

UNIVERSITY OF STUTTGART

General Terms and Conditions for the Procurement of Goods (Contractual Conditions)

§ 1 General regulations

- (1) These General Terms and Conditions for Deliveries and Services (hereinafter referred to as "Contractual Conditions") shall apply, provided that no other written agreement to the contrary exists between the University of Stuttgart (hereinafter referred to as "Client") and the contractor (hereinafter referred to as "Contractor"), to all deliveries and services ordered by the Client as part of the contract.
- (2) By submitting a tender, or by confirming, accepting or executing a purchase order, the Contractor shall submit to these Contractual Conditions, provided that the Client has communicated these in connection with a call for tender, an inquiry, or a purchase order, or has made the Contractor aware in some other way that these Contractual Conditions apply. Any conflicting, additional, or different terms and conditions of the Contractor shall not become part of the contract, unless the Client has agreed to their validity in writing. These Contractual Conditions shall also apply if the Client accepts, without reservation and in knowledge of the Contractor's conflicting, additional, or different terms and conditions, a delivery by the Contractor.
- (3) In the case of orders relating to information technology, these Contractual Conditions shall apply unless otherwise stipulated in the Supplementary Conditions of Contract for the Procurement of Information Technology (EVB-IT).
- (4) Furthermore, the General Terms and Conditions for the Provision of Services (VOL/B) shall apply.
- (5) If individual provisions of these Contractual Conditions are not applicable for some reason, the remaining provisions shall remain unaffected.
- (6) Any rights to which the Client is entitled under statutory provisions or other agreements beyond these Contractual Conditions shall remain unaffected.

§ 2 Offer and placing of orders

The offer must be submitted free of charge. In the offer, the Contractor shall specify the measures and strategies that will be used to take account of the principles of data protection through technology and through privacy by default settings in the sense of Article 25 of Regulation (EU) 2016/679 (GDPR). Orders shall always be placed in text form, and in exceptional cases also in written form. Oral agreements shall only become valid when they have been confirmed by the Client in writing.

§ 3 Prices, passing of risk, and insurance

- (1) The prices on which the order is based shall be fixed prices, provided that no agreement exists to the contrary. The price shall include the value added tax, unless it is expressly designated as a net price in which case the value added tax must be shown separately on the invoice. Prices shall be "full at place of use", including packaging, its disposal, shipping (including equipment required for shipping), transport, and insurance for deliveries made to the address specified by the Client as well as customs duties and other public charges as well as adequate and complete documentation, if such documentation is required. Any subsequent cost increases shall have no influence on the agreed fixed price.
- (2) When calculating the price, the provisions of Regulation PR No. 30/53 on the Pricing of Public Contracts of November 21, 1953 in the respective current version shall apply along with the Guidelines for Pricing on the Basis of Cost.
- (3) The Contractor shall bear the risk of accidental loss and accidental deterioration of the delivery items until they are handed over to the Client. If the Contractor is obligated to install or assemble the delivery items, the risk of accidental loss and accidental deterioration of the delivery items shall not pass to the Client until the delivery items have been installed or assembled. The Contractor is obligated to take out a transport insurance policy that is suitable in terms of amount and type, and to provide evidence thereof in writing without undue delay upon the Client's request.

§ 4 Delivery and customs, acquisition of ownership

- (1) The goods must be delivered to the place of delivery or installation specified in the order. Each delivery must be accompanied by a single copy of a delivery note stating the items delivered, the item and material numbers, the quantities delivered, the date of manufacture, and the order data, in particular the order number, the order date, and the supplier number. When performing contract work, the number of hours worked must be demonstrated by means of a confirmation from the corresponding academic institution.
- (2) In the case of deliveries from outside the customs jurisdiction, the Contractor shall get in touch with the Client in due course for customs and import processing (exemption from customs duty). Any occurring customs claim must be settled by the Contractor. For such import transactions, the delivery condition DDP Delivered Duty paid (Delivery Duty Paid) to specified destination is agreed in accordance with Incoterms® 2020.

The Contractor shall therefore bear all costs and risks associated with the

transport of the goods to the delivery destination and shall be obliged to clear the goods not only for export but also for import, to pay all duties for both export and import and to entirely process all customs formalities.

- (3) The delivery items shall pass directly and unencumbered into the ownership of the Client upon their handover. The Contractor warrants that they are entitled to resale and to transfer ownership.

§ 5 Packaging

- (1) Deliveries shall be made in packaging appropriate to the type of delivery items. In particular, the delivery items are to be packed in such a way that transport damage is avoided. Packaging must be limited to what is absolutely necessary. It should be reusable or recyclable. Packaging materials shall in principle be returned to the Contractor at their expense and without any warranty for the condition thereof. The same shall apply to empty containers (e.g. toner cartridges, PC ink cartridges, printer drums); the Contractor guarantees environmentally-friendly disposal. If the packaging materials or containers are not returned, they shall become the property of the Client without any claim to remuneration.
- (2) If delivery is made in rented containers, the Contractor shall not be entitled to any special remuneration for the rental fee.

§ 6 Delivery deadlines, delay in delivery, penalty

- (1) The specified delivery deadlines and delivery dates are binding and must be complied with. Within the delivery deadline or on the agreed delivery date, the delivery items must be received at the delivery address specified by the Client. If the Contractor becomes aware of circumstances which mean that it may not be possible to complete the delivery in time, the Contractor shall immediately inform the Client of these circumstances in writing, together with the expected length of the delay. Giving notification of a delay in delivery does not exempt the Contractor from the consequences of the delay. The Client shall not be required to put the Contractor in default if specific delivery deadlines or delivery dates have been set.
- (2) In the event that the delivery date or the delivery deadline is exceeded, the Client may claim 0.5% of the net order value for each commenced week of delay, but not more than 5% thereof, as a contractual penalty, unless the Contractor is not responsible for the delay in delivery. The Client must claim the penalty with the final payment at the latest. Cases of force majeure shall be excluded. Further claims of the Client shall remain unaffected, with the contractual penalty being offset against any claims for compensation. The Client's claim to delivery shall not be excluded until the Contractor, at the Client's request, pays compensation instead of making the delivery. Acceptance of the delayed delivery shall not constitute a waiver of claims for compensation or the contractual penalty.
- (3) Delivery prior to the agreed delivery date shall be permitted only with prior approval of the Client. The Client shall be entitled to store or return at the Contractor's expense any delivery items delivered ahead of time without written consent, unless the arrival ahead of schedule is insignificant or the Contractor is not responsible for it.

§ 7 Invoice, payment

- (1) The Contractor must submit an auditable invoice showing the order number, delivery address, and the delivery date or performance period. Invoices shall be issued without value added tax (net prices) and using unit prices. The statutory value added tax shall be shown separately in the invoice at the statutory rate applicable on the date of invoicing. A separate invoice must be created for each order.
- (2) Payment shall be made after acceptance of the delivery items and receipt of the invoice, within 30 days net. The receipt of the transfer order by the Client's payment institution shall be the determining factor for the payment to be considered on time.
- (3) Payment by the University to the contractor prior to receipt of the item/service are generally prohibited under the Baden-Württemberg State Budget Regulations (§56 LHO). If an advance payment is necessary in exceptional cases because the item/service could not otherwise be procured, the advance payment must be secured by means of a self-bonded bank guarantee (§§ 232, 1113 ff., 1191 ff. BGB).
- (4) Invoicing:
As of 01/01/2022, the Contractor is generally obligated to issue and transmit electronic invoices in accordance with the e-invoice regulation in Baden-Württemberg (ERechVOBW). This does not apply to invoices up to an amount of EUR 1,000 without VAT and to contractors from non-EU countries. All electronic invoices shall be sent exclusively to the central email address rechnung@uni-stuttgart.de. The invoice document must be created in the "XRechnung" standard or in another format corresponding to the EN 16931 standard (ZUGFeRD) valid at the time of invoicing. A routing ID in the Buyer Reference (BT-10) field is not mandatory, since the University of Stuttgart has a direct, single point of invoice receipt. Invoicing via PDF to the email address rechnung@uni-stuttgart.de is permitted only on an interim basis. Detailed information can be found in the [Notes for Suppliers](#). If one of the above exceptions applies, invoices in paper form may be sent to the central billing address of the University of Stuttgart.

§ 8 Executing the contract, compliance with regulations

- (1) The models, drawings, or designs given to the Contractor by the Client for the purpose of executing the contract are subject to copyright protection. The Contractor is prohibited from making any changes to these documents, reproducing them, or making them available to third parties. After the aforementioned documents have been used, the Contractor shall return them to the Client free of charge.
- (2) The Contractor is obligated to comply with the relevant legal and official regulations and requirements when fulfilling the contract. The delivery or service must comply with all standards relating to safety, industrial safety, TÜV, accident prevention, radiation protection and VDE regulations as well as all other relevant regulations and requirements. The Contractor must present corresponding evidence on request. The Contractor must supply the protective equipment required by these regulations within the agreed price.
- (3) If necessary, the Contractor shall provide all documents required for acceptance, operation, maintenance, and repairs (testing protocols, work tools, drawings, plans, operating instructions, etc) free of charge and in a reproducible form.
- (4) The delivery or service must take account of the principles of data protection through technology and through privacy by default settings in the sense of Article 25 of Regulation (EU) 2016/679 (GDPR).

§ 9 Amendment of contract

The formal requirements listed in section 2 of these Contractual Conditions shall apply to technical changes and their effects on prices, delivery periods, and other conditions.

§ 10 Training of staff, quality control, and acceptance

- (1) If requested and where necessary, the Contractor shall provide training to the Client's staff free of charge in how to operate the equipment delivered.
- (2) The Client and the persons commissioned by them shall be authorized to perform quality control measures at the Contractor's site. The costs of the testing ordered by the Client shall be borne by the Client, insofar as the required staff or materials are provided by the Client. The costs of any subsequent tests carried out by the Client due to defects identified in previous tests shall be borne by the Contractor in their entirety. The tests shall not release the Contractor from the Contractor's warranty and liability.
- (3) Acceptance shall take place at the Client's receiving office unless otherwise agreed. A previous inspection or test carried out on the Contractor's premises shall be considered as acceptance only if this has previously been agreed in writing. If the delivery or service has been provided in the condition stipulated in the contract, or if any defects identified have been resolved, the delivery or service shall be accepted. If a trial run has been included, acceptance shall be declared by means of a joint acceptance report subject to a faultless trial run being carried out.

§ 11 Rights arising from product defects

- (1) The Contractor warrants that the delivery items comply with the agreed specification, the approved samples, the relevant legal provisions as well as the regulations and guidelines of authorities, trade associations, and professional associations as well as the relevant DIN standards. If the delivery items are defective, the Client shall be entitled, irrespective of the statutory warranty claims according to § 14 VOL/B, to demand that either the defects be remedied or the services be provided again by the Contractor within a reasonable period of time as a supplementary performance. If the Contractor fails to fulfill their obligation to provide a supplementary performance within a reasonable period of time set by the Client, or if it is a matter of urgency, the Client may take the necessary measures themselves or have them carried out by a third party at the Contractor's expense. The Contractor shall bear the necessary expenses for the supplementary performance. The costs to be incurred by the Contractor in carrying out the supplementary performance shall also include the expenses for packaging, freight and delivery, the work involved in dismantling and installing, travel expenses as well as any work to rectify defects on the Client's premises.
- (2) The limitation period for the Client's warranty claims shall be 24 months, beginning with the receipt of the delivery items. The limitation period shall not apply if the Contractor has fraudulently concealed the defect. If the defective delivery items have been used for a building in accordance with their customary use and have caused the building's defectiveness, or if it is a defect in a building, the limitation period shall be five years.

§ 12 Trademark rights

- (1) The Contractor warrants that no domestic or foreign patents, utility models, licenses, or other trademark rights and copyrights of third parties will be infringed by the delivery and use of the delivery items.
- (2) If a claim is made against the Client by a third party due to an infringement of such rights as a result of the delivery and use of the delivery items, the Contractor shall be obligated to indemnify the Client against such claims. The obligation to indemnify shall relate to all expenses incurred by the Client in connection with the claim made. In particular, the Client shall be entitled to obtain permission to use the delivery items from the third party at

the expense of the Contractor. The obligation to indemnify shall not apply if the Contractor is not responsible for the infringement of the trademark rights of a third party.

§ 13 Liability of the Client

- (1) The Client shall be liable without limitation for damages arising from the breach of a warranty or from injury to life, limb, or health. The same shall apply to intent and gross negligence. The Client shall be liable for ordinary negligence only insofar as essential obligations are violated which arise from the nature of the contract and which are of particular importance for achieving the purpose of the contract. In the event of a breach of such obligations, default, and impossibility, the Client's liability shall be limited to such damages as may typically be expected to occur under the contract.
- (2) Insofar as the Client's liability is excluded or limited, this shall also apply to the personal liability of the Client's employees, collaborators, representatives, and vicarious agents.

§ 14 Confidentiality

- (1) The Contractor is obligated to keep confidential and secure from unauthorized use, access, or disclosure for an unlimited period of time, all information that is made accessible to the Contractor by the Client and that is designated as confidential or is recognizable as business or trade secrets. The Contractor agrees to neither record, nor pass on or exploit such information, unless required for the cooperation.
- (2) The obligation to maintain confidentiality shall not apply if the information pursuant to subsection 1 is proven to have already been known prior to the conclusion of the contract or to have been generally known or generally accessible prior to the conclusion of the contract, or is to become generally known or accessible through no fault of the Contractor. The Contractor shall bear the burden of proof.
- (3) The Contractor shall ensure, by means of suitable contractual agreements, that the Contractor's employees and the freelancers, subcontractors, and service providers engaged by the Contractor also refrain from any violation of the confidentiality obligation pursuant to subsection 1.

§ 15 Closing provisions

- (1) The Contractor shall be authorized to transfer rights and obligations to a third party, or to have an order or essential parts of an order performed by a third party, only with the prior written consent of the Client.
- (2) Counterclaims of the Contractor may only be offset against claims if the Contractor's counterclaims are undisputed or have been legally established. The Contractor shall be entitled to exercise a right of retention only if the Contractor's counterclaim is based on the same contractual relationship.
- (3) The legal relationship between the Contractor and the Client shall be governed by the law of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (4) For any dispute concerning the business relationship between the Contractor and the Client, the exclusive place of jurisdiction shall be Stuttgart. Arbitration clauses are objected to.
- (5) The place of performance for the Contractor's delivery and supplementary performance obligations shall be the delivery address specified by the Client. Furthermore, the place of performance for all services of the Contractor and the Client shall be the administrative headquarters of the Client, unless otherwise agreed in writing.
- (6) The contract language is German.
- (7) If any clause or provision of these Contractual Conditions is or becomes invalid or unenforceable in whole or in part, or if there is a loophole in these Contractual Conditions, the validity of the remaining provisions shall not be affected thereby. In place of the invalid or unenforceable provision, such valid or enforceable provision shall be deemed to have been agreed upon that comes closest to the purpose of the invalid or unenforceable provision. In the case of a loophole, such provision shall be deemed to have been agreed upon that corresponds to what would have been agreed if the contracting parties had been aware of the loophole at the time of conclusion of these Contractual Conditions.