

Federal Office for Radiation Protection

General Terms and Conditions of Purchase applying to Contracts of Purchase and Contracts for Work and Materials (AGB-Einkauf-BfS)

Revised: 31.08.2015

- 1. Scope of application and general provisions**
 - 1.1 These General Terms and Conditions of Purchase shall govern the legal relationship between the Federal Office for Radiation Protection (hereinafter AG) and the Contractor (hereinafter AN) with respect to any contracts regarding the delivery of movable items (Contracts of purchase) or the delivery of items to be manufactured or produced (Contracts for work and materials). These Terms and Conditions shall only apply if included in the contract upon conclusion of the contract. Individual purchase orders may include additional written arrangements that amend or modify these Terms and Conditions. However, these General Terms and Conditions of Purchase shall only apply to additional arrangements made in connection with the contract if explicitly agreed to in writing.
 - 1.2 In addition to these General Terms and Conditions of Purchase the general provisions of the German official contracting terms for award of service performance contracts, part B (VOL/B) shall apply in the version in force at the time of conclusion of the contract.
 - 1.3 AN's general terms and conditions shall only apply if and insofar as expressly accepted by AG - Section Procurement in writing. These General Terms and Conditions of Purchase shall even apply if AG places a purchase order with AN, knowing that AN's terms and conditions conflict with or differ from these General Terms and Conditions of Purchase, or if AG accepts AN's delivery unreservedly.
 - 1.4 Contracting party shall be the Federal Republic of Germany, represented by the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety, represented by the President of the Federal Office for Radiation Protection, Willy-Brandt-Strasse 5, 38226 Salzgitter, Germany.
- 2. Offer, purchase orders and order confirmation**
 - 2.1 In its tender AN shall adhere to the quantity, quality and design described in the invitation to tender or in the request for proposal; AN shall explicitly indicate any deviations. If ancillary costs are not included in the tender, such costs shall be shown separately and their amount shall be indicated. If the tender's validity period is not expressly agreed, AN's tender shall be binding for 3 months. This includes the technical documentation pertaining to the tender and submitted to AG, such as drawings, specifications and calculations. Expenses for tenders, estimates or other preliminary work shall only be reimbursed if such reimbursement was agreed in advance in writing.
 - 2.2 Purchase orders transmitted by AG shall only be binding if they are made in writing or confirmed in writing by AG - Section Procurement. Unauthorized extra work performed by AN shall not be reimbursed. This does not require an explicit objection at the time of acceptance. AG may request AN to confirm purchase orders promptly in writing. AG reserves the right to cancel a purchase order if order confirmations were agreed and AG does not receive such confirmation in due time.
- 3. Prices and prepayments**
 - 3.1 Unless expressly agreed otherwise, the prices indicated in the tender shall be fixed prices, covering the costs for packaging and delivery to the agreed place of delivery. AG shall only bear transport and packaging costs or return the packaging if this was agreed separately in writing. In case of doubt, the statutory value added tax shall be deemed to be included in the price.
 - 3.2 In the event that prepayments were agreed, AG shall be entitled to request AN to provide security in the amount of the prepayment. Such provision of security shall be subject to VOL/B § 18, para 1, sentence 2 and the provisions of § 18, para 2 to 7.
- 4. Term of delivery, delivery deadlines, delay and liquidated damages**
 - 4.1 AN shall precisely comply with the term of delivery indicated in the purchase order. The term of delivery shall begin with the time of receipt of the written purchase order by AN. In case of delay, AN shall inform AG promptly in writing and shall state the reasons and the anticipated time of delay.
 - 4.2 In the event that AG is required to assist in a delivery, AN shall request a written confirmation of the delivery date from AG - Section Procurement before delivery. This does not apply if otherwise agreed in the purchase order.
 - 4.3 In the event that AN fails to comply with delivery deadlines, AN shall be obliged to pay liquidated damages to AG for each full week of culpable delay; the liquidated damages shall amount to 0.5 per cent of the net reimbursement for the respective unusable services. The total amount of any liquidated damages to be paid according to these provisions shall be limited to 5 per cent of the net order value. Even if AG accepts the delivery, AG reserves the right to claim such liquidated damages upon receipt of AN's final invoice at the latest. Liquidated damages incurred according to the above provisions shall be offset against a potential claim for compensation made by AG for reasons of failure to comply with the deadlines for completion or delivery. This does not apply in the event that any intermediate deadlines are exceeded.
- 5. Place of performance, transfer of risk and liability**
 - 5.1 The place of performance shall be the place designated in the purchase order. In the event that no place is designated, the place of performance shall be Salzgitter, Germany.
 - 5.2 If no additional services were agreed (set-up, installation services etc.) the risk of accidental loss or deterioration shall be transferred to AG upon proper delivery of the goods at the agreed point and place of delivery. In the event that additional services beyond mere delivery were agreed, the risk shall only be transferred to AG upon acceptance of the total performance by AG.
- 6. Compliance, performance of contract, disclosure as reference**
 - 6.1 AN agrees to ensure compliance with the relevant legal and regulatory rules and conditions when performing the contract. AN's delivery or performance must comply with the relevant regulations with respect to security, occupational safety, accident prevention as well as the applicable DIN, VDE and other standards. Safety devices required according to such regulations have to be supplied by AN as included in the agreed price. In the event that AN objects to the type of design requested by AG, AN shall notify AG immediately in writing.
 - 6.2 Any and all documents pertaining to the use, maintenance and repair of the delivered goods or to the services (including operating instructions, drawings, schedules, codes) must be supplied to AG by AN in due time and at no cost in reproducible form.
 - 6.3 AN shall only be allowed to disclose the commercial relationship with AG to third parties with AG's written consent.
- 7. Invoice, payment, set-off**
 - 7.1 Invoices shall be submitted in single copy and shall bear AG's order number. The value added tax shall be shown separately on the invoice. When placing a purchase order, AG may require AN to use an electronic invoicing system.
 - 7.2 In the event that a discount was agreed, the agreements with respect to the discount period shall apply. If the beginning of the discount period was not agreed, the discount period shall begin with AG's receipt of the goods and of a verifiable invoice.
 - 7.3 Payment periods shall begin with the date of invoice received; they shall, however, not begin before the goods are received. The payment period shall not begin in case of delays in invoice processing caused by AN's failure to mention AG's order number completely and accurately. Unless otherwise agreed in writing, the payment period shall be 30 days. Payment shall not be deemed to confirm performance of AN's contractual obligations. AN shall be responsible for informing AG in case of overpayment and shall be required to repay such overpayment.
 - 7.4 AN shall only be entitled to set-offs if the claims in question are undisputed or have been recognized by declaratory judgement. This does not apply to reciprocal claims resulting from the contractual relationship.

8. AG's rights in case of defects

Unless otherwise agreed in writing, AG's rights in case of defects shall be subject to the legal regulations and the provisions of VOL/B as well as to the following provisions:

- 8.1 AN shall guarantee proper and careful performance of the contract according to the state-of-the-art of science and technology and, in particular, in compliance with the contractual quality requirements and the agreed specifications as well as with other implementing provisions provided by AG; furthermore, AN shall warrant the fitness of the goods or services for the contractual purpose and, as the case may be, compliance with the specification of services. AN shall guarantee the quality and durability of the goods and/or services with regard to material, construction, design and documents to be delivered with the goods or services (in particular operating instructions, drawings, plans, source codes etc.). The specifications indicated in the contract shall be deemed to be contractually agreed and warranted properties of the goods and/or services to be delivered.
- 8.2 AN shall bear its own expenses arising from subsequent fulfilment of the contract, in particular the costs for transportation, packaging, travelling, labour costs, and material costs, as well as AG's expenses arising from the remediation of defects. In the context of subsequent fulfilment, AN shall also bear the relevant costs for disassembly and reassembly of defective goods. This shall also apply if AN is not responsible for the defect. AG is entitled to decide if AN shall perform the disassembly and reassembly itself or if AN shall bear the costs for disassembly and reassembly. Unless otherwise agreed in writing, the place of subsequent fulfilment shall be the location of the goods.
- 8.3 AG shall be entitled to remedy defects at AN's cost if AN fails to perform subsequent fulfilment in due time.
- 8.4 The warranty period for defects in quality and defects in title shall be 2 years. Such warranty periods shall begin as stipulated in the relevant legal regulations. The provision of Section 9.4 shall remain unaffected.

9. Third party property rights

- 9.1 AN shall guarantee that no third party property rights are infringed within the Federal Republic of Germany in connection with or as a result of the delivery.
- 9.2 In the event that any third party asserts claims against AG due to an alleged infringement of property rights, AN shall hold AG harmless from such third party claims unless AN is not responsible for the infringement of third party property rights.
- 9.3 AN's liability to hold AG harmless from third party claims includes any expenses that AG necessarily incurs as a result of or in connection with the assertion of claims by any third party, unless AN proves that AN is not responsible for the breach of duty that has led to the infringement of third party property rights.
- 9.4 The period of limitation for the claims mentioned in this Section 9 shall be 3 years and shall begin with the transfer of risk.

10. Anti-corruption clause

- 10.1 AG and AN commit to take all necessary measures to prevent corruption. To this end, AN and AG shall, in particular, take organisational measures and instruct their employees.
- 10.2 Without prejudice to any other rights of termination and rescission, AG shall be entitled to terminate the Agreement without notice or to rescind the Agreement if AN or its employees/representatives directly or indirectly propose, offer, promise or grant presents, other allocations or benefits to AG's employees or parties related to such employees. AG's employees are generally not permitted to accept presents and other benefits. In the case of money in cash this applies without exception. In other cases a limit of €25 per year and per business partner applies as an exception.
- 10.3 AG's rights set out in Section 11.2 shall also apply in cases where AN and/or its employees/representatives commit any criminal offence or aid and abet to such criminal offence in their relationship with AG.

10.4 AG shall be entitled to claim compensation for any damage occurred directly or indirectly as a consequence of a termination or rescission as per Sections 11.2 or 11.3. AG shall be entitled to decide if AG will return the services received wholly or partially (in the context of a reverse transaction) or if AG will pay compensation for the value of such services. Apart from the right of compensation for the value of the services, AN shall not be entitled to any other rights resulting from such termination or rescission.

10.5 In the event that reasons for a termination or rescission as per paragraph 2 or 3 above exist, AN shall pay liquidated damages for every case of violation, whether or not AG exercises its rights as per paragraph 2 or 3 wholly or partially. In cases as described in paragraph 2, the liquidated damages shall amount to 50 times the value of the presents or other benefits offered, promised or granted. In cases as described in paragraph 3, the liquidated damages shall amount to 50 times the expenses spared or the damage caused. The liquidated damages shall be limited to a maximum of 5 per cent of the total contract value without VAT. Even the cumulative amount of multiple liquidated damages shall not exceed this limit. In case of doubt, the contract value shall be equivalent to the agreed price or the agreed reimbursement.

10.6 AN shall ensure that a similar anti-corruption clause is also agreed with potential subcontractors.

11. Compensation in the event of anti-competitive agreements

11.1 In the event that AN has demonstrably committed collusion that is regarded as unlawful restraint of competition as per the German Act against Restraints of Competition (GWB), AN shall pay a lump-sum compensation of 15 per cent of the contract's net billing amount (excluding discounts and VAT) to AG. Either contracting party shall be entitled to prove that the actual amount of damage is higher or lower. AN shall also be at liberty to prove that no damage has occurred at all. Such liability for compensation shall continue to apply even if the contract is cancelled or has already been performed. AG's other contractual or legal rights shall remain unaffected.

11.2 Unlawful restraints of competition include anti-competitive behaviour and agreements with other contractors, candidates or tenderers with respect to prices, coupling of other costs, mark-ups, manufacturing margins and other pricing components, terms of payment and delivery and other terms and conditions (insofar as they have an immediate effect on pricing), profit participation and/or other charges and recommendations, unless such behaviour and agreements are permitted by the German Act against Restraints of Competition (GWB).

12. Applicable law, place of jurisdiction, severability clause and written form

12.1 The contractual relationship of AN and AG shall be subject to the laws and regulations of the Federal Republic of Germany; the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded. The contract shall be concluded in German.

12.2 Exclusive place of jurisdiction for any disputes shall be Salzgitter, Germany.

12.3 Any modifications and/or amendments to the contract and to these General Terms and Conditions of Purchase must be made in writing for the purposes of conservation of evidence according to §§ 127, 126, para 1 of the German Civil Code (BGB). This does not apply to discount agreements or unilateral statements made by AG that become effective upon receipt by AN. At the time of conclusion of the contract no ancillary verbal agreements have been made.