

Special Conditions of Contract

for the execution of deliveries and services (excl. construction services)
of the University of Freiburg
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1 General terms, scope

- 1.1 Unless otherwise agreed in writing between the University of Freiburg (University) and the Contractor (Contractor), these Special Conditions of Contract shall apply to all contracts awarded by the University, with the exception of construction services.
- 1.2 Any contradictory conditions, in particular the Contractor's General Terms and Conditions or Conditions of Payment, shall not be valid, even if the Contractor typically uses them in its current business operations or refers to them by way of form. The Contractor's conditions shall only apply if they have been expressly accepted by the University in writing.
- 1.3 Notifications on letter paper, price lists, order confirmations, invoices, verbal agreements, supplementary or follow-up orders shall only be binding if confirmed or issued by the University in writing.
- 1.4 Deliveries and services are subject to the following order of priority:
 - a) the contract including applicable supplementary agreements
 - b) any supplementary written contractual provisions
 - c) this Special Conditions of Contract
 - d) the General Conditions for the Provision of Services, Part B (VOL/B) and the Supplementary Contractual Terms of the State of Baden-Württemberg (ZVB-BW) as amended from time to time.
- 1.5 In the case of deliveries and services in the field of information technology, the supplementary contractual conditions for the procurement of IT services (EVB-IT) shall also apply in the respective current version.
- 1.6 The VOL/B, the ZVB-BW and the EVB-IT can be viewed at the Central Procurement Office of the University of Freiburg during normal business hours.

2 Prices

- 2.1 The unit and lump sum prices offered shall be fixed prices plus the statutory value added tax for the entire duration of the order period, unless otherwise agreed in writing. They include all services and ancillary services required for operational handover, even if they are not expressly mentioned in the preliminary technical remarks and in the tender specifications.
- 2.2 Unless otherwise agreed in writing, the prices shall also include the costs for free delivery to the place of use, packaging, transport, assembly as well as removal and return of the packaging.
- 2.3 The price for the service shall also cover any patent fees and royalties.
- 2.4 The provisions of Regulation PR 30/53 on Prices in Public Contracts of 21.11.53 as amended from time to time with the Guidelines for Pricing on the Basis of Net Cost (LSP) shall apply.

3 Packaging, disposal, transport and insurance

- 3.1 The provisions of the law on the distribution, return and high-quality recycling of packaging (Packaging Act - VerpackG) shall apply. The deliveries must be packaged in the customary manner. Packaging shall be limited to what is strictly necessary and an appropriate and environmentally sound solution shall be chosen. The costs of packaging shall be borne solely by the Contractor. The Contractor shall take back and dispose of packaging materials in accordance with the applicable legal provisions at its own expense, unless otherwise specified in the technical specifications. The packaging must be taken back free of charge immediately upon delivery or within two weeks at the latest. Recyclable materials, bulky waste, packaging, empties, material residues, etc., as well as small waste (residual waste) shall be cleaned up and removed by the Contractor on an ongoing basis.

If the Contractor fails to comply with this obligation after a simple request by the University, the University shall carry out the removal of all packaging materials at the Contractor's expense. With regard to maintaining order and cleanliness on the construction site (delivery and assembly site), the obligations of the German Construction Contract Procedures (VOB) shall apply.

Deliveries shall be made free of charge to the point of use; auxiliary staff shall not be provided.

- 3.2 Deliveries and transport routes must be coordinated with the University in good time before delivery. The delivery items shall be clearly marked on the packaging with identification of the place of delivery. Deliveries without labelling shall not be accepted. In the case of heavy-duty transport, the project structural engineer is to be called in at their own expense via the University to check the maximum load-bearing capacity of the transport routes. The tender number and tender specifications identifier shall be clearly stated in the accompanying documents (delivery note).
- 3.3 The transport risk shall be borne solely by the Contractor. If the Contractor takes out insurance to cover the transport risk, it shall bear the costs thereof. The purchase of insurance at the University's expense is prohibited.

4 Transfer of risk

In the case of purchase and work delivery services, the risk shall pass to the University upon handover at the place of performance. If formal acceptance has been agreed, this shall be decisive for the transfer of risk. In the event of acceptance, the statutory provisions of the law on contracts for work and services apply. Any agreed quality inspection shall not replace the functional acceptance at the place of delivery and shall not result in the transfer of risk.

5 Delivery dates and delayed delivery

- 5.1 Unless otherwise agreed in writing, the specified delivery, service and assembly dates are fixed dates.
- 5.2 The Contractor shall be obliged to inform the University in writing without delay if circumstances arise or become apparent which indicate that the agreed deadlines cannot be met.
- 5.3 In the event of default, the University shall be entitled, without prejudice to its rights under § 9 VOL/B, to demand a flat-rate contractual penalty from the Contractor in the amount of 1% of the net value of the goods per full week, but not more than 5% of the contract sum. The University reserves the right to make further legal claims.

6 Right of inspection

- 6.1 The University shall be entitled to obtain information from the Contractor within the operating hours on the contractual execution of the services, to participate in inspections of the works and to carry out inspections.
- 6.2 The costs of inspections arranged by the University shall be borne by the University insofar as the personnel or materials for the conduct of the inspections are provided by the University. Follow-up inspections by the University due to defects identified in previous inspections shall be borne in full by the Contractor.
- 6.3 When awarding subcontracts, the Contractor undertakes to ensure that the subcontractor contractually grants the University the right to notify and carry out inspections at the subcontractor's premises to the aforementioned extent. The inspections shall not release the Contractor from its warranty and liability.
- 6.4 In the case of services and work carried out by the Contractor at the University, the University shall be authorised to monitor the execution of the contractor's work at any time and to demand immediate cessation of the work insofar as this is deemed necessary to ensure operational safety, operational protection or the prevention of dangers.

7 Additional or reduced services

In the case of marketable, standard products for which unit prices are provided for in the contract, the Contractor shall be obliged to provide additional services up to 10 per cent of the quantities spec-

ified in the contract at the unit prices specified in the contract. Furthermore, in the event of justified reductions of up to 10 per cent of the quantities stipulated in the contract, the Contractor shall have no claim to a change in the unit prices stipulated in the contract.

8 Ownership

- 8.1 The University shall acquire unrestricted ownership of the object of the delivery or service after its handover on acceptance. The same shall apply to the documents supplied by the Contractor.
- 8.2 By handing ownership over, the Contractor declares that they are fully authorised to transfer ownership and that no third-party rights exist.
- 8.3 Material supplies of any kind shall remain the property of the University. They shall be marked as such and stored, labelled and managed separately. If the material provided is processed, transformed, combined or mixed with other objects, the University shall acquire sole ownership of the new object. The Contractor shall keep these in safe custody for the University free of charge.
- 8.4 Ownership, rights of use and copyrights of University documents provided to the Contractor shall remain with the University. The documents shall be surrendered immediately upon request together with all copies or duplicates. The University's documents may only be used for the purposes stipulated in the contract. In the event of infringements, the Contractor shall be liable for the total damages.

9 Invoicing

- 9.1 The Contractor shall send an invoice in XRechnung format (standard: Universal Business Language (UBL) or UN/CEFACT Cross Industry Invoice (CII)) to the email address xrechnung@zv.uni-freiburg.de. For internal allocation, the order number or the internal guiding criterion in the order reference (BT13) is required. The PEPPOL ID: 0204: 08311000-DE142116817-24 / Routing ID: 08311000-DE142116817-24 shall be entered in field BT10. Detailed information is available at <https://uni-freiburg.link/lieferanteninfo/>. An additional paper invoice is not required or is to be marked as a duplicate. A paper or PDF invoice may only be sent in exceptional cases.
- 9.2 The documents required for inspection shall be sent to the place of delivery indicated in the address list. The regulations in §§ 15, 16 and 17 VOL/B shall apply. In the case of agreed partial deliveries, partial invoices shall only be recognised if they clearly show the scope of the overall delivery and the scope of the invoiced partial delivery. Flat-rate invoicing does not oblige the University to pay. The last partial invoice shall be marked as such and as the final invoice.
- 9.3 Invoices that are missing the required information cannot be processed and will be returned. Any delays resulting from this shall be borne by the Contractor. The invoice received date for payment deadlines shall not begin if delays in invoice processing have occurred as a result of the order number not being stated or being stated incorrectly.

10 Terms of payment

- 10.1 Payments shall generally be made within the agreed discount period less any agreed discounts.
- 10.2 The calculation of the discount period shall not be based on the date of issue of the invoice by the Contractor, but on the date of receipt of the invoice by the specified accounting office of the University. This notwithstanding, the earliest date for the calculation of the discount period shall be the day after the acceptance of use.
- 10.3 In the case of agreed partial deliveries, the entire discount amount shall be deducted from the final invoice, unless the value of the remaining delivery is below the total deduction amount. In this case, the corresponding cash discount amount will be deducted from each partial invoice.
- 10.4 Advance payments shall not be agreed upon.
- 10.5 Other terms of payment of the Contractor shall only be recognised if they have been expressly confirmed in writing.

11 Execution of the contract

- 11.1 The Contractor shall protect the deliveries and services performed by it as well as the materials or objects handed over to it for their execution against damage or loss at its own expense until fulfilment.
- 11.2 The models, drawings or samples provided by the University for the execution of the contract are subject to copyright protection. The Contractor is prohibited from making changes to them, reproducing them or making them available to third parties, unless the subcontracting of individual parts of the overall service has been agreed. In this case, the Contractor shall be liable to the University for ensuring that the subcontractor keeps the provided documents safe from unauthorised use or loss.
- 11.3 After use, the Contractor shall return all the aforementioned documents and any necessary copies to the University free of charge.
- 11.4 The delivery or service must comply with the safety, standard, occupational health and safety, TÜV, electromedical equipment, VDE, accident prevention, radiation protection and other relevant public law regulations and requirements. Proof of this must be presented on request.
- 11.5 All documents required for functional acceptance, operation, maintenance and repair (test reports, works certificates, drawings, plans, operating instructions, etc.) shall be supplied by the Contractor free of charge in reproducible form, if necessary.
- 11.6 The technical specifications are considered to be functional criteria. The articles are to be tendered as complete, including all small parts and including the equipment necessary for operation. The prices offered are all-inclusive.
- 11.7 If the tendering procedure allows the use of equivalent products for individual services, the equivalence must be proven upon request within the specified time limits.
- 11.8 The University may request the preparation of samples and the submission of construction sketches prior to the conclusion of the contract. Should it become apparent that the items offered do not meet the standards specified or expected in the specifications, whether due to recognisably poor manufacturing in the sample items, poor detailing or impairment of function, the University reserves the right to award the contract elsewhere.
- 11.9 All items listed in the technical specifications shall include the complete delivery in a defect-free condition to the designated locations, either according to plan or according to prior verbal indication, including installation and assembly, if necessary. Each item shall be accepted after the services have been rendered. A record of the acceptance shall be kept.
- 11.10 The required manuals must always be supplied in German.

12 Subcontractors

- 12.1 The Contractor may only assign services to subcontractors who are competent, efficient and reliable. This includes meeting their legal obligations to pay minimum wage, taxes and social security contributions and fulfilling the requirements under trade law.
- 12.2 When requesting a bid, the Contractor shall inform the subcontractor that it is a public contract.
- 12.3 Prior to the intended transfer, the Contractor shall disclose in writing the type and scope of the services as well as the name and address of the subcontractor intended for this purpose. If the Contractor intends to transfer services for which their business is equipped, they must obtain the University's prior written consent.
- 12.4 The Contractor must ensure that the subcontractor does not subcontract the services assigned to it unless the University has given its prior written consent; the preceding paragraphs shall apply accordingly.

13 Staff training, quality inspection and acceptance

- 13.1 If staff training has been agreed upon, the Contractor shall instruct the staff in the operation of the supplied equipment free of charge at a date to be agreed upon with the University. The staff training shall be linked to the functional acceptance.
- 13.2 The University itself or an authorised representative may carry out a quality inspection at the Contractor's premises. It does not replace the functional acceptance; this takes place at the receiving office of the University. Any prior inspections or tests at the Contractor's premises shall not be deemed to constitute functional acceptance. The Contractor shall receive a certificate of acceptance.

- 13.3 Deliveries, including partial deliveries, which are objected to during the functional acceptance shall be taken back by the Contractor immediately. Upon request, a replacement shall be supplied as soon as possible. The costs for removal and reinstallation shall be borne by the Contractor.
- 13.4 If a procedure to preserve evidence has been initiated by one party to the contract, the rejected items shall be stored at the expense and risk of the Contractor. If the Contractor has provided a replacement, a new functional acceptance test shall be carried out. Fulfilment of the delivery obligation shall occur on the day of successful functional acceptance.
- 13.5 Further fulfilment of the Contract may not be refused or delayed on account of a dispute concerning a partial delivery, unless the postponement has been approved by the University.
- 14 Warranty and limitation of warranty claims**
- 14.1 Deliveries and services shall be inspected by the University for defects in the ordinary course of business. In the case of obvious defects, the Contractor shall be notified of the defect without delay, calculated from the date of delivery or performance, and in the case of hidden defects, without delay from the date of discovery of the defect.
- 14.2 The statutory limitation periods shall apply to warranty claims. A shorter warranty is expressly not agreed, this applies in particular to the law on contracts for work and services and in the law on sales of goods. The statutory limitation period for warranty claims shall commence with the unobjected acceptance of the delivery or service or, if acceptance is neither provided for by law nor contractually agreed, with the unobjected acceptance of the delivery, in the case of partial deliveries with the provision of the last service. In addition, the provision of §14 VOL/B shall apply.
- 14.3 During the warranty period, the Contractor shall remedy all defects at its own expense. The costs of remedying defects to be borne by the Contractor shall also include all ancillary costs (e.g. travel costs) incurred in connection with the remedying of defects. The Contractor shall also be liable for any damage demonstrably incurred by the University as a result of the defect.
- 14.4 The warranty shall also cover all spare parts supplied with the delivery or subsequently ordered from the Contractor. For the latter, the limitation period for warranty claims begins on the day of delivery. The limitation of claims and the expiry of the period for exercising rights in the event of defective delivery shall be suspended during the aforementioned rectification of defects.
- 14.5 The Contractor shall also be obliged to inform the University immediately of any hidden defects as soon as they become known to the Contractor. This obligation is not limited to the warranty period, but extends over the entire average expected useful life of the respective device. The duty to inform exists irrespective of the fact that the manufacturer of the device may initiate a recall. If the Contractor fails to provide the necessary information and this causes damage to the University or its employees, the Contractor shall be obliged to compensate the University for this damage and to indemnify it against any claims for damages by third parties.
- 15 Replacement parts guarantee**
- The Contractor undertakes to provide a follow-up delivery guarantee of 5 years for all standard parts.
- 16 Property rights**
- The Contractor shall be liable for ensuring that the property rights of third parties are not infringed in the execution of the contract and in the delivery and use of the object of the delivery or service. They shall indemnify the University against claims by third parties arising from any infringements of property rights.
- 17 Special termination and withdrawal rights**
- 17.1 Notwithstanding any other rights of termination or withdrawal, the University shall be entitled to withdraw from the contract with immediate effect or to terminate the contract if the Contractor, its vicarious agents or subcontractors:
- b) directly or indirectly promises or grants gifts or other advantages to the University or to employees of the University as defined by §§ 331 et seq. StGB and § 12 UWG, or if the contract was concluded in violation of the provisions of the Act against Restraints on Competition;
 - c) commits or aids and abets criminal offences against the University, its employees or commissioned third parties that fall under § 298 StGB (agreements restricting competition in tenders), § 299 StGB (bribery and corruption in business transactions), § 333 StGB (granting of advantages), § 334 StGB (bribery), § 17 UWG (betrayal of business and trade secrets) or § 18 UWG (exploitation of documents);
 - d) brought about the conclusion of the contract in violation of the Act against Restraints on Competition (GWB);
 - e) cease their payments and/or other acts of performance (also vis-à-vis third parties) not only temporarily, insolvency is imminent or an application for insolvency has been filed;
 - f) culpably violate minimum working conditions and minimum wage regulations
 - g) have intentionally made false declarations as to their reliability, competence and efficiency
- 17.2 In the event of withdrawal from the contract, the University shall be entitled, but not obliged, to retain deliveries or services received in whole or in part against payment of their respective value. If the delivery or service is returned concurrently against reimbursement of the remuneration, the Contractor may not claim any compensation for use.
- 17.3 The University may also claim damages from the Contractor. Otherwise, the consequences of withdrawal and termination shall be governed by the statutory provisions.
- 17.4 Notwithstanding the provision of § 9 VOL/B, in the event of a breach of the terms and conditions of the contract, the principal shall be entitled as a general rule to demand compensation for the costs and damages incurred as a result of the breach or to withdraw from the contract.
- 17.5 Without prejudice to other rights of withdrawal and termination, the principal shall in particular be entitled to terminate the contract with immediate effect or to withdraw from it in the event of actions on the part of the Contractor as defined by §§ 333, 334 StGB (granting of advantage, bribery). In addition, the principal may claim damages from the Contractor.
- 17.6 If, after the execution of the contract, reasons become known which justify the assumption that criminal acts in the aforementioned sense have led to the conclusion of the contract, the principal shall be entitled to withdraw from the contract, even subsequently, and, as far as possible, to return the delivery or service concurrently against reimbursement of the agreed purchase price. In this case, a usage fee cannot be demanded.
- 18 Place of performance, place of jurisdiction, language**
- 18.1 The place of performance and jurisdiction for all contractual claims is exclusively agreed to be Freiburg i.Br. German law shall apply, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 18.2 All written statements by the Contractor must be in German. Written statements by third parties in foreign languages, e.g. certificates, other documents from authorities and private persons, must be submitted with a German translation. The translation of official certificates must be certified by the consulate.