

General conditions for contracts and purchasing - on the fulfilment of public contracts

These *general conditions for contracts and purchasing* are part of all and any contracts, linked to the fulfilment of a public contract that has been awarded to us and that has been entered into by us and our suppliers and contractors (hereafter referred to as "contractors"). They will continue to remain valid in current and future business relations. Alternative agreements - particularly those that are not consistent with the terms and conditions of our contractors - as well as subsidiary agreements require our explicit written consent in each and every individual case in order to become effective and part of the contract.

1. Quotation and conclusion of the contract

- 1.1. The contractor must submit his quotation to us gratuitously and bindingly. The contractor must follow our requests in his quotation, concerning amounts, packaging units, condition, execution, etc.; any variances must be explicitly pointed out in writing. The previous sentence applies to order confirmations by the contractor accordingly.
- 1.2. Our orders and any other of our statements shall only be binding, if we submitted them to the contractor in writing.

2. Integral parts of the contract

Integral parts of the finalised contract are in the order of their nomination:

- our confirmation of order
- these conditions of the contract
- our company-based specifications, service descriptions, plans *as well as*
- the official contracting terms for award of service performance contracts - excluding contracting rules for award of public works [*German abbr.: VOL/B*]. That is, the version which is in effect upon conclusion of the contract.

3. Requirements of the contracting authority and billing at cost price

- 3.1. Regarding fulfilment of public contracts we must inform the contractor that our contracting authority insists that we and our contractors, for the implementation

of the contract - of which these conditions are an integral part - abide by the requirements of the statutory laws regulating prices, according to by-law PR 30/53, as well as the rationing principles for benefits on cost base towards companies with commercial research and development projects (BKFT 75) and the hereunto issued subsidiary regulations. The contractor must issue a written statement in accordance.

- 3.2. Our contractor must bill the respective awarded contract at cost price, according to the principles of §§ 5 - 8 of by-law 30/53, provided that the contracting authority's pricing department in charge establishes that a price evaluation according to §§ 3 and 4 of by-law 30/53 is not possible, respectively that a market price had not been given from the first.

In the case of a billing at cost price, the contracting authority must apply 6% of the operationally necessary assets for the calculation of interest and - in order to compensate the calculation of profit - apply 5% of the net costs (prime costs excluding VAT and without special charges by the sales department). In case of billing at cost price, the contracting authority must accept the proffered quotation price as topmost limited cost price (fixed cost price or reimbursed cost price respectively).

- 3.3. On request the contractor must allow inspection - by someone who has been sworn to secrecy and who works in a profession concerned with legal advice, tax consultancy or someone who works as a government employee that has been commissioned to carry out a price check - of all and any deliveries and services that form a part of this contract, as well as any business records and price calculations, as far as it becomes necessary in the scope of this price check by the contracting authority.

4. Contract documents

- 4.1. We reserve our property rights, copyrights and/or any other commercial trademark rights for all samples and documents (e.g. technical specifications, drawings, illustrations, colour-specifications, dimensions and indications of weight) that have been made accessible to the contractor. Without our explicit written consent these samples and documents must not be used in any other way than to fulfil the respective contract. It is particularly prohibited to duplicate these samples and documents or to make them accessible to a third party. On request they are to be returned to us by the contractor.
- 4.2. The contractor must independently check the samples and documents that have been placed at his disposal. The contractor must inform us in writing immediately, if he has any concerns about the samples or documents that have been placed at his disposal by us.
- 4.3. The necessary quantity of all and any particular graphics or other documents that are required by the contractor for the fulfilment of the respective contract shall be placed at the contractor's disposal by us, free of charge.

5. Deadlines and terms

- 5.1. The deadlines and terms stated by us in our orders are binding for the contractor.
- 5.2. The contractor must inform us in writing immediately concerning the

reason and estimated duration of an imminent deadline or term not adhered to.

- 5.3. Should the contractor not manage to deliver/render his service at the agreed date, or rather, within the period stipulated we may - after an ineffective reminder was extended and after expiration of an adequate time limit - withdraw from the contract and/or demand from our contractor either compensation for the damages suffered or - without proof of damage - demand a payment of 10% of the agreed price. It remains the particular right of the contractor to prove that we have suffered no damages or minimal damages.

6. Transfer of perils, packaging, shipping and acceptance

- 6.1. The contractor must send all items of delivery or performance to the receiving centre that we proposed. There, the risk of accidental loss of the goods or random deterioration of any items of delivery or performance will be transferred to us.
- 6.2. The contractor is responsible for adequate, standard and eco-friendly disposable packaging that will keep all and any items of delivery or performance free of damage and/or free of impairment of serviceability.
- 6.3. On the day of dispatch of the shipment the contractor must provide us with the shipment papers, specifying the purchase order number, a declaration of goods and the amount/quantity; each shipment must have a delivery receipt with this data enclosed by the contractor or else we may decline acceptance of the shipment at the contractor's expense.
- 6.4. We reserve ourselves the right to decline acceptance of all and any partial shipments, excess deliveries or short deliveries.
- 6.5. The contractor must insure all items of delivery or performance - at his own expense and at replacement value up to the time of transfer of perils to us (cf. **6.1.**) - against

- accidental loss of the goods (particularly against fire and theft) and against random deterioration.
- 6.6. We may decline acceptance of items of delivery or performance for as long as an event due to force majeure or any other circumstances beyond our control (this includes industrial unrests) make it impossible or unreasonable for us to accept items of delivery or performance. Should this be the case the contractor must stock and insure the items of delivery or performance at his own expense and peril until delivery can take place.

7. Invoices and payments

- 7.1. Invoices by the contractor must be submitted in triplicate, for each shipment separately, as stipulated in the contract regarding deliveries/performances, stating the purchase order number. The contractor must specifically include the purchase tax in its respective statutory amount.
- 7.2. The contractor's pecuniary claims towards us will fall due 30 days after receipt of a ready-for-inspection invoice. That is, however, at the earliest 30 days upon receipt of the items of delivery or performance at the receiving centre that we proposed. Should the contractor deliver/render his services ahead of time, the expiration of the 30-days term will begin no sooner than from the date of delivery or performance that was provided in the contract.
- 7.3. We may deduce a discount of 3% of the invoice amount (excluding purchase tax), should we authorise payment of the invoice amount within 14 days upon receipt of the above mentioned (cf. 7.2.) settlement date requirements.

8. Transfer, netting and retention

- 8.1. The contractor must not - neither partially, nor completely - assign his rights or claims against us to a third party, without our explicit consent in writing.

- 8.2. The contractor shall only be authorised to settle accounts, if the counterclaims of the contractor are undoubted, legally established or ready for a decision (proven).

- 8.3. The contractor must not - due to possible counterclaims of the contractor against us, from previous dealings or other current dealings - retain any items of delivery or performance.

9. Defects

- 9.1. The contractor must ensure that the item of delivery or performance is consistent with the condition stipulated, that the respective item is scientifically and technically state of the art and that no attendant circumstances will reduce its value or serviceability according to its common usage or according to its assumed usage as specified in the finalised contract.
- 9.2. Should the item of delivery or performance be faulty, we shall be entitled to a period for claims of at least eight days (according to §377 of the German Commercial Code) which shall be supplemented not only by the regulations of the official contracting terms for award of service performance contracts – excluding contracting rules for award of public works (German abbr.: VOL/B), but also by the legal claims and liabilities for defects – without any qualification. Should there be any latent defects of the items of delivery or performance, particularly those to be uncovered during handling or at the time of commissioning, the period for claims will begin with their detection.

10. Liability, release and coverage

- 10.1. Claims for compensation/indemnity and reimbursement of expenses (hereafter referred to as "claims for indemnity") of the contractor against us, on the basis of whatever cause in law, shall be excluded unless they are based on:
- regulations under the Product Liability Act

- a deliberate or wantonly negligent breach of our contractual or statutory duties
- a breach of our duties, causing damages to the health/bodily harm to the contractor and/or his employees
- an acceptance of warranty from our side for the existence of a feature
- a breach of an essential contractual obligation by us

Should we incur a breach of an essential contractual obligation, the contractor's claims for indemnity shall be limited to the typically-contractual and foreseeable damages, unless they derive from a deliberate act or gross negligence and/or if we are not liable for damages to the health/bodily harm or if we are liable for the existence of a feature due to an acceptance of a warranty. A breach of duty by us, our legal agent or an auxiliary person shall be treated likewise. The previous arrangement is not linked with a shifting of the burden of proof to the disadvantage of the contractor.

10.2. The contractor will:

- ensure during development and production that the item of delivery or performance is scientifically and technically state of the art.
- comply with the regulations
- perform a function control/quality check of the item before delivery to us
- sufficiently document all the measures that have been taken in fulfilment of these obligations
- store this documentation for a period of eleven years and - upon request - grant us access to this documentation at any time

10.3. Should we be held responsible by a third party, due to a defect of an item that was delivered to us by the contractor and in the course become liable for any indemnities, the contractor must indemnify us from these claims and compensate any of our expenses or damages that will arise from/are linked to any product recalls undertaken by us. That is, if the damage was caused by raw materials, partial

products or deliveries/performances provided by the contractor.

We will inform the contractor in advance - if possible and reasonable - concerning the contents and extent of these measures and give him the opportunity to comment on it. The liability of the contractor according to the legal requirements will remain unaffected.

10.4. The contractor must - at his own expense - produce:

- a product liability insurance that includes all and any environmental liability risks
- an indemnity insurance that will also cover processing risks - with a limit of indemnity in each case of at least € 2.5 Mio. per bodily injury/damage to property and excluding the recurring claims damages of the insurer.

11. Retention of title and supply

11.1. We will not accept an extended retention of title by the contractor or any of his suppliers.

11.2. Should we provide the contractor with items that are considered to be our property, these shall remain to be our property henceforth. Any processing or alteration of these items shall be performed by the contractor.

11.3. Should any of the items that we provided become intrinsically mixed/mingled with anything that is not our property, we shall purchase the new item at a ratio of the value of the items that were provided by us to the value of the other items - at that point in time when the mixing/mingling took place. Should the mixing/mingling take place in a way so that the other items may be deemed the main-items, the contractor must grant us a co-ownership of the new items. The contractor must store these new items for us, free of charge.

12. Storage of data

We may - within the scope of our business relations with the contractor - store any required data of the contractor and the individual contracts between us and him,

using data processing for this purpose. We may also process and use this data for company purposes in compliance with the legal requirements.

13. Place of delivery, place of jurisdiction, applicable law and severability clause

- 13.1. Place of delivery for all and any deliveries/services to be made by the contractor shall be the receiving centre, proposed by us.
- 13.2. Exclusive place of jurisdiction for all and any disputes arising directly or indirectly from our contractual relationship with the contractor - this also includes certificates, exchanges or cheques - will be our principal office. However, we may also sue the contractor - if we choose to do so - at the place of jurisdiction for his principal office.
- 13.3. The laws of the Federal Republic of Germany shall apply, excluding the United Nations' treaty on the international sale of goods.
- 13.4. Should single terms of a contract that was made between us and the contractor be/become invalid, this shall not affect the validity of the rest of the terms.

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