

# UNIVERSITY OF STUTTGART

## General Terms of Conditions for the Procurement of Services and Freelance Services

### § 1 General regulations

- (1) These General Terms of Contract for the Provision of Services and Freelance Services (hereinafter referred to as "Terms for Services") 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 services and freelance 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 Terms for Services, 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 Terms for Services 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 Terms for Services shall also apply if the Client accepts, without reservation and in knowledge of the Contractor's conflicting, additional, or different terms and conditions, a service rendered by the Contractor.
- (3) Furthermore, the General Terms and Conditions for the Provision of Services (VOL/B) shall apply.
- (4) If individual provisions of these Terms for Services are not applicable for some reason, the remaining provisions shall remain unaffected.
- (5) Any rights to which the Client is entitled under statutory provisions or other agreements beyond these Terms for Services shall remain unaffected.

### § 2 General obligations of the Contractor

- (1) The services must correspond to the state of the art. Insofar as the Contractor works within the Client's sphere of activity, the service must also correspond with the principle of sound financial management, public procurement laws, budgetary provisions and regulations under public law as well as taking into account the local situation. The Contractor shall ascertain in due course whether a change to the technical regulations can be foreseen and must be taken into consideration.
- (2) The standards applicable in Germany must be used. Other standards may be used only if the same quality or higher has been demonstrated in German and if they do not contradict the building supervision regulations that apply to engineering and architectural services.
- (3) The service must be provided in German in all its components.
- (4) The Contractor shall ascertain in due course whether any public-law obstacles and constraints stand in the way of providing their services. The Contractor shall immediately notify the Client in writing of any claims from third parties, in particular from public authorities.
- (5) The Contractor shall inform the Client of any relevant changes to the state of the art if they have a significant impact on the manner in which the contractual services are provided.
- (6) If no or only minor changes to the task instructions or requirements have been made, any necessary revisions to the documents shall not justify claims for additional remuneration.
- (7) If it becomes clear that a given budget is not sufficient for the work being planned, the Contractor shall immediately inform the Client of the expected additional costs and highlight possible ways to reduce costs.
- (8) The Contractor may transfer the services assigned to them to a designated third party only with prior written consent of the Client.
- (9) The liability of the Contractor for the correctness and completeness of their services is not restricted by the recognition or agreement of the Client.
- (10) In the event of any interruptions or impediments to the execution of the contract, the Contractor shall immediately notify the Client in writing, giving the reasons why.

### § 3 Representation of the Client by the Contractor

- (1) The Contractor is authorized and obligated to safeguard the rights and interests of the Client in connection with the services assigned to the Contractor. The Contractor shall immediately inform the Client of any circumstances which may result in claims by third parties either towards or against the Client. The assertion of such claims shall be the responsibility of the Client.
- (2) The Contractor may make binding declarations on behalf of the Client, in particular declarations involving financial obligations, only with prior written consent of the Client. This shall also apply to the conclusion of contracts, the amendment of contracts, additions to contracts as well as new price agreements.
- (3) The Contractor must not hand over documents to third parties without the consent of the Client and must not provide any information referring to the Contractor's services as well as to the measures as a whole.

### § 4 The Contractor's obligation to provide information

Upon request, the Contractor shall provide the Client with information about the Contractor's performance without delay and without special remuneration, within the respective applicable limitation periods for warranty claims.

### § 5 Surrender of documents and media

The documents and digital media created by the Contractor for the purpose of fulfilling the contract, such as plans or designs as transparent copies, shall be handed over to the Client without special remuneration, unless otherwise agreed, and become the property of the Client. The documents provided to the Contractor shall be returned to the Client at the latest after the service has been performed. Rights of retention which are not based on this contractual relationship shall be excluded, with the exception of copies for archiving purposes in compliance with mandatory statutory or professional regulations.

### § 6 Copyrights, rights of use and Inventions

- (1) The Contractor grants the Client the exclusive and transferable right, irrevocable in terms of time, space and content, to use, duplicate without limitation, publish, distribute as well as publicly reproduce and make publicly available all of the Contractor's services in the original or in modified, edited, or rearranged form. The granting of rights shall also include types of use that are currently unknown.
- (2) The agreed remuneration shall cover all claims of the Contractor in connection with the transfer of the rights of exploitation, use, and modification of the contractual services.
- (3) Rights of use shall be granted throughout Germany (including cross-border measures in countries immediately neighboring Germany).
- (4) The granting of rights of use shall cover the full or partial use as well as duplication, distribution, and/or public reproduction (e.g. lectures, presentations, making available to the public on demand at a place and time chosen by the user, dispatching including forwarding, the reproduction of video and audio recordings, the reproduction of radio broadcasts and making same publicly accessible) in any form and, in particular, with regard to the following types of use:
  - a) Any desired number of performances of the measures listed in the contract, likewise any desired number of repeat performances.
  - b) The unknown types of use at the time of placing the order.
- (5) Furthermore, all aforementioned rights of use shall also include
  - a) the right to process or otherwise transform the services, in particular the documents and/or the measures named in the contract. This right shall include processing and its use which is required for the use stipulated in the contract and which maintains the particular nature of the contribution,
  - b) processing and its use by means of repeating the measure once up to repeating the measure on a regular basis in the course of standardization,
  - c) processing and its use in the course of public relations, information, archiving, training, examinations, or continuing education.

The Client is therefore free to reprocess the provided services, e.g. the documents and/or the measures listed in the contract, at a later stage as frequently as they wish, either by themselves or by a third party, without involving the Contractor.

- (6) The services to be provided, e.g. the documents to be delivered and/or the work carried out to the extent described in this section, may also be used without acceptance, e.g. in the event of faults, provided that the Contractor is remunerated.
- (7) The Contractor warrants that they are exclusively authorized to dispose of the contractual rights, and that they have not previously made any dispositions contrary to the rights of use granted by this contract. The Contractor also warrants that all necessary approvals from third parties have been obtained, in particular the approval from the authors to transfer the rights of use (sections 34, 35 UrhG, Act on Copyright and Related Rights).
- (8) The Contractor affirms that their services do not infringe the copyrights or other rights of third parties.
- (9) The Contractor shall therefore indemnify the Client (see subsections 7 and 8) from any justified claims from third parties who may assert these claims against the Client and/or other authorized users and/or their employees from any pre-existing better rights, provided that the Contractor bears no responsibility. Any costs incurred by the Client from an appropriate legal defense and legal proceedings against the third party in this regard shall be borne by the Contractor. Further claims of the Client against the Contractor remain unaffected.
- (10) The Contractor may use the information and documents provided by the Client and all results of the order only within the scope of the subject matter of the order. Any other use is prohibited.
- (11) All rights to potential sole or joint inventions of the Contractor, which originate in the contractual relationship, shall be transferred to the Client - to the extent that is legally permitted. Any compensation for this is already covered by the contract payment.

## § 7 Invoice, payment

- (1) The Contractor must submit an auditable invoice showing the order number, the delivery address, and the 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](mailto: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](mailto: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 Acceptance and limitation period

- (1) Unless otherwise stipulated either contractually or by law, the work carried out must be formally accepted by the Client, unless – depending on the nature of the work – an acceptance check has been excluded.
- (2) The Client shall accept a provided service by means of a written declaration stating that the service has been rendered in accordance with the contract.
- (3) For services provided, the Client's claims arising from this contractual relationship shall lapse according to the statutory provisions, unless otherwise agreed in the contract. If an acceptance has been agreed, the limitation period for warranty claims shall begin with the receipt of the declaration of acceptance.
- (4) For services, the statutory provisions shall apply.

## § 9 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.

## § 10 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.
- (4) Any publication made by the Contractor regarding the subject matter of the contract shall require the explicit consent of the Client, in writing and in advance. The Contractor's written request for the Client's consent must be received by the Client at least 10 working days before the intended publication.

## § 11 Working group

- (1) Insofar as the Contractor is a working group, the member named in the contract who has been appointed as proxy shall take the lead. This member shall represent all members of the working group in dealings with the Client. Restrictions to the power of representation resulting from the contract with the working group shall not be applicable with respect to the Client.
- (2) Each member of the working group shall be jointly and severally liable to perform the contractual obligations, even after the working group has been dissolved.
- (3) Payment shall be made exclusively to the representative of the working group named in the contract or in accordance with the representative's written instructions, with discharging effect for the Client. This shall also apply after the working group has been dissolved.

## § 12 Notification of cyber attacks or security incidents in IT services.

The Contractor shall inform the Client without undue delay within the scope of its contractual ancillary obligations if they recognize based on concrete evidence that an act committed with hostile intent regarding the IT infrastructure of the Contractor or the Client, for example a cyber attack, leads to damage or serious impairment of the interests of the Client, its customers or its employees that are worthy of protection. This shall apply accordingly if damage or severe impairment has already occurred because of such an act. Under the same conditions, the Contractor shall notify the Client of any other security incidents affecting the Client. The notification shall be sent to [cert@uni-stuttgart.de](mailto:cert@uni-stuttgart.de). Insofar as there are no legitimate conflicting interests, the report must include the following information in particular:

- Specific description of the incident;
- The time at which it was discovered;
- The recognized or presumed attack vector;
- Findings regarding a possible compromise of data of the State of Baden-Württemberg administration or the IT infrastructure of the administration of the State of Baden-Württemberg;
- whether it is a compulsorily notifiable process in accordance with Article 33 of the General Data Protection Regulation and whether a notification has been made to the responsible State Commissioner for Data Protection and Freedom of Information
- Whether the State Office of Criminal Investigation or other (law enforcement) authorities have been informed.
- The designation of a contact person of the Contractor regarding the incident for the Client.
- The type of access by the Contractor's employees to the IT infrastructure of the administration of the State of Baden-Württemberg.

The Client shall take into account the legitimate interests of the Contractor when processing the case. In particular, it acknowledges that the Contractor's containment of the incident may take precedence over a report to the Client.

## § 13 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 law of the Federal Republic of Germany shall apply to the legal relationship between the Contractor and the Client.
- (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 performance and supplementary performance obligations shall be the headquarters of the Client, unless otherwise agreed in writing.
- (6) The contract language is German.
- (7) If any clause or provision of these Terms for Services is or becomes invalid or unenforceable in whole or in part, or if there is a loophole in these Terms for Services, 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 Terms for Services.