4. if variable prices are agreed, the ÖNORM B 2111 "Conversion of variable prices of construction works"
5. the Haslinger factory standards.

General standards for contracts such as ÖNORM B 2110, ÖNORM B 2118, VOB/A shall not be effective alone with these GTCPC. References from other ÖNORM standards (e.g. B 22xx, B 2111) to ÖNORM B 2110 shall also not render this effective.

A general contractual standard shall only be deemed to have been agreed if it has been agreed to be applicable in the request itself, in accordance with the terms in the request, or in the contract.

The CN's own terms and conditions of contract, supply or execution shall only become an integral part of the contract if they are expressly agreed to by the CL in writing. They shall also not apply even if they are stated on the CN's letterheads and are not objected to again by the CL.

2. Order of precedence of the elements of the contract

If contradictions arise from the contract, unless anything has been agreed otherwise between the CL and CN the elements of the contract shall apply in the following order:

1. The notice of award
2. Agreements in accordance with the record of the negotiations
3. The terms and conditions defined in the enquiry (request)
4. The tender specifications priced by the bidder
5. The rules and provisions of these General Terms and Conditions of Procurement and Contracts
6. Haslinger factory standards
7. The ÖNORM standards with technical content and/or for construction projects on bridges take precedence over the applicable Guidelines and Regulations for Planning, Construction and Maintenance of Roads (RVS)

8. ÖNORM standards of the series B 22xx with standardized terms of contract which are factually applicable to the contract in question
9. ÖNORM B 2111 insofar as variable prices are expressly agreed
3. Provision of documents, request for information

If documents, instructions, advance deliveries etc. from the CL or the principal are required for the execution of the performance, the CN must request these in good time and verifiably from the CL. It should be borne in mind (time schedule!) that the CL itself might first have to request or obtain the documents, information etc. from the principal.
4. Plans of the CN

Any execution plans, calculations etc. of the CN must be submitted to the CL for approval in due time in the correct number.

If the CL requests drawings, plans, calculations etc. which the CN has to procure in accordance with the contract or in accordance with general custom, no separate remuneration shall take place over and above the agreed contractual prices.
5. Modifications of the contract

In order to be legally effective, modifications and additions to the contract require the written confirmation of both contracting parties. This also applies in the event of an amicable departure from the agreed written form.
6. Withdrawal from the contract

The CL shall also be entitled to withdraw from the contract if its client (principal) for its part withdraws from the contract with the CL. In this case the contractually rendered services shall be settled with the contractual prices without any further additional claims of whatever kind from the CN. No compensation shall take place in addition to this.
7. Disputes, place of jurisdiction, contractual terms of the CN

Austrian law shall be applied with the exclusion of such standards as would lead to the application of non-Austrian law to the contract.

The place of jurisdiction for disputes from the contract is the district court of Feldkirchen or the regional court of Klagenfurt depending on their competence for the matter.
8. Prices

The bid price (the units prices) includes all the work and supplies which pertain to the complete production of the ordered performance. This shall also be the case if these are not described or stated separately in the bill of quantities or the tender specifications.

If the bill of quantities contains separate items for the construction site overheads, the costs of these must exclusively be tendered in these items. If the bill of quantities contains no items for the construction site overheads, these costs must be included in the prices for the services tendered.

All the prices shall apply with no differences in terms of components, storeys and/or the production period, and shall also remain unchanged if the performance is provided in sections.
9. Ancillary services

Ancillary services are proportionally minor services which according to custom must also be implemented even if they are not shown in the elements of the contract, but only to the extent that they are essential for the complete proper and professional execution of the contractual performance and are directly associated therewith.

No separate remuneration shall take place for ancillary services.

Among others, ancillary services which are named in the ÖNORM standard EN B 2110 and in Series B 22xx as ancillary services also count as ancillary services.

Among others, the following services also count as ancillary services:

 - The production and provision of connections for electricity, water, telephone etc. for the CL's own requirements, and the costs of consumption.
 - The fencing, surveillance, signage, lighting and securing of the CL's own workplace(s).
 - All services in connection with the setup and provision of the construction site, surveillance, coordination etc, which are necessary for the performance. The construction site facilities must be set up in consultation with the principal's construction site manager and in accordance with the construction site setup plan. The CN shall be obliged to implement and clear the areas made available to it for setting up the construction site several times free of charge on the instructions of the construction site manager if these areas are required for construction measures.
 - All costs for the clearance, removal and disposal of the materials, waste, packaging, soiling etc. incurred due to the CN's performance.
 - Participation in meetings
 - The necessary function tests and trial operations
 - The provision of scaffolding
 - The taking of actual measurements before provision of the performance
10. Supplement to the contractor's (CN) duty of inspection and warning (reporting concerns)

The duty of inspection and warning (reporting concerns) shall only be deemed to have been complied with if any necessary warning takes place in writing and is verifiably received by the CL.

In particular the following must be checked among other things:

 - The CN must inspect deliveries and supplies from the CL for their suitability, completeness, damage etc. immediately they are handed over.
11. Cooperation in the construction site area

If the CN's services build upon the services of other contractors, they must without separate remuneration be coordinated with the CL and the other entrepreneurs, planned and implemented in a coordinated fashion, in order to ensure that the project runs smoothly.

Within the time window of 06.00 to 22.00 on weekdays, the CN must adapt its working times to those of the CL and/or the principal's other contractors without separate remuneration.

On request by the CL, an authorised representative of the CN must participate in the construction meetings of the principal and the CL.
12. Safety regulations

The contractor itself is responsible for compliance with all the safety standards and regulations applicable to the services which it is to execute. Attention must be paid in particular to ensuring that the personnel employed at the place of provision of the performance observe the applicable safety standards. Insofar as necessary for reasons of accident prevention, fall protection etc. must be provided. These should be included in the calculation of the end prices and shall not be remunerated separately. For justified reasons, in particular the breaching of the safety regulations, the CL shall be entitled to ask the CN to replace personnel.

13. Documentation

The CN is obliged to maintain a construction diary. The content stipulations of ÖNORM B 2110 Issue 2011 Section 6.2.7.2.2 must be observed.
14. Fixed prices or variable prices

Fixed prices are deemed to have been agreed.

The agreed prices shall also apply if the agreed performance period is exceeded by up to 25% of the originally intended performance period, however in all events if this is exceeded by up to three months.
15. Cost-plus services (hourly paid work)

Cost-plus services shall only be provided if specially ordered by the CL.

The CN must keep records daily of cost-plus services. Records of cost-plus services must be handed over to the CL for confirmation and recognition of the type and extent within two working days of the day on which such services were provided.

Cost-plus services for which records are not verifiably handed over to the CL for confirmation and recognition of the type and extent by the expiry of four calendar days from the provision of the service at the latest shall not be remunerated.

A confirmation of the execution of cost-plus services, and also the payment of cost-plus services, shall not constitute a declaration by the CL that these cost-plus services are not included in the contractual scope of services calculated via unit or flat-rate prices. If it turns out that the services charged as cost-plus services are included in the contractual scope of services calculated via unit or flat-rate prices, the CL can claim back the overpayment within the period in accordance with Point 32 GTCP- HMS Infra B 2110.
16. Contractual penalties

If there is a delay in the CN's performance and the CN cannot prove that neither it nor its vicarious agents are to blame for such delay, it shall be deemed to be agreed that the amount of the contractual penalty shall be 0.1% of the original order value, but at least € 250.00, for each calendar day for which the CN's performance is delayed.

If due to such delay the CL incurs damage or disadvantage greater than the contractual penalty, the CN must pay full compensation, even in the event of slight negligence.

If both the CN and the CL are simultaneously delayed, it shall be assumed that the delay of the CL is fully ascribable to the delay of the CN.

The CL can demand a contractual penalty even if it did not reserve the right to do so on acceptance (approval).
17. Right to modify the performance (modification of the building design)

The CL reserves the right to order modifications of the performance (modification of the building design).
18. Calculation risk

The calculation risk lies within the sphere of the CN. No risks from price changes, changes in procurement costs etc., even if they were not foreseeable, or assumptions in calculations or relevant to calculations shall fall within the sphere of risk of the CL.

Failures resulting from disregard of Points A.2 and A.3 shall fall within the sphere of risk of the CN.
19. Weather risk

The CN shall bear the weather risk.

CN's duties of notification in the event of disruptions to the performance and modifications of the performance being ordered (notification requirements)

If the CL orders a modification of the performance, the claim to adjustment of the performance period and/or the remuneration must be notified verifiably in writing on its merits before
- the execution of the performance. This shall also apply if the claim is obvious.
- The CN must inform the CL immediately of disruptions of its performance (e.g. hindrances). This shall constitute a requirement for the assertion of additional costs or the extension of the deadline.
20. Claims must be submitted to the CL for inspection in verifiable form and in respect of the amount.
- Insofar as is factually justified, the CL can assert a claim for minimum costs up to the end of the statute of limitations in accordance with Point 32 GTCP- HMS Infra.
21. Adjustment to the performance period and/or the remuneration in the event of increases in the performance
- Increases in the performance of up to 25% of the originally agreed contract value shall not lead to any adjustment of the agreed execution periods or to any claims by the CN for additional costs resulting from acceleration, adjustment of prices of materials, etc.
22. Loss of entitlement due to delayed notification of additional costs or extension of the deadline
- If the contract provides for notification requirements of the CN in the event of additional costs or the extension of the deadline, failure to provide such notification shall bring about the loss of entitlement.
23. Compensation for disadvantage if the contract amount is under-shot
- If the settlement amount falls below the contract amount, this circumstance shall not give rise to any compensation for disadvantage or any entitlement to such compensation, or any claim for damages etc. on account of the services which were not executed. This shall also apply to the discontinuation of services.
24. Quantity calculation (ÖNORM A 2063)
- If electronic accounting is used, the data must be handed over pursuant to ÖNORM A 2063.
25. Invoicing for cost-plus work
- If the prices for cost-plus services are calculated on the basis of invoices which are to be submitted etc. plus the agreed total surcharge (business overheads, interest on construction loans, risk and profit), the total surcharge for calculating the prices for cost-plus services shall be limited to a maximum of 12 percentage points.
26. Final invoicing
- The final invoice must be issued no later than one month after acceptance (approval) of the performance.
27. Faulty invoicing
- The CL is entitled to return incorrect invoices to the CL within the agreed payment period. The payment period and any discounts agreed shall start afresh on the resubmission of the corrected or modified invoice.
28. Due date for payments
- Invoices for payments on account and invoices for cost-plus work shall be payable no later than 60 days from receipt of the invoice by the CL.
- Final or partial final invoices shall be payable no later than 90 days from receipt of the invoice by the CL.
- Payments shall be cashless. A payment shall be deemed to have been made within the due period if the instruction to the bank to make payment took place within such period and there was cover available.
29. Discount
- If a discount has been agreed, the right to deduct a discount for partial payments made during the discount period shall not be overridden by the fact that other partial payments are made outside the discount period. The agreed discount shall also apply to the liability retainer insofar as it is deducted in cash.

30. Payment cap
Payments of invoices shall only take place to the extent to which the CL is remunerated for the CN's services by the principal.
31. Interest on late payments
The interest on late payments shall be 3 percentage points above the respective applicable base rate issued by the Österreichische Nationalbank (Austrian National Bank).
32. Period for asserting over-payments
If over-payments have been made, it shall be permissible to reclaim them within 4 years from the last payment which took place, if no further payment took place after acceptance (approval).
33. Security for advance payments
The security for advance payments is a security against over-payments (payments on account or payments according to schedule) which are based on services which were only determined approximately, and security for the fulfilment of the contract by the CN.
A security for advance payments shall be retained in the amount of 10% of the invoice total.
34. Liability retainer
The liability retainer is a security in case the CN does not fulfil the duties incumbent upon it from the warranty or compensation for damages.
A liability retainer in the amount of 5% of the invoice total of the final invoice (total price plus VAT) shall be retained unless this is redeemed by the CN by means of another surety.
If the liability retainer is not used, it shall be released no later than 30 calendar days after the expiry of the warranty period.
35. Use of parts of the performance prior to acceptance (approval)
The use of parts of the performance prior to acceptance shall not constitute any acceptance with the triggering of legal consequences of an acceptance, such as transfer of risk, commencement of the warranty period, etc.
36. Acceptance (approval)
It is deemed to have been agreed that a formal acceptance of the performance shall take place. The CN must announce the completion of the performance.
The acceptance of the performance shall only take place at the time when the principal accepts the performance from the CL. The CL shall endeavour to obtain partial acceptances from the principal.
There shall be no loss of entitlement if on acceptance the CL does not submit claims for contractual penalties, obvious defects etc.
37. Retention on account of defects
If the performance is accepted with defects, the CL shall have the right to retain a consideration as well as the liability retainer. The amount of the retained consideration shall only be limited by the statutory normal situation.
38. Risk assumption
Until the acceptance (approval), the CN shall bear the risk of the loss, destruction or damage to its performance and the materials which have been provided to it.
39. Warranty periods
The warranty period is 42 months in principle. If the site of the construction work is the territory of the Federal Republic of Germany, the warranty period shall be 54 months.
The warranty period shall commence with the acceptance (approval) of the performance free from defects. If defects are rectified after acceptance (amelioration or replacement), the warranty period for these parts (performances) shall start afresh.
- Defects asserted during the warranty period can still be asserted by means of legal proceedings one year after the expiry of the warranty period (time limit for legal action).
40. Warranty – burden of proof of the existence of a defect
If defects occur during the warranty period, it shall be assumed that these defects were present at the time of acceptance (approval). Such an assumption shall not be made if it is not reconcilable with the nature of the defect.
41. Rectification of defects by third parties
If rectification of defects is requested, this must be undertaken by the CN immediately after being asked to do so by the CL. If the CN does not immediately comply with the request for rectification of the defect, the CL shall be entitled at the CN's expense to rectify the defects itself or have it rectified by third parties. The CN shall renounce objections to the CL concerning the amount of the rectification costs asserted.
42. Damages for slight negligence
Claims by the CL against the CN for compensation shall not be limited even in the case of slight negligence. The damages to be compensated shall also comprise lost profit.
43. Particular liability of several contractors; damage to the construction
If the CN's performance is damaged or destroyed before acceptance (approval), the CN must immediately restore the performance to the required condition (replacement, repair etc.).
If the contractor responsible for causing damage to the construction is known to the CN, the CN undertakes to regulate the rectification of the damage and the bearing of the costs of this directly with the contractor which caused the damage.
Damage to the construction which cannot be apportioned, soiling, etc. shall normally be settled in such a way that the share in the costs apportioned by the principal to the CL shall be divided between the subcontractors of the CL liable for the damage in proportion to the original order total and the order total of the CL remaining after this. The CN shall have the possibility of proving that the damage could not have been undertaken by the CN.
44. Principal's orders to the CN
After conclusion of the contract for the construction project which forms the subject of these GTCP, the CN may only accept direct orders from the principal with the consent of the CL. If the CN disregards this provision, the CL shall be owed a compensation payment in the amount of 10% of the services directly settled with the principal. If the CN does not plausibly prove the invoice amounts, the CL shall be entitled to estimate the scope of services.
45. Notification in accordance with the Ausländerbeschäftigungsgesetz [Employment of Foreigners Act] (AuslBG)
The CN is obliged to provide a corresponding declaration in good time as to whether or not foreigners are employed on the execution of the work within the meaning of the AuslBG.
46. Poaching employees from the CL
The CN is forbidden at all events from poaching employees from the CL from the conclusion of the contract until 24 months after the acceptance (approval) of the performance. In the event of contravention of this, without prejudice to further legal claims there shall be a contractual penalty of €150,000.
47. Advertising signs
The CN is not entitled to attach advertising posters etc. on the construction site. Advertising signs and construction site panels of the CL must be maintained and if necessary repositioned to be easily visible.