

Additional General Terms of Contract of the Federal State of Brandenburg (ZVB-Bbg)

1 Contractual Components

Contractual components are – in case of discrepancies in the following order -

- a) The offer including the terms of reference describing the services to be provided and any and all (further) appendixes according to the order declaration, if a contractual deed has been issued the latter;
- b) If applicable Additional Terms of Contract;
- c) these Additional General Terms of Contract;
- d) the General Terms for the Performance of Services – part B of the official contracting terms for services (abbreviated in German: VOL/B).

2 Prices

All prices stated in the offer are – if nothing to the contrary has been expressly agreed upon – fixed prices that shall include all services of the contractor including freight, packaging, and other costs and liabilities. The contractual relationship shall be governed by the Ordinance PR No. 30/53 on public procurement prices.

3 Performing the Services

- 3.1 In performing the services the contractor shall comply with the commercial practices, the state of the art, and any legal provisions and official regulations.
- 3.2 The contractor undertakes to deliver only such items that, at the time of delivery, meet the statutory accident-prevention regulations (independent legal standards) enacted by statutory accident insurance funds in the Federal Republic of Germany and any other employment protection provisions and generally recognized technical safety and industrial medicine rules.
- 3.3 The contractor shall remain responsible for the services even if the client has checked the plans, drawings and calculations necessary for performing the services and has ordered on the basis of these plans, drawings, and calculations.
- 3.4 The client is entitled to be informed about the performance of services according to the contract.
- 3.5 Descriptions, drawings, or specimens received by the contractor remain the client's property. They shall be returned to the client free of charge after execution of the order.
- 3.6 Operating instructions, instructions for use, and directions for use or suchlike shall accompany the services to be performed even without requiring a special agreement.
- 3.7 The agreed execution period shall be binding.
The contractor shall immediately notify the client in writing about any difficulties conflicting with on-time completion of the services or jeopardizing the delivery period, such notification shall state reasons and measures taken to overcome these difficulties. This shall also apply if the client is not the recipient of the services.
- 3.8 The contractor shall perform the services in his own facilities.
Any transfer to others shall be permissible only with the client's consent; consent shall not be required for insignificant or such partial performances of services for which the contractor's facility is either not equipped for at all or currently not equipped for.

4 Delivery and Dispatch

- 4.1 The contractor has to dispatch the delivery items as specified in the order confirmation.
- 4.2 The delivery items shall be delivered at the contractor's risk with free delivery to the point of use.
- 4.3 Providing no alternative agreement has been reached, any packaging material shall become the property of the client without any entitlement to claim payment. As required by the Packaging Ordinance manufacturers and distributors are obligated to take back packaging for transportation, outer and sales packaging. The costs for any possible take back shall be born by the contractor.
- 4.4 Providing no alternative agreement has been reached, costs for any possible insurance and other additional fees for registered and insured items shall be included in the price for performing the service.
- 4.5 Additional fees for accelerated transportation are only reimbursed, if such a means of transport has been agreed upon.
- 4.6 Providing no alternative agreement has been reached, costs for transportation there and back of tools and devices needed for assembly at the point of use shall be included in the price for performing the service.

5 Dissolution of Contract by Client

The client may withdraw from the contract or terminate the contract with immediate effect, if

- a) claims of the contractor against the client are attached, unless the contractor immediately offers sufficient security.
- b) the contractor violates the obligations under Article § 4 no. 2 (1) or Article 4 no 4 VOL/B.
- c) the contractor offers, promises, or grants benefits to persons involved with preparing, forming, or executing the contract on the part of the client with respect to their affiliation to the administration of the client. Such actions of the contractor themselves are equal to actions of persons involved with preparing, forming, or executing the contract on the part of the contractor. Above shall apply regardless of whether the benefits are offered, promised, or granted to aforementioned persons of the client directly or in their interest to their next of kin or other persons related to them or are offered in the interest of the first or the latter to a third party.

Prior to exercising the rights referred to in b) and c) and without prejudice to the regulation in Article 19 (1) VOL/B, the contractor shall have the opportunity to immediately make a statement on the issue.

6 Quality Inspection, Passing of Risk, Acceptance and Place of Delivery

6.1 The client may request a quality inspection.

The contractor shall bear any costs for the quality inspection required by nature and scale.

6.2 Any items rejected in a quality inspection on the ground that same are non-conforming with the conditions agreed shall be replaced by the contractor with such items that conform with the conditions agreed free of charge; if such quality inspection was not performed in the contractor's workshop or factory etc. also free of any delivery charges. Any necessary rework with respect to individual performances of the service which are not fully conforming to the conditions agreed shall be performed by the contractor within a reasonable period of time. Where this is not the case the client may do the rework or have the rework done at the contractor's expense.

6.3 If not otherwise agreed in the order confirmation, the place of performance and fulfilment is the registered office of the receiving entity (receiving office) which is obligated to receive or accept the delivery exclusively from Monday to Friday between 8.30 a.m. and 2 p.m. or, if applicable, upon separate agreement.

6.4 Unless otherwise agreed, deliveries shall be shipped with free delivery to the point of use.

6.5 The risk of accidental loss or of accidental degradation shall only be transferred to the customer upon the receiving office accepting the services performed by the contractor or, if an acceptance is neither provided by law nor contractually agreed, upon the reception of the delivery.

6.6 Ownership and risk shall be transferred to the client at the same time unless services have been transferred to the client already before the point in time decisive for the transfer of risk as set out in section 6.5 herein.

7 Claims for Defects and Limitation

7.1 The appearance and workmanship of presented samples and specimens and their characteristics as set out in section 3.2 herein shall be deemed to be the appearance and workmanship agreed upon.

7.2 The statute of limitations for any claims for defect shall be as defined in respective specifications in the order confirmation or in the description of the work, in the absence of such specifications in accordance with statutory provisions. The statute of limitations commences with the unobjected acceptance of the performed services or, if an acceptance is neither provided by law nor contractually agreed, upon the unobjected reception of the delivery.

7.3 A timely claim for defects shall suspend the limitation of this claim for defects until the contractor has notified the client in writing about the result of their examination of the defects reported or has finally rejected to settle these claims for defects. The statute of limitations for claims of defects is interrupted, if the contractor acknowledges this claim for defects by his actions.

7.4 The contractor undertakes guarantee for the appearance and workmanship as required by the regulations set out in section 3.2 herein for the duration of a customary usage, however for no longer than a period of 5 years and independent from any other statute of limitations for claims of defect that may also apply.

7.5 Costs for any remedy of defects on the part of the client shall be born by the contractor and include all necessary expenses, in particular any costs for transport, travel, work, and material.

8 Invoicing

8.1 The invoice shall be issued to the receiving entity or entities specified in the order.

- 8.2 Unless otherwise agreed, the invoice shall be submitted in duplicate. The second and, if applicable, any further copies shall be clearly marked as copies.
- 8.3 The invoice shall specify the performed services in accordance with the wording and in the sequence in which the specifications are listed in the order confirmation; also, the invoice shall specify the performed services in single itemization including units and quantity. General information such as "produced", "corrected", "made viable" etc. are not permissible without a more detailed reference to the services performed. Abbreviations introduced by the client's tender specifications are permissible if the execution does not deviate from the description of services.
Contractors shall issue the invoice with contract prices without turnover tax (net price). If a contractor from the Federal Republic of Germany is awarded a contract same shall invoice the turnover tax on the date of the incurrence of the tax (Article 13 German Turnover Act UStG) and state it in the end.
Contractors from other EU Member States have to adhere to special turnover tax regulations for intra-Community acquisition when issuing invoices.
- 8.4 Invoices shall be designated according to their purpose as down payment invoice, part payment invoice, and final invoice; down payment invoices and part payment invoices shall be continuously numbered.
- 8.5 When a price per unit includes a fraction of the smallest unit of national currency the calculation shall be continued with this fraction.
- 8.6 If information detailed in the invoices were changed the original information must remain legible.
- 8.7 Delivery notes shall contain:
number and date,
number, date, and reference number of order confirmation,
consecutive number of any part delivery, if applicable,
details on type and scope of delivery.
- 8.8 Entitlement to payment of invoices shall exist only if verifiable documents on the delivery/service are attached to the invoice and made available to the receiving office; this is generally done by means of statements on allocated work hours recognized at the receiving office, countersigned delivery notes, or other evidence of performance. The statement on allocated work hours shall contain all data required to verify the invoice. These data shall include the date, place, names and qualification of workers (such as foreman, journeyman, assistant, apprentice), the hours worked per employee, and the type of services.
- 8.9 Payment delays resulting from an incompletely issued invoice or missing documents shall be at the contractor's expense.

9 Payment, Overpayment, Assignment

- 9.1 In principle, payment shall be done cashless at the contractor's registered office.
- 9.2 In principle, any payments shall be made in Euro.
- 9.3 Unless otherwise agreed, payment shall be made at the client's choice either within the period of 14 days with the agreed upon early payment discount or within the period of one month without deductions.
- 9.4 Period of payment and period for payment with early payment discount start on the day the verifiable invoice (cf. section 8.8 herein) has been received at the specified receiving entity; however, no earlier than the time the risk is passed on as set out in section 6.5 herein.
- 9.5 For observance of terms payment shall be deemed to have been made upon reception of the transfer order by the payment institution.
- 9.6 Payments including down payments and part payments may be reduced by the amount of a claim held by the client against the contractor even if the amount of such claim is not based on the same contractual relationship.
- 9.7 In the event of a claim for recovery from overpayment (Articles 812 and the following German Civil Code BGB) the contractor may not invoke failure of enrichment (Article 818(3) BGB).
- 9.8 In the event of overpayment the contractor shall return the benefits of use from the amount to be recovered less any included value added tax from reception of payment onwards. Usually, these benefits are saved interests on the debt with in-debt business/credit accounts. To simplify administration, these interests on the debt are accepted to be 3% above the base lending rate of Article 247 BGB, unless evidence for a higher or lower benefit use is provided.
- 9.9 Assigning a claim of the contractor becomes legally effective only upon the client's written consent.

10 Foreign Contractor's Contract

When a contract is interpreted only the wording of the contract drafted in German shall be binding. Declarations and proceedings shall be made in German. Any contractual and extra-contractual relations between the contractual partners shall be regulated exclusively by the law of the Federal Republic of Germany.