



General contractual terms and conditions  
of SÜDWEST Lacke + Farben GmbH & Co. KG  
for work and services

Version of: 4 June 2024

**1 General, scope**

1.1 The general contractual terms and conditions for work and services (GCT&C) of SÜDWEST Lacke + Farben GmbH & Co. KG ("SÜDWEST") apply to all work and services ordered by SÜDWEST.

1.2 These GCT&C do not apply to contracts covering the delivery of movable items of property that are to be manufactured or created, as these are exclusively subject to SÜDWEST's "General terms and conditions of business", which can be retrieved from [www.suedwest.de](http://www.suedwest.de) or requested free of charge from SÜDWEST.

1.3 These GCT&C, in their latest applicable version, also apply to all future business with the contractor.

1.4 Any contractual terms and conditions used by the contractor are hereby expressly rejected.

1.5 Deviations from and additions to these GCT&C shall only be effective if expressly confirmed by SÜDWEST in text form (e.g. by fax, e-mail, EDI, or in writing); they shall apply only to the specific transaction for which they were individually agreed.

1.6 Otherwise, the execution of a work order by the contractor shall be deemed an acknowledgement of these GCT&C.

1.7 If SÜDWEST also incorporates special delivery instructions/specifications into the contract, these shall take precedence over these GCT&C, which – in this case – shall apply in addition to SÜDWEST's special delivery instructions.

**2 Compliance in the supply chain**

2.1 SÜDWEST is a member of the Sto Group. The respective Sto supplier code of conduct forms an integral part of the contract. It can be retrieved from [www.sto.de](http://www.sto.de) or will be sent free of charge by SÜDWEST on request. The contractor undertakes to comply with the requirements of the supplier code of conduct. Furthermore, the contractor must observe all applicable prohibitions related to human rights and the environment in accordance with Section 2 (2) and (3) of the German Supply Chain Due Diligence Act (LkSG) (hereinafter referred to, jointly with the supplier code of conduct, as the "human rights requirements").

2.2 The contractor must obligate its suppliers to comply with the human rights requirements and must, to a reasonable extent, monitor their implementation of and compliance with these requirements. In this regard, it is also entitled to impose its own supplier code of conduct on its suppliers, provided that this contains and covers the human rights requirements.

2.3 At the request of SÜDWEST, the contractor shall provide it with the necessary information required to identify any human rights-related or environmental risks (hereinafter referred to as “risks”) present within the business relationship with the contractor. The contractor must inform SÜDWEST without delay of any risks or violations of human rights requirements identified within its own business area of the company, as well as in the area of its suppliers’ operations. To this end, the contractor shall provide evidence in an appropriate form at SÜDWEST’s request.

2.4 If SÜDWEST offers training on supply chain compliance in accordance with the German Supply Chain Due Diligence Act (LkSG), the contractor must participate in this training at SÜDWEST’s request, unless it can prove that adequate training on compliance with human rights requirements is already being conducted within its own company.

2.5 SÜDWEST is entitled to check compliance with the human rights requirements through regular audits with a 2-week notice period, and in the event of a suspected breach of the human rights requirements, to conduct an audit without notice. The audit may be conducted during normal business hours in compliance with the applicable data protection laws, either by SÜDWEST or by experts appointed by SÜDWEST who – unless already bound to confidentiality by their profession – have been bound to confidentiality by SÜDWEST. The auditors must be granted access to the contractor’s premises and to the documentation required for the audit. Access does not need to be granted to the contractor’s trade secrets or to confidential documentation of third parties towards whom the contractor has a duty of confidentiality. The contractor must provide credible evidence to the auditors that the above exception applies.

2.6 The right of audit under section 2.5 above is restricted to suspected cases if the contractor is certified under a certification system recognised by the German Supply Chain Due Diligence Act (LkSG) and it sends SÜDWEST the certificate automatically on conclusion of the contract and whenever the certificate is renewed.

2.7 If the contractor and/or SÜDWEST identify breaches or imminent breaches of human rights requirements within the contractor’s own company or among its suppliers, the contractor shall immediately take appropriate remedial measures to prevent or end such breaches, or minimise their extent. The contractor must terminate the business relationship with its supplier if there is a serious violation of human rights requirements, if implementing the measures developed in the concept does not provide a remedy by the end of the time period specified therein, and if no other milder means are available to the contractor.

2.8 In this regard, on becoming aware of a breach of human rights requirements by its company or its suppliers, the contractor must submit a concept detailing appropriate remedial measures to end or minimise the breach to SÜDWEST without delay, and must also implement this concept. The concept must contain a specific time schedule. If the contractor fails to meet this obligation within a reasonable period set by SÜDWEST, this shall constitute good cause for SÜDWEST to terminate the contractual relationship without notice. The same applies if the contractor fails to prove to SÜDWEST, within a reasonable period set by SÜDWEST, that the remedial measures have been successfully implemented or if, in the event of serious breaches of human rights requirements by the contractor or its suppliers, the remedial measures detailed in the concept do not end or minimise actual or imminent serious violations of human rights requirements.

2.9 If the contractor culpably violates any of the obligations above under sections 2.1 to 2.8, it shall

indemnify SÜDWEST against all claims by third parties – as well as official fines, the costs of officially ordered measures, and/or legal costs and other liabilities – insofar as these are asserted against SÜDWEST due to such a violation of obligations.

2.10 The provisions above in sections 2.1 to 2.8 and the supplier code of conduct do not provide any protection for third parties and create obligations solely for the contractor and entitlements solely for SÜDWEST.

### **3 Structure of these GCT&C**

3.1 These GCT&C consist of three sections. Section A contains general provisions for all work and services.

3.2 Section B contains special provisions for the provision of services.

3.3 Section C contains special terms for the performance of work.

3.4 In the event of discrepancies, the terms of sections B and C shall take precedence over those of section A.

#### **A. General provisions**

### **4 Offer, order, conclusion of contract**

4.1 Offers by the contractor must adhere to the terms set out in SÜDWEST's request for offer; if the contractor wishes to deviate from the request for offer, it must expressly draw SÜDWEST's attention to any such deviations contained in the offer.

4.2 Orders shall only be binding if they have been issued or confirmed by SÜDWEST in text form.

4.3 As a basic principle, orders from SÜDWEST must be confirmed by the contractor in text form without delay following receipt, and in any case, no later than 2 working days from the date of the order (acceptance period). The confirmation must include all specified order details. If SÜDWEST does not receive such confirmation within the acceptance period, SÜDWEST will no longer be bound by the order, unless otherwise agreed, e.g. if the requirement for order confirmation has been waived. If the requirement for order confirmation has been expressly waived by SÜDWEST, the order remains valid.

### **5 Scope of work and services, service provision, use of artificial intelligence**

5.1 The order from SÜDWEST is the sole determining factor for the scope of work and services, unless deviations, changes, or additions have been confirmed by SÜDWEST in text form.

5.2 Cost estimates by the contractor and the prices subsequently listed in the order are binding. Before commencing any additional work that will generate costs, the contractor shall submit a new binding price quotation to SÜDWEST in text form.

5.3 The contractor shall perform the work or service with the utmost care and in accordance with the current state of the art in science and technology.

5.4 The contractor must perform its tasks in person or through its employees. The use of generative artificial intelligence in the broadest sense (hereinafter referred to as “AI”) always requires the prior consent of SÜDWEST in text form. In this case, the result generated by an AI must be thoroughly checked by the contractor in accordance with sentence 1 above. The contractor must ensure, in particular, that the agreed rights to the result generated by the AI are transferred to SÜDWEST or granted to SÜDWEST, and that there are no third-party rights that conflict with the agreed and intended use of the work or service by SÜDWEST. The contractor bears sole liability for the risks of using AI.

5.5 For the purpose of performing its work or service, the contractor may only involve subcontractors if it has obtained the prior consent of SÜDWEST in text form. SÜDWEST may only refuse consent in order to protect legitimate interests.

5.6 The contractor alone has the authority to issue instructions to its employees and must ensure that the personnel it deploys do not become integrated into the operations of SÜDWEST.

5.7 Unless otherwise agreed, the contractor shall continuously report the progress of the work to SÜDWEST.

## **6 Remuneration**

6.1 The remuneration for performing the work or service shall be based on the order.

6.2 If no prices have been defined in the offer, in the confirmation of order, or via a written agreement, the contractor must communicate its prices to SÜDWEST in text form for confirmation prior to execution of the order.

6.3 In the context of ongoing business relationships, the most recent price charged by the contractor for this – or for comparable – work or services shall apply in the absence of an express price agreement.

6.4 SÜDWEST does not agree to price adjustment or price increase clauses.

6.5 All prices are exclusive of VAT at the applicable statutory rate, which shall be charged separately. Unless otherwise agreed in text form, the price includes all costs associated with the work or service, particularly travel costs, call-out charges, and material costs.

## **7 Invoicing and terms of payment**

7.1 To receive the remuneration, the contractor must issue an auditable invoice conforming to the applicable tax regulations. The billing address for invoices in respect of deliveries to SÜDWEST Lacke + Farben GmbH & Co. KG is: SÜDWEST Lacke + Farben GmbH & Co. KG Rechnungseingang, Ehrenbachstraße 1, 79780 Stühlingen. The supplier must send the invoice as a PDF document to the e-mail address: [invoice.0191@suedwest.de](mailto:invoice.0191@suedwest.de); a PDF document must be e-mailed separately for each individual invoice. The invoices must state the beneficiary as SÜDWEST Lacke + Farben GmbH & Co. KG, Iggelheimer Straße 13, D-67459 Böhl-Iggelheim.

7.2 The contractor’s invoices can only be processed by SÜDWEST if they include the standard commercial details (particularly the order number, precise description of the work or service). For each individual service or work item, the remuneration must be allocated to the relevant order number. If time-based remuneration has been agreed, the records of hours worked, countersigned by SÜDWEST,

must be enclosed. The contractor shall be responsible for all consequences resulting from a failure to fulfil this obligation, unless it can prove that it is not at fault.

7.3 Save for any special agreements to the contrary, payment will be made either within two weeks of full performance of the work or service and receipt of the invoice, with a 3 % discount applied for early payment, or within 30 days of full performance of the work or service and receipt of the invoice, without any deduction.

7.4 If partial payments have been agreed, they will only be made after full performance of the respective partial work or service and receipt of a corresponding invoice; the provisions of section 7.3 shall apply mutatis mutandis.

7.5 If partial or progress payments have been agreed, the early payment discount shall apply to each individual payment, provided it is made within two weeks.

7.6 An early payment discount is also possible if SÜDWEST offsets amounts or legitimately retains or withholds payments.

7.7 Each payment by SÜDWEST is made subject to correction or reclaim, should it subsequently emerge that the calculation was incorrect or should objections arise. They are also contingent upon full and proper performance of the work or service. Payments do not constitute acceptance of the work or service.

7.8 The date of payment is the day on which the payment obligation is fulfilled.

7.9 SÜDWEST does not agree to the agreement of interest on overdue or late payments in excess of the statutory interest rate.

## **8 Subsequent changes to the scope of work and services**

8.1 SÜDWEST is entitled to request changes to the contractual work or services, or to request additional work or services from the contractor, at any time. The contractor may object to such a subsequent change if it is unreasonable for it to implement the change request.

8.2 The contractor shall submit a new contractual offer for these changes and/or additions in text form to SÜDWEST within 14 days. Any additional remuneration or expenses will only be paid or reimbursed following the order and confirmation of these additional work items or services in accordance with sections 4.2 and 4.3.

8.3 If an agreement cannot be reached, SÜDWEST shall be entitled to terminate the contract for the originally agreed work or service without notice if it is unreasonable for SÜDWEST to remain bound by the contract without the changes and/or additions.

## **9 Deadline agreements**

9.1 The deadlines and dates specified in the order are binding.

9.2 If neither deadlines nor a specific date for the work or service have been agreed, the work or service must be performed immediately unless the circumstances dictate otherwise.

## **10 Delay in performance, default**

10.1 Should any circumstances prevent the contractor from meeting a binding deadline and/or suggest that a deadline will be exceeded, the contractor shall immediately notify SÜDWEST in text form of the reason for the delay and its anticipated duration. This also applies to circumstances and events for which the contractor is not responsible.

10.2 In the event of a delay in performance due to force majeure (section 11) or industrial disputes for which the contractor is not at fault, SÜDWEST may, without any claims arising for the contractor, choose either to withdraw from the contract in whole or in part after the expiration of a reasonable deadline or to request the execution of the work or service at a later time.

10.3 In the event of default by the contractor, SÜDWEST shall be entitled to impose a contractual penalty of 0.25 % of the agreed gross order value for each day of default, subject to a total maximum penalty of no more than 5 % of the gross order value of the respective (partial) work or service for which the contractor is in default.

10.4 This does not affect the right to claim a higher amount of damages for default; in this case, the contractual penalty paid will be credited against the claim for damages.

10.5 The right to impose the contractual penalty may still be reserved by SÜDWEST within two weeks of receipt of the final invoice.

10.6 SÜDWEST does not agree to any limitations or exclusions of liability by the contractor in the event of default.

## **11 Force majeure**

11.1 "Force majeure" means the occurrence of an event or circumstance that hinders a party from fulfilling a contractual obligation, to the extent that the party affected by the hindrance (hereinafter referred to as "the affected party") can prove (a) that the hindrance is beyond its reasonable control and (b) that the affected party could not have reasonably prevented or overcome its impact. Hindrances

as defined in (a) include, inter alia, wars, civil wars, uprisings, acts of terrorism, piracy, currency and trade restrictions, embargoes, sanctions, official measures and decrees, expropriation, epidemics, pandemics, natural disasters, and fires, unless the unaffected party proves otherwise.

11.2 If a party does not fulfil its contractual obligation due to the failure of a third party it has engaged to fulfil the entire contract or part of the contract (including upstream suppliers), the party may only invoke force majeure to the extent that the conditions of section 11.1 apply to both the contracting party and the third party.

11.3 If the conditions of section 11.1 or 11.2 are met, the affected party is released from its contractual obligation and any liability for breach thereof from the time when the hindrance makes performance impossible and to the same extent that the hindrance prevents performance, provided that the affected party notifies the other party without delay. If the notification is not issued immediately, the release will not take effect until the notification is received by the other party. Where applicable, the other party may suspend the fulfilment of its obligations from the time of the notification.

11.4 If the effect of the asserted hindrance or event is temporary, section 11.3 only applies for as long as the asserted hindrance prevents the contractual obligation from being fulfilled by the affected party. The affected party must inform the other contracting party as soon as the relevant hindrance no longer exists.

11.5 The affected party is required to rectify the force majeure event insofar as possible and to limit its impact to the maximum possible extent.

## **12 Obligations of SÜDWEST to cooperate**

12.1 Where SÜDWEST is required to provide services necessary for the contractor to perform its work or services, SÜDWEST shall do so in accordance with the description specified in the order or offer, and by the dates specified therein. This shall apply mutatis mutandis to the handover of requested documentation and information.

12.2 If information cannot be obtained using reasonable means or cannot be disclosed due to third-party rights, this shall not constitute inadequate cooperation. In such cases, the contractor is not entitled to terminate the contract unless it is unreasonable for the contractor to remain bound by the contract.

12.3 If SÜDWEST does not adequately cooperate, the contractor must issue a warning in text form without delay upon becoming aware of the issue; otherwise, SÜDWEST will not be in default and the contractor will not be able to invoke this inadequate cooperation. The contractor is responsible for proving receipt of the warning in text form.

## **13 Granting and transfer of rights, usage rights**

13.1 On payment of the agreed remuneration, SÜDWEST shall acquire all transferable rights to the documents, documentation, concepts, and ideas that the contractor has developed or produced for SÜDWEST, particularly the exclusive, unrestricted, irrevocable, and permanent right of use, as well as all other authorisations to publish, reproduce, and exploit these works, including all legal positions (particularly any rights to names or trademarks). This transfer of rights is unrestricted in terms of time, location, intended purpose, and all other respects. It includes the rights of reproduction, editing, and

onward transfer, and also applies to unknown types of use.

13.2 The work and services provided by the contractor under this agreement – in the form of ideas, concepts, and designs – must be free from third-party rights that could interfere with or prevent their use for the contractually determined purpose.

13.3 If the contractor engages third-party subcontractors to fulfil the contract, it must ensure that SÜDWEST is granted the same legal position with respect to the work and services provided by the third parties as that described in paragraph 1. The contractor shall provide SÜDWEST with suitable proof of this on request. If the contractor is not able to do this in particular cases, it must notify SÜDWEST of this in good time before performing the respective work order.

13.4 When publishing works of the contractor, SÜDWEST is not required to include a copyright notice referencing the contractor, unless otherwise agreed in individual cases.

13.5 When submitting a work, particularly third-party works, the contractor shall provide SÜDWEST with suitable proof that the author(s) has/have waived the right to be credited by name on the work.

13.6 SÜDWEST reserves title and copyright to the documentation made available to the contractor for the purpose of performing the work or service (e.g. illustrations, drawings, models, samples). The documentation may only be used for processing the work order and executing the ordered work or service; it must not be made accessible to third parties without the prior consent of SÜDWEST in text form. At the same time, the contractor is required to return any duplicate copies of the documentation it has made; the same applies to any documents developed based on the documentation. Any models, etc. produced according to SÜDWEST's documentation may only be delivered to SÜDWEST.

## **14 Insurance**

14.1 The contractor undertakes to maintain public liability insurance with a coverage amount of EUR 1 million per claim (personal injury and/or property damage); if SÜDWEST has any further claims for damages, these shall remain unaffected.

14.2 The contractor shall submit all confirmations of the relevant insurance or the insurance policies to SÜDWEST on request.

14.3 Furthermore, whenever there are changes to or switches in the public liability insurance or other insurance, the contractor is required to communicate this in text form immediately.

14.4 It is the responsibility of the contractor to insure its own equipment; SÜDWEST does not have any insurance in place for this.

## **15 Termination and withdrawal**

15.1 SÜDWEST's right to give ordinary notice of termination shall remain unaffected.

15.2 In addition, both parties are entitled to terminate the contract without notice for good cause. Examples of good cause for termination include, in particular:

- if a party ceases its payments or
- the initiation of insolvency proceedings is denied for lack of sufficient assets or
- if the other party breaches contractual obligations and this breach is not rectified within a reasonable period following written demand by the contractual partner. It is not necessary to provide a warning or set a deadline if the continuation of the contractual relationship seems unreasonable due to the severity of the breach, a successful outcome is unlikely, or if immediate termination seems justified after weighing up the interests of both parties. As a basic principle, termination without notice is excluded if the breach of the contractual obligation is insignificant, meaning that, after weighing up all the circumstances, termination without notice would not seem reasonable.

15.3 The contract must be terminated in text form.

15.4 The work and services performed to date must be settled in accordance with the agreed terms and conditions.

15.5 The right of either party to withdraw, provided the legal conditions are met, shall remain unaffected. If the conditions for termination without notice are simultaneously met, the relevant party shall have the right to choose.

## **16 Safety precautions**

16.1 The contractor must fulfil its legal obligation to maintain the safety of work equipment. The contractor must take all necessary safety precautions related to its work or services itself, and must implement, maintain, and – where applicable – supplement them under its own responsibility in accordance with the provisions of the accident prevention regulations.

16.2 If any existing safety precautions, such as protective covers, railings, steps, etc., are temporarily removed to perform the work or service, the contractor is required to reinstall the removed equipment professionally and securely after performing the work or service. For the duration of the removal, the contractor must secure all danger zones at its own expense using appropriate measures.

16.3 The contractor is liable for all damage caused to items belonging to SÜDWEST through the breach of the aforementioned legal obligations to maintain safety. If SÜDWEST is held liable by third parties due to personal injury or property damage resulting from a breach of the aforementioned legal obligations to maintain safety, the contractor must fully indemnify SÜDWEST.

16.4 If the contractor carries out work within the physical confines of SÜDWEST's company premises, the work shall be subject to the health and safety regulations of the employer's liability insurance association and the "Instructions for external companies on the premises of SÜDWEST Lacke + Farben", the latest version of which is available free of charge on request.

## **17 Work force and subcontractors of the contractor**

17.1 The contractor must not employ temporary workers as defined by the German Act on Temporary Agency Work (AÜG) and/or employees without a valid work permit and/or a valid social insurance identity card. The contractor grants permission for SÜDWEST or an authorised representative of SÜDWEST to carry out corresponding checks.

17.2 Any subcontracting of work or services requires the consent of SÜDWEST in text form. In the event of any subcontracting, the engaged companies must be named. If work is subcontracted to a foreign subcontractor, the contractor must also inform SÜDWEST of the number of foreign employees to be deployed and for how long.

17.3 The contractor also promises SÜDWEST that it will fulfil its obligations to pay the minimum wage and contribute to the holiday funds in accordance with the German Posted Workers Act (AEntG), comply with the terms of collective bargaining agreements applicable to the contractor's operations under this Act, and meet its obligations under the German Minimum Wage Act (MiLoG). The contractor's obligations under the German Minimum Wage Act (MiLoG) particularly include, but are not limited to, the obligation to pay wages at least at the minimum wage level by the due dates specified in the MiLoG, the obligation to record the start, end, and duration of daily working hours, and to retain these records.

17.4 The contractor must take care to ensure that not only they themselves but also their engaged subcontractors do not employ temporary workers as defined by the German Act on Temporary Agency Work (AÜG) and/or employees from third countries without a valid work permit and/or a valid social insurance identity card, and that these subcontractors both fulfil the obligations under the German Minimum Wage Act (MiLoG) and impose these obligations on further subcontractors (referred to as sub-subcontractors) to an identical extent.

17.5 SÜDWEST is entitled to demand evidence from the contractor proving that the obligations under sections 17.1 to 17.4 have been fulfilled.

17.6 If the contractor breaches one or more of the obligations under sections 17.1 to 17.5, SÜDWEST shall be entitled – subject to the assertion of any further rights – to set a reasonable grace period for the contractor to fulfil the relevant obligations. Should this reasonable period expire to no avail, SÜDWEST shall be entitled to terminate the contract without notice and claim damages in lieu of performance.

17.7 If the contractor engages subcontractors, it shall indemnify SÜDWEST against all claims that are brought against SÜDWEST due to these subcontractors having breached the provisions of the German Posted Workers Act (AEntG). In the context of its internal relationship with SÜDWEST, the contractor shall assume the obligations that apply to both SÜDWEST and the contractor as joint guarantors in accordance with Section 14 of the German Posted Workers Act (AEntG), solely and in full. The same applies to the engagement of agencies under the German Act on Temporary Agency Work (AÜG). Furthermore, the contractor indemnifies SÜDWEST against any third-party claims arising from breaches of obligations under the German Minimum Wage Act (MiLoG).

## **18 Assignment, set-off, right of retention**

18.1 Any assignment of receivables due to the contractor from SÜDWEST always requires the consent of SÜDWEST in text form. Provided that the contractor provides objectively justified grounds for the assignment, SÜDWEST will not refuse the necessary consent.

18.2 The contractor shall only have rights of set-off or retention if the counterclaims arise from the same contractual relationship, or if they have been legally established as final and absolute, are recognised, or are undisputed.

## **19 Extent of liability**

SÜDWEST does not agree to any limitation of the contractor's contractual and non-contractual liability, either with regard to the standard of fault or the extent/level of liability.

## **20 Limitation period**

Any reduction in the warranty periods according to these GCT&C is expressly rejected. The statutory periods always apply as a minimum, unless longer periods have been agreed in sections B and C.

## **21 Non-disclosure**

21.1 The contractor undertakes to maintain confidentiality regarding the existence and content of the work order, as well as all business matters and processes that are not common knowledge and of which it becomes aware in connection with SÜDWEST's work order – particularly all confidential data relating to the financial position and market behaviour of SÜDWEST – and all technical data of SÜDWEST (hereinafter referred to as "confidential information"), even after the work order has ended. The above does not apply to any confidential information that can be proven to have been common knowledge or published at the point of disclosure, is part of the general body of technical knowledge, forms part of the state of the art, or is already individually known to the contractor; the contractor shall inform SÜDWEST in writing of any such prior individual knowledge that it possesses.

21.2 The obligation to maintain confidentiality shall no longer apply if and as soon as the confidential information is made common knowledge after the point of disclosure without the contractor acting in a way that violates the non-disclosure agreement, the confidential information is divulged to the contractor by a third party without the third party acting in a way that violates a non-disclosure obligation covering the confidential information, the contractor discovers or develops the knowledge itself independently of the confidential information, SÜDWEST makes the confidential information public knowledge in writing, or the contractor is required to disclose the confidential information in accordance with mandatory legal provisions. In the latter case, the contractor shall inform SÜDWEST about the disclosure obligation.

21.3 Except in the cases covered by section 21.2 above, any disclosure to a third party that is not absolutely necessary for the purpose of fulfilling the contract requires the express prior consent of SÜDWEST in text form.

21.4 The contractor is required to enter into a corresponding non-disclosure agreement with its

employees, to the extent permitted by employment law, and with any third parties it engages.

## **22 Choice of law, place of performance, place of jurisdiction**

22.1 The laws of the Federal Republic of Germany apply exclusively.

22.2 The destination specified in the order is the place of performance for all work and services of the contractor. The place of performance for payments by SÜDWEST is Böhl-Iggelheim.

22.3 If the contractor is a merchant as defined by the German Commercial Code, a legal person under public law, or a special fund under public law, or if the contractor or the branch of the contractor concluding the contract has its registered office outside the Federal Republic of Germany, the place of jurisdiction for all rights and obligations of the contracting parties arising from transactions of any kind is the location of SÜDWEST's registered office. The same applies if the contractor relocates its domicile or habitual residence outside of Germany after the conclusion of the contract, or if its domicile or habitual residence is unknown at the time when the action is brought. SÜDWEST is, however, also entitled to take action against the contractor at the latter's general place of jurisdiction.

## **B. Special provisions for services**

### **23 Claims for breach of contract**

23.1 SÜDWEST retains full entitlement to its legal claims in the event of a breach of the contractor's principal or ancillary obligations, a delay in performance, impossibility of performance, default, or non-performance.

### **24 Limitation period**

24.1 The general three-year limitation period applies, starting from the completion of the service or the handover of any work results, whichever is the later.

## **C. Special provisions for work performance**

### **25 Scope of work, obligations of the contractor**

25.1 The contractor undertakes to create/produce and deliver the work, or make it available to SÜDWEST, exclusively in accordance with the description and specification set out in the individual contract and according to the instructions issued by SÜDWEST in text form. Before commencing work, it must – at the request of SÜDWEST – confirm in text form that it has taken note of the description and specification in all details.

25.2 If perusal of the description and specification, and the instructions according to section 25.1 reveals ambiguities or if the contractor has doubts about the proposed method of execution, the quality of the items provided by SÜDWEST, or the work/services of other companies engaged by SÜDWEST, it is the responsibility of the contractor to communicate this to SÜDWEST in text form and to work with SÜDWEST to seek an amicable resolution.

25.3 Section 25.2 shall apply mutatis mutandis if the ambiguities or concerns only become apparent in the course of fulfilling the work order. The contractor shall suspend performance of the work until such time as the ambiguities or concerns have been fully resolved.

25.4 It is the responsibility of the contractor only to commence work performance once all details of the description and specification, and the instructions from SÜDWEST, have been clarified. The contractor may request that SÜDWEST provide approval – including, if applicable, partial approval – in text form for the performance of the work.

25.5 The contractor shall bear any costs that it incurs due to a lack of necessary clarification of ambiguities.

## **26 Change requests**

26.1 If SÜDWEST deems any changes to be relevant or necessary after conclusion of the contract, SÜDWEST shall inform the contractor of these without delay. In this case, both parties must agree on the resulting modifications to the contract's content and fulfilment.

26.2 If the subject matter of the contract is subsequently changed or extended, the contractor shall be entitled to request an adjustment to the remuneration to cover the additional costs resulting from the change, provided that the contractor communicated this to SÜDWEST as an offer to amend the contract before the subject matter of the contract was changed or extended. The contractor shall only become entitled to the increased remuneration once the offer to amend the contract has been expressly accepted by SÜDWEST, with SÜDWEST undertaking to accept the offer if the contractor proves that the additional costs communicated are due to the subsequent change to the subject matter of the contract.

## **27 Obligations of SÜDWEST to cooperate**

27.1 Where SÜDWEST is required to provide services necessary for the performance of the work, SÜDWEST shall do so in accordance with the contractually defined description and specification, and by the dates specified therein.

27.2 If SÜDWEST fails to provide these services exactly as agreed, the contractor may demand appropriate compensation from SÜDWEST, the method of calculation of which will be specified in the contract or the amount of which will be set as a lump sum.

27.3 The contractor must deduct from this compensation any expenses it saves as a result of default by SÜDWEST or any amount it is able to earn by using its work force elsewhere. The contractor is obligated to disclose these sums to SÜDWEST. The contractor can fulfil this disclosure obligation by granting SÜDWEST access to the accounting records – via an expert who is bound by professional secrecy.

27.4 In such cases, the contractor is not entitled to terminate the contract unless it is unreasonable

for the contractor to remain bound by the individual contract, despite the compensation provided for herein.

## **28 Provision of items, reservation of title, tools, indemnification**

28.1 If SÜDWEST provides the contractor with any items, SÜDWEST shall retain title to these. Any processing or remodelling by the contractor is done on behalf of SÜDWEST.

28.2 If items provided by SÜDWEST are processed with other items not belonging to SÜDWEST, SÜDWEST shall acquire joint ownership of the new item in proportion to the value of the provided items relative to the other processed items at the time of processing.

28.3 If items provided by SÜDWEST are inseparably intermixed with other items not belonging to SÜDWEST, SÜDWEST shall acquire joint ownership of the new item in proportion to the value of the provided items relative to the other intermixed items at the time of intermixing. If the intermixing is carried out in such a way that the contractor's item is to be regarded as the main item, it is hereby agreed that the contractor will transfer joint ownership to SÜDWEST in proportion. The contractor shall hold sole or joint ownership on SÜDWEST's behalf.

28.4 SÜDWEST reserves title to tools. The contractor must use the tools exclusively for creating the work or service ordered by SÜDWEST. At its own expense, the contractor must insure the tools belonging to SÜDWEST at their replacement value against fire damage, water damage, and theft. At the same time, the contractor hereby assigns to SÜDWEST in advance all claims for compensation arising under such insurance, SÜDWEST hereby accepts the assignment. The contractor must carry out any necessary maintenance and inspection work on tools in good time and at its own expense. It must report any incidents to SÜDWEST immediately; if it culpably fails to do so, SÜDWEST reserves the right to claim damages.

## **29 Material**

29.1 If the contractor is responsible for procuring the material required to perform the work or service, it must do so at its own expense and risk. The material used by the contractor must conform to the contractually defined description and specification. If the contractor wishes to use equivalent yet different material, its use will only be deemed in accordance with the contract if SÜDWEST has given its prior consent in text form (section 1.5).

29.2 In cases where SÜDWEST has contractually stipulated specific sources of supply for procuring the material, only the use of the material originating from this source will be deemed in accordance with the contract. In such cases, or if SÜDWEST has a legitimate interest, the contractor must – at SÜDWEST's request – provide SÜDWEST with proof of the contractor's suppliers and the material's place of origin.

## **30 Termination**

30.1 SÜDWEST is entitled to terminate the contract for work and services at any time up until acceptance without stating its reasons for doing so.

30.2 If the contract for work and services is terminated by SÜDWEST, the contractor shall be entitled

to demand pro-rata remuneration for the partial work or services it has already performed in accordance with the contract, as well as for any contractually compliant preparatory work carried out for future partial work or services.

## **31 Acceptance**

31.1 Acceptance of the work will take place following completion. No partial acceptance will take place.

31.2 Where expressly agreed, a record of acceptance will be produced, which must be signed by both parties.

31.3 If the work or service has not been performed in accordance with the contract and SÜDWEST therefore rightfully refuses acceptance, or if acceptance is granted subject to remediation of defects specified in the record, the contractor must – in each case – promptly perform the work or service in accordance with the contract and remedy the defects, communicate how long remediation of the defects is expected to take, and report that the defects have been remedied on completion of the rectification work. Where necessary, the work must undergo repeat acceptance.

## **32 Legal guarantee, limitation period**

32.1 SÜDWEST retains full rights regarding material defects and defects of title under the law on contracts for work and services.

32.2 The limitation period is 36 months, and for work and planning services related to construction works, 72 months from acceptance.

32.3 In the case of maliciously concealed defects or fault due to inadequate organisation, limitation shall only apply once the periods in section 32.2 have expired.

32.4 In the case of supplementary performance, the limitation period under section 32.2 shall recommence upon completion of the remediation work or delivery of the new work. However, the new limitation period applies solely to the remedied or replaced portion of the work in cases where only that portion – including any dependent portion – has been remedied or replaced.

32.5 The limitation period shall be suspended for the time the work cannot be used due to a defect or its remediation. The suspension of the period shall begin no earlier than the day the defect is communicated to the contractor and shall end when SÜDWEST is able to use the work again.