

General Purchasing Terms and Conditions

1. General:

These General Purchasing Terms and Conditions shall apply, unless otherwise agreed in writing between the Alfred-Wegener-Institut für Polar- und Meeresforschung, Bremerhaven (Alfred Wegener Institute for Polar and Marine Research, hereinafter called the customer) and the contractor (hereinafter called the contractor), to all deliveries and services commissioned by the customer. These General Purchasing Terms and Conditions shall apply to all future business transactions, even if express reference has not been made to the fact that they apply. The contractor obligates himself to these General Purchasing Terms and Conditions by issue of a quotation, by an order confirmation or by acceptance or execution of an order, insofar as the customer has notified him of them by means of an invitation to tender, a request for a quotation or an order, or has made it known in any other way that the contractor had to expect their being applied.

The General Standard Terms and Conditions of the contractor and any terms and conditions differing from the order letter from the customer or these General Purchasing Terms and Conditions shall apply only if and insofar as they have been expressly acknowledged in writing by the customer. This shall also apply if the contractor makes reference to his General Terms and Conditions in the quotation or in the order confirmation. If individual provisions of these General Purchasing Terms and Conditions should not be able to be applied for whatever reason, the remaining provisions shall remain unaffected thereby.

The order number, reference number and date of the letter from the customer must be stated on all documents, including invoices.

2. Quotation, order and order confirmation:

Quotations must be submitted in duplicate and shall be non-binding on and be free of charge for the customer. The contractor must adhere in his quotation to the quantity, nature and implementation of the object as specified in the request for a quotation or in the invitation to tender, and must expressly point out any difference. He shall be bound to his quotation for 3 months.

The order shall not be binding unless in writing. Oral agreements shall apply if they have been confirmed by the customer in writing. If requested by the customer, orders must be confirmed immediately in writing by the contractor. The customer reserves the right to withdraw the order if confirmation thereof is not received within 14 days.

3. Prices:

The agreed prices are fixed prices excluding value added tax and are free point of use, including packaging. Unless otherwise agreed, the freight and packaging costs are to be disbursed by the contractor and itemised separately in the invoices. If the price has not been fixed at the time the order is granted, it must be disclosed to the customer at the latest with the order confirmation. If the customer does not object within 8 working days, the price shall be deemed as having been approved.

The provisions of the PR 30/53 ordinance relating to prices for government contracts dated November 21, 1953, in its applicable version with the guidelines for pricing based on cost price (LSP) shall be used in determining the prices.

4. Implementation of the agreement, observation of regulations:

The contractor undertakes to observe the pertinent statutory and official regulations and requirements in implementing the agreement. The delivery or service must comply with accident prevention and work safety regulations, as well as with the generally recognised safety engineering and industrial medicine rules, pertinent standards, DIN, VDE and other regulations. Electrical machines, devices etc. must bear the VDE interference suppression sign in accordance with the Law Relating to High Frequency Devices. Protective devices required in accordance with such regulations must be supplied by the contractor as part of the agreed price.

If the contractor has misgivings about the type of implementation desired by the customer, he must notify the customer immediately of these. All the documents necessary for acceptance, operation, maintenance and repair (inspection records, factory certificates, drawings, plans, operating instructions and the like) must be supplied by the contractor free of charge, if necessary in a reproducible form.

5. Delivery deadlines, delay in delivery, force majeure:

The agreed deadlines shall be binding. The period of delivery shall commence on the date on which the contractor receives the order letter. The contractor shall be in delay after expiration of the period of delivery, without this requiring a warning. If delays are to be expected, e.g. including in the case of force majeure, industrial disputes or other unforeseeable events, the contractor must report this immediately in writing, stating the reasons and the presumed duration. The contractor shall also propose suitable countermeasures to avert the consequences.

The contractor shall be obliged to compensate the customer for all direct and indirect damage caused by a delay. If the contractor is in delay in delivery, he shall moreover pay the customer lump-sum damages for the delay of 1% of the value of the delivery for each completed week, but no more than 10% of said value. The contractor reserves the right to prove that the customer has suffered far less damage or none at all. The customer reserves the right to assert further statutory claims.

6. Right of information and examination:

The customer and agents appointed by him have the right to inform themselves that the delivery is being executed in accordance with the agreement, to take part in internal company examinations and to conduct examinations at the contractor's premises within the latter's business hours. The costs of examinations initiated by the customer shall be borne by the customer. Repeat examinations by the customer as a result of deficiencies determined by previous examinations shall be borne in full by the contractor.

The contractor undertakes to ensure in awarding subcontracts that the subcontractor grants the customer by agreement the right to obtain information and conduct examinations at the subcontractor's premises in the afore-mentioned scope. The examinations shall not discharge the contractor from his warranty and liability.

7. Changes to the agreement, assignment of claims:

The customer has the right to demand subsequent changes to the nature of the delivery or service within the scope of the technical capacity of the contractor. Technical changes and their effects on prices, the period of delivery and other terms and conditions must be submitted in writing in accordance with clause 2 of these General Purchasing Terms and Conditions. The contractor may only effectively assign claims against the customer with the latter's consent.

8. Consignment and customs:

Two delivery notes must be enclosed with the delivery. In the case of deliveries from foreign customs territories, the contractor must contact the customer in good time as regards customs and import clearance.

9. Acceptance:

If the delivery or service (contract of purchase / contract for services) has been fulfilled in accordance with the agreement or if any deficiencies ascertained have been rectified, the delivery or service shall be accepted by the customer. If trial operation is envisaged, acceptance shall be pronounced after a smooth trial run by means of a joint acceptance certificate.

10. Proprietorship:

The customer shall acquire the unrestricted ownership of the delivery or service after it has been handed over and accepted; the same shall apply to the documents supplied by the contractor (clause 4, paragraph 2). With hand-over of the delivery or service, the contractor thereby declares that he is fully entitled to dispose of it and that third parties do not have any rights to it. Material supplies of any kind shall remain the property of the customer. They must be indicated as such and must be stored, designated and administered separately. If material supplies are processed, transformed, combined or mixed with other objects, the customer shall acquire the sole ownership of the new object. The contractor shall keep these in safe custody for the customer free

of charge. The ownership and copyright of documents which belong to the customer and which he has provided for use by the contractor shall remain with the customer. The documents, including all copies or reproductions of them, must be surrendered immediately upon request. The documents of the customer may only be used for the purposes defined within the framework of the agreement. The contractor shall be liable to compensate any damage in full in the case of infringements of this.

11. Invoice and payment:

Invoices must always be submitted in triplicate and immediately after consignment of the goods, separately for each order and stating the customer's order number. Value added tax must be itemised separately. Invoices that have not been drawn up correctly shall be deemed as not having been submitted.

The contractor must furnish all the evidence (e.g. certificates of origin) that the customer requires in order to obtain tariff and other advantages.

Payment shall always be effected

- within 14 days, with a 3% cash discount
- or within 30 days, with a 2% cash discount
- or within 60 days, without any deduction

by cheque or remittance, at the discretion of the customer.

The deadlines shall commence upon receipt of the invoice or, if the goods arrive after the invoice, upon receipt of the goods, but not before the agreed goods receipt date. The fulfilment of the contractual obligations by the contractor is not confirmed by any payment. The payment shall be deemed as having been effected upon receipt of the remittance order by the pertinent financial institution of the AWI. If payment is made by cheque, the date the check is sent shall be authoritative.

If advance payments have been agreed, the contractor must furnish absolute guaranties without any time limitation from a German bank as security.

Apart from the cases in Section 286 (2) German Civil Code (BGB), the customer shall only be in default after being given prior written warning. If he is in default in payment, the customer shall be liable to pay interest on arrears of 5 percentage points above the base interest rate.

Disagreements or disputes about the amount to be paid to the contractor shall not entitle the contractor to discontinue or retain his contractually agreed services in full or in part.

12. Warranty claims:

The contractor shall provide the contractor with goods that are free of deficiencies in title and material defects. He shall ensure the careful and proper fulfilment of the agreement, in particular observation of the defined specifications and other implementation regulations of the customer, in conformance with the state of the art, as well as the quality and suitability of the delivery as regards material, design and implementation and of the documents belonging to the delivery (drawings, plans etc.). The defined specifications shall be regarded as contractually promised and guaranteed features of the subject of the delivery or service by the contractor.

The customer shall be obliged to check the goods for any visible deviations in quality and quantity within a reasonable period of time, where this is expedient in the normal conduct of business. If deviations are discovered, they shall be reported. This notification shall be deemed as having been received in time if it is received by the contractor within a period of five working days as of receipt of the goods or, in the case of hidden defects, as of when these are discovered. Section 377 HGB shall otherwise apply.

The customer shall be entitled to the statutory warranty claims in full. In the case of a justified complaint, he shall be authorised to demand that the contractor, at his discretion, rectify the deficiency or supply a new object. The right to damages, in particular to damages instead of performance, is expressly reserved. If there is imminence of danger or the need for particular haste, the customer shall be authorised to rectify the deficiencies itself at the cost of the contractor. The costs to be borne by the contractor for rectifying deficiencies also include the costs for packaging, freight and transportation, the work required for dismantling and installation, travel expenses and rectification of deficiencies at the customer's premises.

The period of limitation for warranty claims shall commence upon delivery of the goods. It shall be three years for deliveries of goods. If goods are supplied that are used for a building in compliance with their customary usage, the period of limitation shall be five years. The statutory provisions shall apply in addition. If no written acceptance certificate is issued, the warranty shall commence two weeks after receipt of the delivery by the customer. The contractor shall assume responsibility for supplied spare parts and improvement work as for the subject of the delivery; the warranty period shall commence anew after the reported deficiencies have been rectified. A current warranty period for delivered parts which have not been able to continue in operation due to defects covered by the warranty shall be extended by the period of the stoppage.

If claims are asserted against the customer if the supplied goods are resold to third parties and the goods are defective, the contractor shall indemnify the customer from any damage the latter incurs as a result.

13. Proprietary rights:

The contractor shall be liable for ensuring that proprietary rights of third parties are not violated in connection with his delivery or service. If claims are asserted by a third party against the customer in this connection, the contractor shall be obliged to indemnify the customer against said claims the first time it is requested to do so in writing. This obligation to provide indemnification shall relate to all expenses necessarily incurred by the customer from or in connection with the assertion of claims by a third party. The period of limitation shall be 10 years as of conclusion of the agreement.

14. Advertising material:

The contractor may only refer in advertising material to the business links with the customer with the latter's express consent.

15. Termination and rescission:

Notwithstanding any other rights to terminate the agreement or claim rescission thereof, the customer has the right to terminate the agreement or rescind it if actions as envisaged by Section 299 (bribery) of the StGB (German Penal Code) are performed by the contractor in connection with placement of an order. The customer can in addition demand compensation for all damage from the contractor.

The customer can also rescind or terminate the contract if bankruptcy proceedings have been opened on the assets of the contractor or if such proceedings are rejected due to insufficiency of assets or if the contractor discontinues his payments not just temporarily.

16. Safety and administrative regulations:

In the case of deliveries and services performed on the grounds or the premises of the customer, the safety and administrative regulations of the customer must be observed and are in this case an integral part of the agreement.

17. Applicable law:

The law of the Federal Republic of Germany shall apply. The provisions of the UN Convention on Contracts for the International Sales of Goods (CISG) shall be excluded.

18. Place of fulfilment and place of jurisdiction:

The place of fulfilment is the Alfred-Wegener-Institut für Polar- und Meeresforschung, Bremerhaven. The place of jurisdiction is Bremerhaven.

Status: March 2008