

Negotiation protocol



Biberach, dated 30.03.2021

Company:

Company:

Select an element.
Select an element.
Select an element.

(hereinafter referred to as **Contractor**)

(hereinafter referred to as **Handtmann**)

Participants: _____

Project: _____

Handtmann request no./requirement specification _____ dated _____

Offer No. of Contractor: _____ dated _____

Quoted price of Contractor: _____

Negotiated final price: _____

Purpose:

Before the contract is awarded, the terms and conditions are hereby negotiated and updated between the Contractor as possible contractor and Handtmann as the client on the basis of the documents and records already available for this project.

In the event of inconsistencies with other documents and records, the specifications of the negotiation protocol with the most current date shall take precedence.

Agreement on the following contractual conditions shall not constitute an awarding of the contract. However, in the event of a decision to award the contract to the Contractor, the agreements reached shall constitute a mandatory part of the contract unless otherwise agreed in the contract. This shall also apply if this negotiation protocol is not again expressly quoted in the contract as being relevant.

Signature Contractor/Handtmann, confirmation of negotiated price

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1. Scope of delivery and services

Technical data/delivery specification

Specifications, descriptions and conditions from request and requirement specification constitute a minimum requirement to be fulfilled.

Any deviating conditions or exclusions in the Contractor's offer shall not form part of the contract in the event of an order. With the exception that these are expressly listed in writing in the contract awarding by Handtmann.

Measures that would result in more favourable solutions are desired and should be included as an alternative by the Contractor, possibly in a follow-up proposal.

Handtmann's "Safety and environmental requirements and regulations for the delivery of plants, systems, devices and machinery" (see Annex 1) shall be observed.

2. Scope of assembly

Fully operational assembly including all additional services, such as:

- Provision of suitable managers with the necessary specialist and assistant staff, including provision and supply of all required vehicles, equipment, tooling and lifting gear, assembly tools,
- Proper set-up and clearing, broom-clean cleaning of the assembly area,
- Provision of required auxiliary and operating materials,
- Taking out of adequate transport, assembly and commissioning insurance.
- The work must be carried out in such a way that Handtmann production and possible third parties are not obstructed; otherwise as agreed.
- Interruption and obstruction of assembly work owing to the continued production at Handtmann shall not entitle to additional claims. Delays shall be bridged by alternative work and are covered by the fixed price. Exceptions shall be reported to the responsible Handtmann coordinator immediately upon occurrence, and an official follow-up order by our purchasing department shall be clarified and agreed.

3. Training/instruction of operators / Servicing and maintenance / Programmer

For the duration of commissioning procedures, the Contractor shall provide the required additional staff for training the operating staff and instructing the maintenance and servicing staff of Handtmann.

In addition, the Contractor shall train _____ Handtmann employees in programming, operation and maintenance.

The date for this shall be agreed by mutual consent.

If this training/instruction does not form part of the scope of delivery requested in the tender/requirement specification, it shall only be conducted on the basis of a follow-up order to be issued by the purchasing department.

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4. Energy efficiency

The scope of delivery shall be optimised in terms of energy consumption. Our energy management officer shall be available for information on energy efficiency and energy measuring systems at Handtmann.

The consumption data shall be submitted to Handtmann beforehand. The plant or components must be M-bus-capable for consumption measurement.

M-Bus (Meter-Bus) is a field bus for consumption data recording. The following measuring tasks must be ensured, depending on the media consumption of the scope of delivery and the requirement in the request/requirement specification or according to below stipulation:

- Heat meter **yes/no**
- Electricity meter **yes/no**
- Gas meter **yes/no**
- Water meter **yes/no**
- Compressed air meter **yes/no**

5. Proof of performance/acceptance criteria

The Contractor guarantees availability with a capacity factor N_G of _____ %.

Availability is determined in accordance with the VDI Guideline 3423 in its current version. Availability must at minimum be ensured for the duration of the agreed warranty period, unless a longer period is specified in the request/requirement specification.

Acceptance of the plant is carried in the form of trial production of _____ production part units // _____ consecutive production shifts // _____ days of trial production.

For this purpose, the plant needs to provide the agreed availability and the produced parts must not exhibit any plant-related defects.

During trial production, the plant must maintain the agreed consumption data for energy, operating and auxiliary materials according to the stipulations in request and requirement specification.

An acceptance report to be signed by both parties shall be drawn up about the acceptance procedure. Minor defects identified, which, however, do not prevent acceptance, shall be recorded and reworked by appointment.

The Contractor hands over the documents to MFU, if requested in the requirement specification.

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6. Documentation

According to requirement specification and additional specifications of the Contractor.

The Contractor shall assume all rework and costs resulting from delayed delivery of the documentation or its incompleteness.

With the submission of the offer or during the project phase to be supplied by the Contractor:

- An overview drawing as PDF and DXF document of the installation dimensions of the machinery/plant, in particular total length, height and width, position of the individual machinery bases, travel paths of main assemblies, dimensions of main assemblies, required space for operators and maintenance personnel, swivelling range of doors and maintenance openings, direction of transport of the flow of goods, if required: Position and required space for loading/unloading, space for material supply and removal
- Information on maximum total weight of the machinery, weight of the heaviest machinery or plant part to be installed and the maximum floor load
- Special requirements for the floor, if applicable
- The Contractor grants Handtmann access to the production facilities of the Contractor after prior appointment to inspect its capabilities and the later progress of the manufacturing of ordered plants/machinery.
- A table as PDF and Excel document (common version) for consumption values, such as power, compressed air, water, oil, additives etc. (see above Item 4.)

Number	System/plant part / assembly	Medium	Consumption in operation	Consumption in standby	Connected load	Further requirements

- A table as PDF and Excel document (common version) for waste water, exhaust air and waste products

Number	System/plant part / assembly	Medium	Volume/mass per hour	Substance properties	Treatment required?	What treatment?

Documents that are missing when the offer is submitted or changed during the project phase (see above) shall be delivered by no later than the awarding of the contract.

With the awarding of the contract to the Contractor:

- An overview drawing of the machinery/plant covering the intake connections for operating materials and the outlet connections for waste water, exhaust air and waste products. The position on the machinery/plant and the dimensions of the connection, if necessary, are described.

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- A project plan incl. milestones and work packages shall be presented and updated with regular reports on the product status.

With delivery, at the latest at commissioning:

- Full operator manual with _____ printed copies filed in DIN A4 folder(s) and an additional PDF document on data carrier (e.g. CD)/digitally available on Handtmann docu server
- EC Manufacturer’s Declaration and EC Declaration of Conformity
- Proof of origin for deliveries from abroad
- A table of spare and wear parts with prices as PDF and Excel document (common version)

Contractor ID No.	Designation	Manufacturer	Manufacturer ID No.	Price/unit	Unit	Wear or spare part?

Prices shall have a validity of _____ years from acceptance of the subject matter of the contract.

The Contractor undertakes to provide spare and wear part supply at market prices for a period of 10 years after commissioning.

7. Provisions by Handtmann

The following shall be provided by Handtmann free of charge:

Plus the additional scopes to be provided according to the Handtmann request and requirement specification.

8. Other supply limits/interfaces

9. Colour codes

According to Handtmann request and requirement specification for this project.

10. Equipment/make requirement

According to Handtmann request and requirement specification for this project.

For machinery with PCs or to be integrated in the Handtmann network, the “Requirements for machinery with PCs” leaflet (see Annex 2) must be observed and complied with. The Contractor shall request this if missing.

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11. Pricing

The agreed price shall be a fixed lump sum price including all tasks until fulfilment of the entire contract and shall include:

- Unloading and transport to assembly site on the company premises
- Packaging and freight to assembly site on the company premises, including transport insurance
- Provision and free handover of an English and German insurance confirmation of a manufacturer's liability insurance taken out at the registered office of Handtmann
- Instruction of our personnel according to item 3
- Performance certificates according to item 5
- Free handover of the documentation according to item 6 at the registered office of Handtmann
- Commissioning, trial operation and acceptance according to requirement specification and negotiation protocol
- Operational assembly according to item 2
- Provision and free handover of an English and German insurance confirmation of an assembly and commissioning insurance taken out at the registered office of Handtmann

In each case, including all additional costs for necessary meeting, coordination talks, travel times, travel expenses, allowances, food and lodging expenses, etc.

In deviation of the above, the following services shall not form part of the Contractors scope of delivery:

12. Deadlines

Contract awarding until	_____
Contract acceptance until	_____
Preliminary acceptance at Contractor	_____
Delivery	_____
Completion of assembly	_____
End of commissioning	_____
Ready for performance certification = ready for production	_____
Acceptance of machinery/plant	_____

Contractual penalty on the date of readiness for production:
0.5 % for each started week, max. 5 % of the total contract amount.

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13. Payment terms

_____ % after receipt of the unconditional order confirmation against provision of an irrevocable, unlimited, directly enforceable bank guarantee from a major German bank, issued to and free of charge for Handtmann.

_____ % after submission of the design, transfer of use and copyrights and release by Handtmann.

_____ % after delivery of the main materials and start of assembly. Materials that remain with the Contractor shall be paid for against a corresponding transfer agreement and marking as the property of Handtmann or against a bank guarantee.

_____ % after completion of assembly on presentation of a handover report, signed by the responsible Handtmann coordinator.

_____ % after overall completion and unconditional acceptance on presentation of a handover report, signed by the responsible Handtmann coordinator, presentation of the invoice, accounting papers and documentation provided.

All percentages of payments refer to the total contract value and shall be requested in writing from Handtmann by the Contractor. Payment by Handtmann shall not affect the right to warranty for defects.

In the event of default in payment, rescission shall only be possible after prior written fixing of a deadline with notice of rescission.

Payments shall be made within _____ days of presentation of the respective invoice.

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14. Guarantees

Guarantee declarations for the payments listed must include statutory value added tax.

In case of a limited advance payment guarantee, the limitation period shall end at the earliest 6 weeks after the planned delivery date; in the case of a limited warranty guarantee, the limitation period shall end at the earliest 2 weeks after the end of the warranty period.

These guarantees shall be returned after acceptance upon written request by the Contractor.

15. Transfer agreement

The deed of transfer of ownership of material shall be signed and submitted to Handtmann with the invoice. The amount must correspond to the invoice amount and include statutory value added tax. Invoices without enclosed transfer agreement shall not be paid.

16. Assignment and offset

Claims against Handtmann may not be assigned to a third party without written consent. Should an assignment be made without the consent of Handtmann, Handtmann shall reserve the right to pay either to the Contractor or the assignee.

Offsetting against Handtmann shall only be possible with claims that are recognised in writing or by final decision.

17. Liability for material defects and defects of title (“Warranty”)

The warranty corresponds to the rules of the statutory guarantee provisions. The Contractor warrants that the plant is low-maintenance.

The warranty period is _____ months after successful acceptance of the complete plant by Handtmann against an acceptance report. The end of the warranty period shall be suspended from the time of receipt of the notification of defect by the Contractor until the successful remedy of the defect or until the refusal to continue negotiations.

Interruptions to business, for which the Contractor is responsible and which are specified in writing by Handtmann, extend the warranty period accordingly.

Place of performance is the final installation site of the Contractor’s scope of delivery and services:

_____.

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18. Performance data guarantee

The Contractor guarantees the performance data stipulated in the contract specifications. The contract shall not be deemed fulfilled until these performances have been proved.

The Contractor further guarantees that the performance data and properties shall be maintained without tolerance for the duration of the warranty period.

It must be possible to maintain the object of the contract's accuracy in performance data over the entire lifetime by means of adjustment options, as far as this is technically feasible and reasonable.

19. Feasibility guarantee

The Contractor holds all documents required for the fulfilment of the contract. Missing documents must be requested from Handtmann. Should the request not be made, the Contractor shall not be able to claim the absence of documents in the event of a possible postponement of the delivery date or any rework that may become necessary.

20. Service availability guarantee during the warranty period

The Contractor guarantees that, if required, service experts shall be available within _____ hours of request, including on weekends. Wear parts shall be in stock at the Contractor's warehouse and available within _____ hours.

21. Proof of performance/acceptance

The proof of performance shall be verified by the department at Handtmann responsible for the plant: _____

The following preconditions must be fulfilled for acceptance:

- The Contractor must notify in writing of the willingness to provide proof of performance.
- A prerequisite shall be that the Contractor has performed all services assigned to the Contractor and that the object of the contract is unrestrictedly ready for production. Moreover, all documentation to be provided up to this point must be complete.
- The Contractor shall provide proof of all performance data according to request and requirement specification for the duration of the agreed trial production with fault-free operation.
- The measuring equipment required for the proof of performance as well as their set-up and removal form part of the Contractor's scope of delivery and services.

Should the results of the first proof of performance be poorer than the guaranteed values, the Contractor shall have the right to make improvements within a period of _____ weeks, during which _____ additional proofs may take place.

All costs of such additional proofs of performance shall be at the expense of the Contractor.

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22. Remedial action

If defects are discovered, the Contractor shall be obligated to remedy them free of charge and without delay before and after acceptance.

Should the defects not be remedied by the Contractor within a reasonable period set by Handtmann, Handtmann shall have the right to carry out remedial work itself or have it carried out by a third party at the expense of the Contractor, without any effect on the Contractor's warranty obligations. Handtmann shall also be entitled to rescind the contract, reduce the purchase price or claim damages.

Should the Contractor request the return of damaged parts for inspection, all costs, e.g. packaging, freight etc., shall be assumed by the Contractor.

23. Temporary employment

Insofar as the Contractor violates provisions of temporary employment within the scope of this contract, the Contractor shall be liable towards Handtmann for all disadvantages that Handtmann should suffer as a result of such violation. Compliance with this provision shall be equivalent to a primary contractual obligation.

24. Occupational health and safety regulations

In the event of violations of the occupational health and safety regulations, Handtmann shall be entitled to deduct all costs incurred by Handtmann as a result of this situation from the Contractor's receivables. Handtmann shall furthermore be entitled to terminate the contract without notice.

25. Occupational safety in case of external company deployment

The Contractor shall be obligated to comply with the Handtmann "Plant regulations for external companies" (see Annex 3) and to sign these before commencing the contract execution and to instruct his employees and assistants accordingly and ensure their compliance.

Further additional details shall be determined, if necessary, as required safety measure by the coordinator of Handtmann responsible for this deployment and the Contractor's authorised construction site manager before the Contractor's initial deployment at Handtmann.

The responsible coordinator of Handtmann and the Contractor's authorised construction site manager shall check the determined safety measures for their continued validity for subsequent deployments of the same kind.

The coordinator of Handtmann is entitled to issue instructions to the Contractor's responsible persons in order to fulfil his tasks. It is imperative that the instructions of the coordinator are followed.

The responsibilities of the Contractor in the contract case regulated by law shall not be affected by the above stipulations.

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26. Approval of overperformance/underperformance

If the intended scope of delivery and services is deviated from, the Contractor shall be entitled to additional claims or changes to deadlines only if these are notified and are based on overperformances requested in writing by the responsible Handtmann project manager. In urgent cases, the Handtmann project manager shall have the costs of overperformance of the Contractor clarified and approved by the purchasing department prior to execution.

Otherwise, these additional costs of the Contractor shall be submitted for approval by the purchasing department at Handtmann within 14 days of this written request. The Contractor shall receive a written supplemental order for the approved additional costs from the Handtmann purchasing department. For additional services requested in writing by Handtmann, the same conditions as those for the main contract shall apply.

Overperformances without written order shall not be acknowledged and paid by Handtmann.

Underperformance or cancellation of services shall be assessed on the basis of your offer calculation and deducted from the basic order or offset against justified claims for additional costs by the Contractor.

27. Liability

The Contractor shall be liable within the scope of the statutory provisions for all culpably caused personal injury, material damage and financial loss in the case of deliveries and services by the Contractor or its assistants.

If claims for damages or other claims be asserted against Handtmann by third parties based on or related to the delivery and services of the Contractor, the Contractor shall hold Handtmann fully harmless from such claims, including judicial and extra judicial costs.

28. Rescission, suspension, termination

Notwithstanding Handtmann's rights in the event of conduct of the Contractor in breach of contract, Handtmann shall be entitled to terminate the contract in whole or in part without giving reasons. In such as case, Handtmann shall be obligated to payment of all deliveries and/or services provided up to that point, as well as to adequate compensation for material procured and work performed.

If legal composition or bankruptcy proceedings should be applied for against the Contractor's assets or if the Contractor should suspend payments, Handtmann shall be entitled to rescind the contract in whole or in part.

Handtmann shall have the right to take over material and/or semi-finished products including any special equipment at reasonable conditions. Further claims of the Contractor shall be ruled out.

Handtmann may request temporary suspension of the services at any time. At the Contractor's request, a time limit for the suspension may be agreed.

There shall be no claim to lost profits.

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29. Contractual changes

Any change to the contract shall require the written form. All previous agreements and subsidiary arrangements shall no longer be valid with the conclusion of this contract.

30. Confidentiality

The obligation to secrecy shall apply to all documents of this contract as well as to all operating methods, figures and drawings, sketches and similar documents of Handtmann or Handtmann customers that have come to the Contractor's knowledge. The Contractor shall commit all assistants and staff involved in this contract accordingly.

Without the consent of Handtmann, the documents may neither be published nor reproduced or made accessible to third parties or used for any purpose other than the originally intended purpose.

If required, the Contractor shall be prepared to conclude a separate confidentiality agreement.

31. Shipping

At least 2 weeks prior to shipping, Handtmann shall be notified of the exact date of arrival and receive a packing list.

32. Correspondence/contacts

Contact at Handtmann:

Technical issues: _____ TEL. _____

Commercial issues: _____ TEL. _____

Project coordinator: _____ TEL. _____

The Contractor shall name a competent, German-speaking contact person for the duration of the project.

33. Applicable law

All legal relationships between Handtmann and the Contractor shall be governed by German law. United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

34. Place of performance, place of jurisdiction

Place of performance shall be the registered office of Handtmann and place of jurisdiction for the parties to the contract shall be the competent court for Handtmann's location or, at the choice of Handtmann, the Contractor's general place of jurisdiction.

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35. Other terms and conditions

In the event of an order, the following conditions shall apply in this order:

- The conditions of the order letter
- The conditions of this mutually signed negotiation protocol dated _____
- Handtmann General terms and conditions of purchase
- Request and requirement specification of Handtmann
- Safety and environmental requirements and regulations for the delivery of plants, systems, devices and machinery” (see Annex 1)
- Handtmann plant regulations for external companies (see Annex 3)

36. Acceptance of order

Within _____ days by official order confirmation from the Contractor.

37. Severability clause

If in the event of contract awarding a provision in this contract should become ineffective or unenforceable, the validity of the remaining provisions shall not be affected by this.

The ineffective or unenforceable provision shall be replaced with such effective and enforceable provision that most closely achieves the economical purpose of the ineffective or unenforceable provision. The above provision shall apply in the event that the contract proves to be incomplete.

Biberach, dated

Handtmann

Contractor

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Annexes:

- Annex 1: List of “Safety and environmental requirements and regulations for the delivery of plants, systems, devices and machinery”
- Annex 2: IT guideline for the coupling of systems (if needed)
- Annex 3: Handtmann plant regulations for external companies (if needed)

For all annexes, also refer to the Internet under www.handtmann.de, Light Metal Casting, Purchasing, Downloads.

INTERNAL:

Technical correctness of the negotiated specifications, in particular of the documentation “With submission of the offer by the Contractor”

Project Technical Manager