

General Terms and Conditions for Deliveries and Services by the German Research Foundation



German Research Foundation

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Section 1 Basis

- (1) The German Research Foundation (DFG) General Terms and Conditions (GTC) take into consideration the general conditions that exist for the conclusion of contracts as a result of the continual procurement practices. These are additional contract terms and conditions as defined in Section 1 of the General Terms and Conditions for the Provision of Services (VOL/B).
- (2) As a result of these GTC being agreed upon, VOL/B will become an integral component of the contract unless other agreements have been reached.

Section 2 Scope

The GTC will apply to contracts for the provision of services, the purchase or manufacture of goods and for rentals, leasing, etc.

Section 3 Components of the contract

- (1) The nature and scope of the services to be provided by each party will be defined in the contract.
- (2) In the event of contradictions, the components of the contract will be in the following order:
 - a) The description of services
 - b) The quote and written order with the special contract terms and conditions contained therein
 - c) Any supplementary contract terms and conditions (e.g. EVB – IT)
 - d) These GTC (additional contract terms and conditions)
 - e) Any general technical contract terms and conditions
 - f) General Terms and Conditions for the Provision of Services (VOL/B)
- (3) Technical guidelines will also be deemed a description of services for the purposes above.
- (4) The features of accepted samples constitute a materialisation of the description of services.
- (5) The Contractor's general terms and conditions of business will not be an integral component of the contract even when referred to in order confirmations.

Section 4 Contract Conclusion

- (1) Contractual agreements are made in writing or in electronic form (Section 126a of the German Civil Code). To be valid, verbal agreements relating to the contract, and declarations issued in this respect in written or electronic form, require confirmation in the form specified in sentence 1.
- (2) The written order / acceptance of bid must be confirmed to DFG by the Contractor in writing or in electronic form (Section 126a of the German Civil Code).
- (3) Only DFG, as the Principal, and not the recipient, will be entitled to make changes to the nature and scope of the services and deliveries.

Section 5 Delivery Dates, Delay

Delivery dates are binding. If the delivery date is exceeded by more than 14 days, DFG may demand damages of 0.5% up to a maximum of 8% of the net value of the entire delivery, or of the part of the overall delivery that cannot be put into service due to the failure to deliver individual associated items on time, per full week of the delay.

Section 6 Place of Fulfilment, Place of Payment

- (1) The place of fulfilment will be the place where the service is to be provided. If not defined in the contract, the place of fulfilment will be DFG's registered office in Bonn.
- (2) The place of payment will be Bonn.

Section 7 Packaging, Transport, Transport Costs

- (1) For secure transportation, the Contractor shall use suitable packaging taking into consideration the requirements in terms of the type and weight of the goods, and the means of transport being used.
- (2) Where the Incoterms abbreviations are used, the version or revision in force at the time of concluding the contract will apply.
- (3) The Principal shall bear the costs of the packaging materials and transport where these are not included in the price. The Contractor will bear all other costs, e.g. insurance fees, cash on delivery commission, carriage, connection charges, demurrage or fees for a certificate of transport costs.

- (4) Where the Principal pays the transport costs, the Contractor must pay the costs up front, at no additional charge, until receipt by the recipient. The Contractor will select the means and nature of the transport with economic efficiency in mind. Section 6 of VOL/B will also apply.
- (5) Upon delivery, the Contractor or the commissioned forwarding agent, obliged to do so by the Contractor, shall take back any packaging (as defined by the latest version of the Packaging Ordinance) from the recipient free of charge. There is no transfer of ownership of the packaging in this scenario. The recipient of the service may however still ask for ownership of the packaging to be transferred to it upon delivery, where such a transfer is possible.

Section 8 Handover

- (1) Unless otherwise agreed, the due goods/services will be handed over to the contractually stipulated recipient at the latter's site or within their premises.
- (2) Upon handover at the place of fulfilment, the Principal acquires full ownership of the subject of the fulfilment.

Section 9 Acceptance

- (1) Acceptance is the Principal's declaration that the contract is essentially fulfilled. In addition, Section 13 VOL/B remains unaffected.
- (2) Acceptance takes place at the place of fulfilment on the part of the recipient, who will also be authorised to report any defects.
- (3) In the event of a defect of quality or title, or in the absence of suitability for the purpose provided for in the contract, the Principal, or the party commissioned by it, may refuse to accept the service.

Section 10 Warranty and Limitation Period

- (1) The statutory provisions will apply to any claims by the Principal on the grounds of defects in quality or title.
- (2) The Principal may grant the Contractor a reasonable period in which to rectify defective goods. Following expiry of said period, the Principal may dispose of these items at the Contractor's expense but with due regard to the Contractor's interests.
- (3) The limitation period for claims on the grounds of defects is one year, except where the law provides for a longer limitation period or where a different period is agreed upon.

- (4) Section 14 VOL/B does not apply.

Section 11 Invoice Submission

- (1) The Contractor must submit the invoice in accordance with the statutory requirements.
- (2) A separate invoice must be generated for every order number.
- (3) Where partial services are agreed upon for an order (e.g. delivery at different times), a separate invoice may be submitted for each partial service.
- (4) Where the Principal bears the costs for transportation to the place of fulfilment, the Contractor must document and invoice these costs separately for each order.

Section 12 Invoice Payment

- (1) Invoices are paid in accordance with the contractual agreements but within 30 days of falling due and of receipt of the invoice at the latest. Payments will only fall due following performance of the service in accordance with the contract.
- (2) The day the payment order is presented or sent to the bank will be deemed the payment date.
- (3) Invoices received without the contractually stipulated documents will not be paid by the Principal.
- (4) Section 17 of VOL/B will also apply.

Section 13 Early Payment Discount

Where early payment discounts have been contractually agreed upon or have been quoted on the invoice by the Contractor, the early payment discount period will commence upon receipt of the invoice and proper fulfilment of the contract by the Contractor. If the Principal raises justified objections or pleas, the early payment discount period will be suspended for that period.

Section 14 Confidentiality

- (1) All personal data and other information made known to the Contractor, or its employees, in conjunction with processing of the order must be treated as confidential. This data may not be disclosed to or shared with third parties.
- (2) The contracting parties undertake to only communicate the content of the contract to third parties where, and to the extent, necessary for fulfilment of the contract.
- (3) The provisions regarding implementation documents (Section 3 VOL/B) remain unaffected.

Section 15 Termination of the Contractual Relationship for Good Cause

- (1) The Principal may withdraw from the contract or terminate the contract with immediate effect
 - a) if the Contractor breaches its duty of confidentiality or an obligation incumbent upon it to keep facts made known to it in connection with the awarded contract secret.
 - b) where insolvency proceedings, or comparable legal proceedings, are initiated against the Contractor's assets, or where the initiation of such proceedings is rejected for insufficiency of assets, or where proper fulfilment of the contract is placed at risk by the Contractor discontinuing its payments on a more than temporary basis.
 - c) where the Contractor has taken part in unlawful restrictions on competition, as defined by the German Act Against Restraints of Competition (GWB), during the course of establishing or performing the contractual obligations. This includes, in particular, agreements with third parties regarding the submission or non-submission of quotes, regarding the prices to be charged, regarding the payment of compensation for losses (profit sharing or other fees) and regarding fixing recommended prices.
 - d) where there are exclusion criteria, as defined in Section 123 GWB and Section 124(1) Nr. 8 GWB. Exclusion criteria will be, in particular, the acceptance or offering of bribes in business transactions pursuant to Section 299 of the German Criminal Code (StGB), the granting of an undue advantage, as defined by Section 333 of the StGB, bribery pursuant to Section 334 StGB, and serious misrepresentation in relation to the exclusion criteria or suitability criteria by the Contractor.
- (2) Additional statutory provisions, in particular the right to termination pursuant to Sections 314 and 626 of the German Civil Code, remain unaffected.

Section 16 Effects of Termination of Contract for Good Cause

- (1) In the event of termination, the performance so far, where this is of use to the Principal, will be paid for in accordance with the contractually agreed prices, or in the ratio of the part of the service provided to the contractual performance in its entirety on the basis of the contractually agreed prices. The portion of the performance that is not usable will be returned to the Contractor at the latter's expense.
- (2) If the Contractor withdraws from the contract in accordance with the provisions set out in Section 15(1) of the GTC, the services provided by the contracting parties must be returned.
- (3) Section 7 Nr. 3 VOL/B will also apply. The legal regulations regarding the withdrawal will remain unaffected.

Section 17 Violation of Third-Party Industrial Property Rights

- (1) The Contractor shall check whether or not its performance violates any national or international third-party industrial property rights or copyrights. There is no such obligation for the Principal.
- (2) There will also be an obligation to check where a description of services, or other specifications, have or are to become integral components of the contract pursuant to Section 3(2)(a) of the GTC.
- (3) If the Contractor discovers that performance of the service is not possible without breaching third-party industrial property rights or copyrights, it must notify the Principal of this without delay.
- (4) The Contractor will indemnify the Principal against third-party claims on the grounds of any violations of industrial property rights or copyrights, and will bear the costs that arise for the Principal in connection with the same.

Section 18 Rights of Use

The Contractor will transfer an unlimited, exclusive, permanent, irrevocable and transferable right of use over the results obtained within the framework of this contract to the Principal.

Section 19 Severability Clause

In the event of one of the foregoing clauses being fully or partially invalid, this will not affect the validity of the remaining terms and conditions of purchase. The parties hereby agree that such an

invalid clause will be replaced with a valid one which most closely reflects the intended purpose of the invalid clause.

Section 20 Applicable Law

- (1) The law of the Federal Republic of Germany will apply. Application of the United Nations Convention on the International Sale of Goods is hereby excluded.
- (2) Correspondence with the Principal must be conducted in German. Correspondence with Principals outside the German-speaking region may be conducted in English.

Section 21 Place of Jurisdiction

The sole place of jurisdiction will be Bonn, Germany.