

# UNIVERSITY OF MANNHEIM

## General Terms and Conditions of Contract for Deliveries and the Performance of Services

### 1. GENERAL PROVISIONS

The following General Terms and Conditions of Contract apply to all deliveries and services ordered by the University of Mannheim (hereinafter referred to as "Client"), unless the Client and the Contractor (hereinafter referred to as "Contractor") agree otherwise in writing. By making an offer, confirming an order, or accepting or executing an order, the Contractor submits to these General Terms and Conditions, provided the Client informed the Contractor about these in the context of an invitation for tenders, a request or by other means in a way that the Contractor was to expect that they would be applied. In addition, the general terms and conditions of contract for the performance of services, part B (*Allgemeine Vertragsbedingungen für die Ausführung von Leistungen*, VOL/B, Version 2003) as well as the additional terms and conditions of contract of the Land of Baden-Württemberg (*Zusätzliche Vertragsbedingungen des Landes Baden-Württemberg für die Ausführung von Leistungen*, ZVB-BW) apply. Deliveries related to information technology are furthermore subject to the supplementary terms and conditions of contract for the procurement of IT services (*Ergänzende Vertragsbedingungen für die Beschaffung von IT-Leistungen*, EVB-IT) and, insofar as no relevant EVB-IT for certain types of contract exist, the relevant special terms and conditions of contract (*Besondere Vertragsbedingungen*, BVB). The VOL/B and ZVB-BW can be viewed in the offices of the University of Mannheim during normal business hours.

General terms and conditions of the Contractor and terms deviating from the order letter of the Client or from these General Terms and Conditions of Contract only apply if and insofar as they were explicitly recognized by the Client in writing. This also applies if the Contractor refers to their general terms and conditions in the offer or the order confirmation. Should, for any reason, individual provisions of these General Terms and Conditions of Contract not apply, the validity of the other provisions remains unaffected.

Order number, reference code and date of the letters of the Client are to be indicated on all written documents, including invoices.

### 2. OFFER, ORDER AND CONFIRMATION OF ORDER

The offer is to be made free of charge. In their offer, the Contractor is required to keep to the quantity, quality and execution specified in the request or the invitation for tenders and must explicitly point out any deviations. The Contractor is bound to their offer for a period of three months. The order is only binding if placed in writing. Oral agreements are only valid if confirmed by the Client in writing. Orders are to be confirmed by the Contractor in writing and in duplicate within a period of 10 days stating the price and the period of delivery. The Client reserves the right to cancel the order if the order confirmation is not received on time.

### 3. PRICES

The agreed prices are fixed prices including turnover tax and direct delivery to the place of use, including packaging and other costs. If agreed otherwise, freight and packaging costs are to be disbursed by the Contractor and are to be listed separately on the invoices. Price calculation is subject to the provisions of the current version of the regulation PR30/53 on prices for public contracts (*Verordnung PR Nr 30/53 über die Preise bei öffentlichen Aufträgen*) of 21 November 1953.

### 4. PACKAGING

Packaging is to be reduced to the necessary minimum. It should be reusable or recyclable; packaging material is generally returned to the Contractor at their expense and without guaranty of quality. The same applies to empty containers (e.g. toner cartridges, ink cartridges, printer drums). The Contractor guarantees their environmentally sound disposal. If packaging material or containers are not returned, they pass into the ownership of the Client without giving the Contractor any claim to compensation. If the delivery is sent in rented containers, the Contractor is not entitled to special compensation for the rental fees, unless agreed otherwise.

### 5. EXECUTION OF CONTRACT, COMPLIANCE WITH PROVISIONS

The Contractor undertakes to comply with the relevant statutory provisions and government regulations and obligations when fulfilling this contract. The delivery or service must comply with safety, industrial safety and accident prevention regulations, relevant standards, including DIN and VDE, and other applicable regulations. Safety equipment required under these regulations must be supplied by the Contractor within the agreed price. If an inspection reveals that the abovementioned regulations and established rules are not complied with, the Client is entitled to exercise their warranty rights.

All documents required for acceptance, operation, maintenance and repair (inspection records, factory certificates, drawings, plans, manuals, etc.) must be supplied by the Contractor free of charge and, if necessary, in a reproducible form. If the Contractor has any concerns about the form of execution required by the Client, the Contractor must immediately inform the Client of these concerns in writing.

### 6. PERIOD OF DELIVERY

The period of delivery starts on the day the Contractor receives the order. The Contractor defaults in delivery upon expiration of the delivery period without the need for a reminder. If the delivery period is exceeded, the Client is entitled to charge a contractual penalty of 0.5% of the order value for each completed week of delay, but no more than 5% of the order value in total. The right to claim further damages remains unaffected. If delays are anticipated, the Contractor must immediately inform the Client thereof in writing stating the reasons and the presumed duration of delay. If the order does not state a period of delivery, the order must be completed within one month after it was placed.

### 7. RIGHT TO INFORMATION AND INSPECTION

The Client and authorized representatives of the Client are entitled to obtain information from the Contractor within normal working hours about the proper execution of the order according to contract, to attend inspections carried out by the Contractor and to conduct inspections themselves. The Client bears the costs for inspections initiated by the Client, insofar as the personnel or material needed to carry out these inspections is provided by the Client. The costs of repeat inspections carried out by the Client due to defects discovered during previous inspections are borne to the full extent by the Contractor. In case of subcontracts, the Contractor undertakes to ensure that the subcontractor contractually agrees to grant the Client the rights to information and inspection on the subcontractor's premises within the abovementioned scope. These inspections do not release the Contractor from their warranty and liability obligations.

### 8. ALTERATIONS OF CONTRACT, ASSIGNMENT OF CLAIMS

The Client is entitled to request subsequent alterations to the nature of the delivery or service within the scope of the Contractor's technical capacity. Technical changes and their effects on prices, the period of delivery or other conditions must be agreed in writing in compliance with number 2 of these General Terms and Conditions of Contract. The Contractor can only effectively assign any claims against the Client with the Client's prior consent.

### 9. ADDITIONAL OR REDUCED QUANTITIES

For marketable, mass-produced products for which unit prices are specified in the contract, - the Contractor is obliged to provide any additional quantities of up to 10% of the amount specified in the contract at the unit price determined in the contract, - reduced quantities of up to 10% of the amount specified in the contract do not constitute grounds for changing the unit prices determined in the contract. New execution periods are to be agreed at request of the Client.

### 10. SHIPPING AND CUSTOMS

Two delivery notes are to be attached to the delivery. If deliveries arrive from a foreign customs territory, the Contractor must contact the Client in due time to discuss customs clearance.

### 11. DELIVERY/SERVICE, ACCEPTANCE

The delivery items are to be delivered directly to the designated place of use at the Contractor's risk. Transport insurances cannot be effected at the expense of the Client. The risk of accidental loss and of accidental deterioration only passes to the Client once the responsible staff member of the Client has officially accepted the service of the Contractor or, if acceptance is neither established by law nor stipulated in the contract, has taken receipt of the delivery of the Contractor.

The delivery or service is accepted provided it has been completed according to contract or once any defects discovered have been remedied. If a test operation is planned according to contract, acceptance is declared by means of a joint certificate of acceptance following a faultless test run.

### 12. OWNERSHIP

The Client acquires unrestricted ownership of the delivery item or service upon delivery and acceptance. The same applies to the documents supplied by the Contractor (number 5 subsection 2). By delivering the delivery item or service, the Contractor declares that they are authorized to dispose and that no rights of third parties exist. Provided materials of any kind remain property of the Client. They are to be clearly marked as such and are to be stored, labeled and managed separately. If materials provided are processed, modified or combined or mixed with other objects, the Client acquires sole property of the new object. The Contractor stores these for the Client free of charge. If the Client provided the Contractor with documents, ownership and copyright of these documents remain with the Client. Upon request, the documents are to be immediately returned along with all copies. The documents of the Client may only be used for the purposes specified in the contract. In case of contravention, the Contractor is liable for the entire damage.

### 13. INVOICE AND PAYMENT

The invoice is to be submitted in duplicate to the address designated in the order indicating bank account details, tax payer's reference number, and reference number and date of the order form. The duplicate is to be clearly marked as a copy. Turnover tax is to be listed separately. Any partial invoices submitted due to partial deliveries must clearly indicate the delivered items and the remaining quantities. The last partial invoice is to be marked as the final invoice.

The Contractor is only entitled to payment of the invoice if auditable documents on the delivery/service to the receiving unit are enclosed with the invoice; this is usually done by means of receipted delivery note or performance record.

Unless agreed otherwise, payment will be effected at the discretion of the Client within 21 days less cash discount that may have been agreed or within 30 days without discount.

The periods of payment and discount run from the day after receipt of the auditable invoice and the delivery items at the designated address, but no earlier than from the time the risk passes according to number 11 of these Terms and Conditions of Contract.

Payments are deemed timely upon receipt of the transfer order by the Client's bank. Advance payments are generally not made. Exceptions are to be agreed separately in consideration of certain principles (e.g. bank guaranty according to sections 770, 771 of the German Civil Code (BGB)).

### 14. WARRANTY

The Contractor is liable for defects in title and quality in accordance with legal provisions. The Contractor warrants careful and proper performance of their obligations under the contract, particularly compliance with the stipulated specifications and other performance requirements of the Client according to state-of-the-art science and technology, as well as the quality and appropriateness of the delivered items with regard to material, design and execution, and of the documents (drawings, plans, etc.) that constitute part of the delivery. The stipulated specifications are considered to be contractually agreed and guaranteed characteristics of the delivered item or service.

The costs borne by the Contractor to remedy defects also include expenses for packaging, freight and delivery, the work expended for dismantling and installing, travel costs and defect removal carried out by the Client.

Claims based on defects become statute-barred according to the applicable legal provisions, and at the earliest after a limitation period of two years as stipulated in section 438 BGB. If no written certificate of acceptance is issued, the limitation period begins two weeks after the Client received the delivery. The Contractor grants warranty for the delivery item as well as for parts supplied in replacement of defective parts and subsequent improvement. The warranty period for buyers in actions for breach of warranty begins after defects discovered have been removed. For parts of a delivery that could not be kept in operation due to warranty defects, the ongoing warranty period is extended by the period of interruption of operation.

### 15. PROPERTY RIGHTS

The Contractor is liable for ensuring that property rights of third parties are not infringed during the execution of the contract as well as during the delivery and use of the delivered item or service. The Contractor releases the Client from claims of third parties arising from any infringements of property rights.

### 16. TERMINATION AND RESCISSION

Without prejudice to any other rights of termination and rescission, the Client is entitled to terminate or rescind the contract if the Contractor performs actions as defined in section 333 of the German Criminal Code (StGB). Moreover, the Client is entitled to claim damages from the Contractor for all losses sustained.

The Client is furthermore entitled to rescind or terminate the contract if insolvency proceedings or judicial composition proceedings have been instituted against the Contractor's assets, or if the Contractor suspends payments other than on a temporary basis.

### 17. PLACE OF PERFORMANCE AND PLACE OF JURISDICTION

Place of performance for the Contractor is the University of Mannheim or another place of use designated by the Client.

Place of jurisdiction is Mannheim.

German legislation applies.

As of: November 2003