

Lindner's Terms and conditions for subcontractors (NUB) 2006

1. Conclusion of contract:
 - 1.1 The subcontractor submits a binding offer in the order placement negotiations if no offer of the subcontractor without obligation has been explicitly agreed. If no deviating binding deadline has been agreed the subcontractor shall remain bound to his offer for 14 calendar days.
 - 1.2 Insofar as the contract has not explicitly been awarded in the order placement negotiations already as an exception, the order shall be placed through a separate contract awarding declaration (placement of order) of the general contractor, which can be made in writing, also by fax letter. A separate construction contract will no longer be prepared.
 - 1.3 The general contractor can also request the submission of copies of the trade registration and/or the trade card and the proof according to No. 3.5.1 and 3.7 in the order placement negotiations already. The subcontractor undertakes to submit these immediately upon request. If this right is not exercised by the general contractor before the conclusion of the contract or the contract is awarded without the necessary proof then this shall not represent a waiver of the rights from No. 3.5 to 3.7.
2. Terms and conditions of contract

These shall apply in the following order:

 - 2.1 the minutes of the negotiations
the performance specifications, if applicable with service specifications
the special terms and conditions of contract (see No. 3 below),
the additional terms and conditions of contract (see No. 4 below),
the additional technical terms and conditions of contract (see No. 5 below)
 - 2.2 the VOB/C [VOB = the contract rules for the awarding of public contracts]
 - 2.3 the VOB/B.
3. Special terms and conditions of contract (BVB)
 - 3.1 not applicable
 - 3.2 Dates, conventional penalties:

If it is expected that agreed dates cannot be observed by the subcontractor (§ 5 No. 3 VOB/B) the general contractor is entitled to terminate the order under the pre-requisites of §§ 5 No. 4, 8 No. 3 VOB/B and to use own fitters or third party fitters for the completion or request damages.

Conventional penalties:

If the agreed contractual interim dates are exceeded for each workday (without Saturdays) 0.2% however a maximum 5% of the net value of the service which is to be provided until the interim date; if the agreed final date is exceeded for each workday (without Saturdays) 0.2% of the net settlement amount, however a maximum of 5% of the net settlement amount; conventional penalties on interim dates shall be offset against all following conventional penalties owing to default with (further) interim dates and/or the final date.

In case of a breach of the ban on alcohol according to 4.1.6, 2nd Par. € 250.- for each case of infringement, in which the subcontractor breached this itself or employees of the subcontractor breach it and the subcontractor breached the obligation for instruction or monitoring. § 11 VOB/B applies to all conventional penalties; the total of all owed conventional penalties may not exceed 5% of the net settlement amount.

- 3.3 Hourly wage records concerning agreed direction hours for special work are to be submitted daily. Incidentally, § 2 No. 10; § 15 VOB/B apply.
- 3.4 Insurances and obligations of the supplier:
- 3.4.1 The subcontractor hereby assures that he has the necessary pre-requisites under industrial law and trade law and satisfies its obligations towards the collection departments (statutory health insurances), trade association and financial authorities as well as according to the law governing assignment of employees (AEntG: minimum wage and holiday allowance fund).
- 3.4.2 Obligation for payment of social insurance contributions: with regard to the guarantor liability of the general contractor according to § 28e Par. 3a SGB IV the subcontractor also undertakes towards the general contractor as per contract that it will satisfy its obligations for payment of contributions to the statutory accident insurance (trade association) and to pay the total social insurance contributions for its employees (§ 28e Par. 1 SGB IV) when due.
- 3.4.3 Obligation for payment of minimum wage and holiday allowance fund contributions: with regard to the guarantor liability of the general contractor according to § 1a AEntG the subcontractor also undertakes towards the general contractor as per contract
- a) that it will satisfy existing claims of its employees for payment of the minimum remuneration and
- b) contribution claims of the joint institutions of the collective wage agreement parties (additional pension fund of the building trade – ZVK or SOKA building – joint holiday allowance fund – (ULAK – etc.) in connection with leave claims (cf. § 1 Par. 3 AEntG) when due.
- 3.4.4. The subcontractor undertakes to reimburse the general contractor for the resulting damages according to § 280 BGB for each case of the infringement of the obligations according to 3.4.2 and/or 3.4.3.
- 3.4.5 The subcontractor is obliged to take out and maintain employer's liability insurance with a sum insured in the amount of € 500,000.- for physical injuries and € 250,000.- for other damages.

3.5 The subcontractor undertakes to prove towards the general contractor the satisfaction of the obligations according to No. 3.4.2 and 3.4.3 as well as 3.4.5 as follows through the listed documents:

3.5.1 Due two weeks after conclusion of the contract:

- a) The full satisfaction of the claims of the trade association for payment of contributions to the statutory accident insurance for the employees of the subcontractor through a confirmation of the responsible trade association that a contribution account exists and no contributions are in arrears (hereinafter referred to as "clearance certificate of the trade association")
- b) The full satisfaction of its obligations towards the collection departments for payment of total social insurance contributions for the employees of the subcontractor through a confirmation of a member of the legal advice or tax consultancy professions or the wage accounting department (hereinafter referred to as "tax consultant confirmation") that the employees of the subcontractor are registered at the health insurance, at which the employee's statutory health insurance is managed (=collection department) and the total social insurance contributions have been reported and remitted in full including full personnel list of all employees of the subcontractor with full name, date of birth and all responsible collection departments as well as one confirmation each of each collection department represented in the company that the subcontractor's company pays social insurance contributions to these departments, for how many employees and that there are no outstanding contributions (hereinafter referred to as "clearance certificate of the collection department"). If the subcontractor has more than 10 employees clearance certificates of collection departments for as many employees as are assigned or have been assigned as a maximum simultaneously for the general contractor are sufficient.

Suppliers who mainly provide construction services within the meaning of § 211 Par. 1 SGB III in their company and do not substantiate that their company is excluded either from the operational scope of the respective valid collective wage agreement concerning the regulation of the minimum wages in the building trade in the territory of the Federal Republic of Germany (collective wage agreement minimum wage) or of the collective wage agreement concerning the social welfare fund procedures in the building trade (procedure collective wage agreement – VTV) or is not bound to this for other legal grounds (e.g. application exception, restriction to the general liability)

additionally:

- c) The full satisfaction of the claims of the employees for payment of a minimum wage to be proven through minimum wage receipts of the employees concerning the corresponding net wage or alternatively to substantiate through a tax consultant's confirmation within the meaning of b).
- d) The full satisfaction of its obligations for payment of contributions to joint institutions of the collective wage agreement parties in connection with holiday allowance claims through a confirmation of the ZVK (SOKA building) or the holiday allowance fund which is responsible for the subcontractor that the subcontractor's company has been registered there and there are no outstanding contributions (hereinafter referred to as "clearance certificate of the holiday allowance fund")

All suppliers prove the existence of liability insurance in line with 3.4.5 through

- e) The submission of a copy of the insurance policy or a written confirmation of the insurer concerning the existence of such insurance cover, upon request of the general contractor also through a proof that the due contributions have been paid. The proof is not necessary if the subcontractor provided the insurance proof as regularly required at the close of the previous calendar year.

- 3.5.2 With commencement of the work in the proof register of the general contractor on the construction site: minimum wage receipts of the present employees
- 3.5.3 Regularly every 3 months from the placing of the order, for the last time after termination of the provision of the services:
- a) once again a clearance certificate of the trade association if the last available one is not still valid
 - b) once again clearance certificates of the collection departments
 - c) once again a clearance certificate of the holiday allowance fund
- 3.5.4 At the annual intervals, for the first time 1 year after the start of the provision of services, no longer than for the period of time until the termination of the provision of the services
- a) once again a tax consultant confirmation with personnel list within the meaning of 3.5.1 b)
- 3.5.5 By no later than until the submission of the final invoice satisfaction of claims for minimum wage to be proven through minimum wage receipts of the employees within the meaning of 3.5.1 c) or alternatively to be substantiated through a tax consultant confirmation within the meaning of 3.5.1 b), respectively with personnel list of the employees assigned for the provision of the services of the subcontractor.
- 3.5.6 The clearance certificates and the confirmation of the liability insurer according to 3.5.1 e) may – insofar as a certain, not yet expired period of validity is not disclosed therein – not be older than three months when submitted. The subcontractor shall receive a sample for a tax consultant confirmation upon request respectively free of charge from the general contractor. If the subcontractor uses further subcontractors then it must submit all proof according to 3.5.1 to 3.5.5 in the same manner for each subcontractor.
- 3.5.7 Suppliers who mainly provide construction services within the meaning of § 211 Par. 1 SGB III in their company and have their registered seat overseas are particularly instructed about the provisions of § 3 AEntG (reporting obligation). They undertake to comply with these provisions.
- 3.6 Rights of retention with the non-satisfaction of proof obligations:
- 3.6.1 The general contractor is entitled to retain up to 5% of the owed wage until the satisfaction of the proof obligation relating to the social insurance liability according to No. 3.5.1 a) and b), 3.5.3 a) and b), 3.5.4 a), respectively no longer than until a time of 4 years from acceptance insofar as the subcontractor does not prove that claims, for which the general contractor is liable as guarantor according to § 28e SGB IV, were not incurred and can no longer be incurred.
- 3.6.2 The general contractor is entitled to retain up to 5% of the owed wage until the satisfaction of the proof obligation relating to the guarantor liability according to the AEntG pursuant to No. 3.5.1 c) and d), 3.5.3 c), 3.5.4 b) and 3.5.5, respectively no longer than until a time of 4 years from acceptance insofar as the subcontractor does not prove that claims, for which the general contractor is liable as guarantor according to § 1a AEntG, were not incurred and can no longer be incurred
- 3.6.3 The general contractor is entitled to retain up to 3% of the owed wage by no longer than until the acceptance until the satisfaction of the proof obligation relating to the employer's liability insurance.

- 3.7 The subcontractor assures that it is subject to the standard taxation (value added tax). The following fiscal proof obligations of the subcontractor are agreed in order to satisfy the obligations of the general contractor under value added tax law, whereby this proof is not replaced by an exemption certificate concerning the withholding tax for building works: Before commencing the work on the construction site the subcontractor must submit a confirmation of its tax representative (tax consultant, authorised tax agent) that the value added taxes on the revenues from its entrepreneurial activity are regularly declared to the responsible inland revenue office and the corresponding preliminary reports for value added tax are submitted. The responsible inland revenue office and the tax number are to be stated in the confirmation (in case of value added tax number which deviates from the tax number relating to tax on revenue also this). The proof can, in particular if the subcontractor does not have a tax representative, also be provided by submitting a copy of the last value added tax assessment; the details of figures, not however further details may be crossed out in the copy. The proof for the individual contract is not necessary if the subcontractor provided the proof as regularly required at the close of the previous calendar year.
- 3.8 The general contractor is entitled to check the identity of all employees of the subcontractor who are employed on its construction site and to request submission of identity documents. The general contractor is further entitled, with all employees who are not members of EU states, to request submission of the original of a residence permit which entitles to perform the work or an equivalent work permit; with employees from the states which acceded to the EU as of 1 May 2004 to request the submission of the original of the work permit. Employees who cannot provide this proof on the construction site may not be assigned by the subcontractor until the proof has been provided. The subcontractor undertakes when commencing the activity on the construction site to present all of its employees and possible subcontractors to the authorised agent of the general contractor for the purpose of the afore-mentioned checks, the same with replaced and additional employees and subcontractors. Should the subcontractor illegally employ workers then it undertakes to reimburse the general contractor for all suffered damages according to § 280 BGB [Civil Code].
The general contractor explicitly points out to the subcontractor that the contractual partners of the general contractor as a rule request high conventional penalties for the illegal employment of foreign workers on the construction site, therefore high claims for damages can be incurred in the event of breaches.
4. Additional terms and conditions of contract and instructions (ZVB)
- 4.1 Execution
- 4.1.1 The general contractor, not however its customer, the building owner or the architects site management, is exclusively authorised to commission services not envisaged in the contract as well as to give orders and instructions (e.g. according to §§ 1 No. 3 and 4, § 4 No. 1 Par. 3 and 4 VOB/B). The right of the building owner and its site management to issue orders in case of danger with default (§ 4 No. 1, Par. 3, Sentence 2 VOB/B), remains unaffected.
- 4.1.2 Before starting the execution the subcontractor must appoint a supervisor and authorised agent who is authorised to accept orders of the general contractor and is authorised to receive all legally relevant declarations of the general contractor with the effect for the subcontractor (cf. § 4 No. 1 Par. 3, Sentence 3 VOB/B).

- 4.1.3 The subcontractor is informed that the contractual service is to be carried out in the own company, with own employees and the assignment to subcontractors is only possible with the prior consent of the general contractor (cf. § 4 No. 8 VOB/B).
If the subcontractors places orders for services with subcontractors or if it hires employees it thus in the internal relationship to the general contractor at the same time solely assumes the guarantor risk for which both contractual parties are responsible in the external relationship according to § 1a AEntG. It undertakes to ensure that subcontractors and leasing companies satisfy the obligations according to No. 3.4.2 and 3.4.3 to the same extent.
- 4.1.4 The subcontractor is informed that misgivings of all kinds, in particular about the envisaged type of the execution and about preliminary services of other entrepreneurs, also of the general contractor, are to be reported to the general contractor in writing immediately and as far as possible before the commencement of the work already (cf. § 4 No. 3 VOB/B).
- 4.1.5 If the subcontractor does not remove the debris from the field of work and from the building daily (see ZTV No. 5.2 below) then the general contractor is entitled to set the subcontractor a reasonable deadline for subsequent performance and request damages (cf. § 4 No. 7 S. 3 and S. 2 VOB/B).
- 4.1.6 The general contractor is entitled at its reasonable discretion to prepare construction site regulations concerning the rules of conduct which are to be complied with on the construction site. Construction site regulations which are handed over to the subcontractor are to be complied with by the subcontractor. The subcontractor must oblige and instruct its employees to comply with the construction site regulations and monitor the compliance.
In any case there is an absolute ban on alcohol on the construction site; accordingly from the entry to until the leaving of the construction site the consumption of all kinds of alcoholic drinks as well as the access of the construction site by persons who have consumed alcoholic drinks on the relevant day is prohibited. The subcontractor must oblige and instruct its employees to comply with the ban on alcohol and to monitor the compliance.
- 4.2 Acceptance and warranty
- 4.2.1 A formal acceptance is principally requested from the general contractor. In case of screed work an acceptance is not possible before the completion of the drying out of the screed (at least 4 weeks from casting) as the non-existence of defects cannot be safely determined before this time.
- 4.2.2. § 13 VOB/B shall apply to the warranty of the subcontractor. However, a warranty period of 5 years which is extended compared with § 13 No. 4 VOB/B shall apply; only the provisions of the BGB are decisive for the inhibition of this extended warranty period.
- 4.3 Settlement and payments, provision of security
- 4.3.1 All services are to be settled cumulatively for instalment invoices and the final invoice, payments which are made are to be deducted.
- 4.3.2 §§ 16 and 14 VOB/B apply to settlement and measurement. All invoices, therefore also instalment invoices, are to be proven with verifiable determination of service (called “measurement”, also if they were carried out according to plans). The measurement shall be carried out according to Section 5 of the ATV-DIN 18299.
- 4.3.3 The following provisions of security are agreed according to § 17 VOB/B:

- 4.3.3.1 For the security purpose according to § 17 No. 1 Par. 2 VOB/B:
10% of the order amount without VAT until the acceptance.
5% from the settlement amount without VAT from the time of the acceptance.
- 4.3.4 An assignment or pledging of claims from an in connection with the building project, to which the subcontractor is entitled against the general contractor, is only permitted with the prior, written consent of the general contractor. However, the general contractor hereby now already grants its consent for the advance assignment of the claim for payment of a due wage insofar as the subcontractor has agreed an advance assignment of the wage claims as a part of an extended reservation of title of its subsuppliers with the execution of the delivery.
5. Additional technical terms and conditions of contract (ZTV)
- 5.1 The following technical provisions shall apply in the following order as a supplement to the service specifications and to the VOB/C:
- 5.1.1 the relevant DIN regulations
- 5.1.2 the laying instructions and instructions of the material manufacturer plants
- 5.1.3 the Industrial Safety Law, the operational safety regulations as well as regulations of the trade associations and the responsible authorities. From these it can be derived that the supplier is solely responsible for itself and its employees. Reference is in particular made to § 3 Industrial Safety Law "basic duties of the employer".
- 5.2 Provisions for pricing and settlement:
The contractual prices are fixed prices. The following are in particular covered by the contractual prices and therefore to be included in the calculation:
- all secondary services in particular the daily removal of the construction site contamination caused by the subcontractor
 - unloading, transport of lorries to the place of use and unpacking of the materials delivered for the subcontractor's service
 - reservation of all machines and tools including parts subject to wear and tear, scaffolding and work platforms insofar as not envisaged as separate position in the special terms and conditions of contract or supply agreement
 - necessary measurement and testing instruments which are to be provided by the subcontractor are to be tested and serviced by it at its costs. Possible proof is to be submitted upon request
 - the whole construction site equipment according to regulations for workplaces, in particular for day accommodation and tool storage areas as well as sanitary facilities insofar as not shown as a separate position in the contract for work and services or in the supply agreement
 - the procurement of building water and building electricity including the creation, maintenance and removal of all lines which are necessary for these
 - possible accommodation, travel, meals and route monies for the subcontractor's employees

5.3 Execution

5.3.1 The subcontractor assumes the responsibility and liability for the proper handling and storage of the materials supplied by the general contractor and by third parties (cf. § 4 No. 5 VOB/B). The accuracy and completeness of the delivery according to the delivery note is to be checked by the subcontractor when handed over. The subcontractor must handle the building materials and not wasting the resources. Unused material and accessories are to be handed over to the general contractor in a proper condition.

5.3.2 The subcontractor must separate produced waste in line with the existing disposal facilities (waste containers) and to take the individual waste fractions to the respective envisaged containers separately. Produced waste which particularly requires monitoring (special waste) is to be reported to the general contractor before the disposal in containers.

5.3.3 The setting of mounting bolts is only permitted after a separate release by the general contractor. Mountings to the ceiling are principally to be carried out using the officially approved metal dowels. Plastic dowels are not permitted. In line with the respective dowel authorisation the stipulated number of dowels is to be checked, test protocols prepared and handed over to the general contractor. A separate remuneration is not granted for this.

6. Final provisions

6.1 Amendments and addendums to the contract must be made in writing in order to be effective. Insofar as a written form is determined in this contract the transmission using telecommunication means is sufficient. The right to subsequently request an original according to § 127, Par. 2 S. 2 BGB remains unaffected.

6.2 Should individual provisions of the contract be or become invalid then this shall have no effect on the validity of the other provisions. The parties undertake to change, supplement or replace invalid regulations to the extent that the commercial intension is achieved to the greatest possible extent.

6.3 The place of jurisdiction for all disputes from this contract is Eggenfelden County Court or Landshut Regional Court insofar as not otherwise agreed in the minutes of the negotiations.

6.4 All rights and duties from the contract are exclusively determined according to German law.