General Conditions of Procurement

Status 11/2024

1. VALIDITY, PROTECTIVE CLAUSE, WRITTEN FORM

1.1. These conditions apply exclusively to our procurement of deliveries and services (hereinafter referred to as “services”) without us having to refer to them in each individual instance. Deviating, contradictory or additional conditions issued by the Contractor only become part of the contract insofar as we have expressly consented to their validity in writing. Unconditional acceptance of deliveries does not constitute consent. Individual agreements drawn up in individual cases take preference over our conditions if they have been expressly arrived at or expressly confirmed by us.

1.2. Fax and e-mail also satisfy the agreed requirement of the written form insofar as these conditions do not expressly specify anything to the contrary.

1.3. References to the validity of statutory requirements are only included for the purpose of clarification. Such statutory requirements therefore apply even without such clarification, insofar as they are not directly altered or expressly excluded in these conditions of procurement.

2. CONTRACT CONCLUSION

Our verbal or telephone orders require our written confirmation, as do our additions and alterations to orders. We are bound to our order for two weeks from the date of order placement. However, we can cancel our order as long as it has not yet been accepted by the Contractor.

3. COLLABORATION, CONTRACTUAL DOCUMENTS

3.1. Frequently, close collaboration is required between ourselves, our customer, other contractors and the Contractor when rendering services. For this reason, the Contractor will collaborate as closely with us and with third parties as is required and can be justifiably expected by us.

3.2. The Contractor will check all order documents and other contractual documents for completeness, accuracy and suitability for the purpose communicated by us or for the evident purpose and notify us in writing of any inconsistencies or errors. This does not affect the Contractor’s independent responsibility for execution.

4. SERVICES

4.1. Our order determines the content, type and scope of the service as well as, where relevant, the specifications and production documents handed over by us or confirmed by the Contractor (drawings, samples etc.).

4.2. The Contractor shall hand over a complete set of documentation (e.g. preferential supplier declaration, safety data sheet, operating and maintenance instructions).

4.3. The Contractor must obtain all the necessary permits and approvals for their services. In rendering their services, the Contractor must adhere to all statutory and official regulations, the applicable ISO standards, European and German standards, professional association guidelines and similar as amended as well as the recognised rules of technology.

4.4. If services are produced or rendered according to our specifications, an approval is required – even if this has not been expressly agreed on. The approval is issued as soon as an inspection has shown that the services are free of defects or at most with negligible defects.

4.5. Insofar as the Contractor renders services on our premises or on third-party premises, the Contractor will observe the relevant regulations (e.g. building regulations, safety regulations); it is up to the Contractor to procure these regulations. Workplaces are to be kept in an accident-proof state at all times as well as being left tidy and clean every day on completion of work.

4.6. The Contractor will also render services which have not been expressly agreed on insofar as these are indispensable in order to fulfil contractual obligations. Furthermore, we are entitled to require changes to be made to the services for good reason in the event of alterations to prices and performance periods.

4.7. Items which the Contractor is entrusted with by us or on our behalf in connection with their services (e.g. materials, devices, documents) shall be treated with care by the Contractor, and we are to be notified of any damage without delay.

4.8. Drawings, plans, film material and animations shall be handed to us also in digital, alterable form as open source files in a structured and transparent manner complete with written documentation no later than with the final invoice.

4.9. The Contractor shall name their subcontractors at our request. We can reject a subcontractor for important reasons; if this results in deadline shifts or changes in cost, we will come to an agreement with the Contractor.

4.10. If the Contractor is only an intermediary in the sale of goods, the Contractor shall inspect the goods before handing them over to us.

4.11. The Contractor shall inform us of changes to their product processes, production site, material used and subcontractors, unless the Contractor is able to assume, based on careful inspection, that any influence on the quality or nature of their services in relation to the purpose of these services to us can evidently be ruled out.

4.12. Goods which contain or release substances that require registration or approval under Regulation EC 1907/2006 of 18.12.2006 (REACH Regulation) including subsequent additions and alterations at the time of supply to us must be registered or approved.

For every delivery, the Contractor shall submit to us an up-to-date, complete safety data sheet which meets the requirements of the REACH Regulation, even if this is not a mandatory condition under the REACH Regulation.

4.13. Duplicates, negatives, files, data media, models and other work documents required for rendering the services shall be handed over to us by the Contractor to us on request at any time; we may also require the Contractor to retain such working documents for a period of up to three years without charge.

5. SUBCONTRACTORS

Services are to be provided by the Contractor themselves. Without our previous written consent, the Contractor is not entitled to have the contractual service rendered by third parties (e.g. subcontractors, freelance collaborators). The Contractor bears the procurement risk for their service unless it is a one-off production.

6. SERVICE PERIOD, SHIPPING, TRANSFER OF RISK

6.1. Agreed deadlines and time limits are always binding for the Contractor.

6.2. The Contractor shall notify us in writing without delay if they do not expect to be able to adhere to agreed deadlines – for whatever reasons. In the event of default, the statutory claims and rights lie with us. If it is a fixed-date transaction we can – notwithstanding our other rights – withdraw from the contract without further hindrance if the deadline is exceeded or continue to demand fulfilment.

6.3. Default further entitles us to charge a contractual penalty of 1% of the net price of the entire order for each complete week of exceedance, though no more than 5% of the net price of the entire order in total. This applies correspondingly if default applies to partial services. This does not affect claims for damages. The contractual penalty is added to any claims for damages. If we accept the delayed service, we must claim the contractual penalty no later than at final payment.

6.4. Shipping is carriage free at the Contractor's risk to the location specified in our order. This also applies to potential return shipments. The Contractor is liable for adherence to any specified shipping regulations. If an approval is carried out, the risk is not transferred to us until our approval statement has been issued.

6.5. The Contractor shall use environment-friendly packaging as far as possible. Return shipment of empties and packaging material is freight collect at the expense of the Contractor unless disposable packaging is used.

6.6. The Contractor shall attach a delivery note to every delivery, specifying our order number, article number, quantity, place of delivery and goods designation, insofar as these are specified in our order. Otherwise we are entitled to refuse acceptance without entitling the Contractor to legal claims. The costs resulting from this shall be borne by the Contractor.

7. PRICES, INVOICING, PAYMENT

7.1. Unless agreed otherwise, the agreed price is a flat-rate and fixed price not including statutory VAT including all ancillary services and ancillary costs (e.g. assembly, installation, packaging, transport, transport insurance, artists' social security contribution) and is due for payment on handover or on approval of the services.

7.2. Every invoice shall contain a detailed description of activities attached to it. The artists' social security contribution is to be shown separately in the invoice.

7.3. We pay – according to our choice – after receipt of a proper invoice within 14 days less a 3% cash discount or within 60 days without discount.

7.4. If significant changes occur in the market situation, the Contractor shall negotiate with us over adjustment of the prices. If negotiations fail, we can terminate existing contracts subject to a deadline that appropriately takes account of both parties' interests. In this case, the Contractor may only charge us for the actual costs incurred to them for material which cannot be put to any other use. We are also entitled to such a right of termination if the Contractor's prices are above market level or at least 3% above the prices of a comparable competitor and the Contractor is not able to offer us more competitive prices at our written request within a period of one month.

7.5. We are entitled to offset and retention rights and the objection of the unfulfilled contract subject to statutory limits, in particular we can retain due payments for as long as we are entitled to claims against the Contractor for incomplete or defective services.

8. INSPECTION, DEFECTS

8.1. Unless anything to the contrary is determined below, the statutory regulations apply in terms of our rights in the event of material defects or legal deficiencies on the part of the Contractor.

8.2. If no approval is carried out, we shall inspect services after receipt in the proper course of business on a random basis, thereby satisfying any inspection obligations.

8.3. If the Contractor defaults on defect elimination or if the delay in defect elimination causes significant damages to us or our customer, we are entitled to undertake the elimination of defects ourselves or have it undertaken by third parties at the expense of the Contractor, even without prior request vis-à-vis the Contractor. We shall inform the Contractor of this as early as possible.

8.4. The costs of supplementary fulfilment also include the costs of defect search and sorting incurred to ourselves and our customer.

8.5. The limitation period for our claims due to a material defect is two years from delivery or approval; for a claim due to a legal deficiency this period is four years from delivery or approval. Longer limitation periods resulting from other claims which are not based on a defect as such remain unaffected. Longer statutory limitation periods (e.g. for construction defects or due to claims in rem) remain unaffected.

9. PRODUCT LIABILITY

If the Contractor is responsible for a product fault, they shall exempt us from third-party claims due to personal injury and material damage insofar as the cause lies in their domain and organisational responsibility and they are liable themselves vis-à-vis third parties.

10. RIGHTS

10.1. On handover we shall receive from the Contractor the exclusive, transferable, irrevocable right, unrestricted in terms of time and place, to use and process the services without charge, in particular to reproduce them, edit them, make them publicly accessible and make them available to third parties, either in return for payment or not, subject to a time limit or permanently, in particular in connection with other products; we shall also be entitled to all usage, editing and processing rights to the services on an unlimited basis. All the Contractor's claims for the granting of such rights are satisfied by the agreed remuneration – as a result, license payments in particular are ruled out for the present and the future. The Contractor waives the right to author attribution.

10.2. The contract also grants us the exclusive rights, unrestricted in terms of time, place and content, to usage types not yet known at the time of conclusion of the contract. If we exercise these unknown usage types ourselves or via third parties, the Contractor shall receive an appropriate remuneration, of which they will be informed when the initiation of such usage is intended. If no agreement is reached within a month of hav- ing informed the Contractor of the intended initiation of the new type of work usage under the last address known to us, we are entitled to determine the remuneration at our reasona- ble discretion. The Contractor is entitled to have the relevant exercise of discretion reviewed within six months of performance determination by the district court responsible.

10.3. The Contractor must have drawn up written agreements with their employees or third parties which require them to fulfil the Contractor's obligations arising from the above regulations, and the Contractor shall present these agreements to us on request, at least the relevant sections of them.

11. SOFTWARE

If the service consists entirely or partially of software created for us by the Contractor, the Contractor is required to make the source code available to us. Insofar as the agreement only regards the handover of the object code, we can request the deposit of the source code (e.g. with TÜV Süd) at our expense. Together with the software we receive printable user documentation and – if the Contractor is required to make the source code available to us – also development documentation, both of which shall be provided in German. We can also require the Contractor to conclude a regular maintenance contract at the usual terms and conditions.

12. SUPPLEMENTARY ITEMS

Images, concepts, plans, drawings, calculations, instructions, product descriptions, equipment and other documents or materials made available to the Contractor by us, handed over in any other way or supplied directly to the Contractor on our behalf remain our property, are to be handled with care by the Contractor and shall be returned to us without delay on termination of the contract. These are submissions under § 18 UWG (Act Against Unfair Competition) which are entrusted to the Contractor.

13. RETENTION OF TITLE

We oppose all forms of extended or prolonged retention of title.

14. CONFIDENTIALITY

14.1. The Contractor is obliged to treat all business and technical information they gain access to through business relations with us as a trade secret and use it only for the purpose of collaboration with us, for as long as and to the extent to which this information is not generally known or becomes known, in particularly all information marked as "secret", "confidential" or similar. The information is to be carefully safeguarded and protected from unauthorised third-party access. This also applies to information belonging to our customer. The Contractor's vicarious agents (including staff members) shall undertake to be bound by this requirement in writing; such written undertakings are to be presented to us on request.

14.2. The Contractor is only entitled to refer to business relations with us for advertising purposes if we have provided our prior written consent.

14.3. Delivery items or other commodities produced on our behalf, according to our specifications (including drawings, models and the like) or with our tools or replicated tools may not be used by the Contractor themselves nor offered or supplied by the Contractor to third parties; the use of such items for the purpose of self-advertising also requires our prior written consent. This applies in the same way to our printing orders.

15. CONTRACTUAL AND POST-CONTRACTUAL CUSTOMER PROTECTION

For the duration of their activity for us, the Contractor shall not provide or offer services, either directly or indirectly, to our customers which are identical or comparable in nature to those rendered to us by the Contractor or which the Contractor is contractually required to render to us, unless the Contractor maintained direct or indirect business relations with the customer prior to initiation or commencement of the Contractor's activities for us. The above ban also applies for the duration of six months after termination of activities for us. The Contractor may not take part in a competition for a concrete order for a particular customer (pitch situation) with services which are identical or comparable in nature, either doing so themselves or on behalf of other clients.
However, exchangeable, standardised services rendered on the part of the Contractor (e.g. standard goods, printing, transport, logistics) are excepted from the above bans. For every case of culpable breach of the above bans, the Contractor shall pay a contractual penalty of up to EUR 20,000.00, the amount of which shall be determined by us based on reasonable discretion, to be reviewed by the court responsible for its appropriateness at the request of the Contractor. In the event of ongoing breaches, each week or part thereof shall count as a separate breach: however, the contractual penalty shall be no more than EUR 40,000.00 in this event. The assertion of any further damage claims remains unaffected by this.

16. DATA PRIVACY

The Contractor ensures adherence to all relevant data privacy regulations, also on the part of any employees as well as vicarious and performance agents. The persons deployed by the Contractor shall undertake to observe confidentiality in keeping with the General Data Protection Regulation.

17. MINIMUM PAY

The Contractor shall adhere to the provisions of the Minimum Wage Act and shall oblige their subcontractors to do the same. The Contractor exempts us from third-party claims in the event of breach of the Minimum Wage Act by themselves or their subcontractor.

18. RIGHT OF RETENTION

The Contractor is not entitled to retain their service, either wholly or in part (for example plans, drawings, film material), insofar as we require this for the fulfilment of our contractual obligations vis-à-vis our customer, not even in the event of a dispute over remuneration claims on the part of the Contractor; at the request of the Contractor, we shall deposit the amount of the remuneration claim under dispute on an escrow or trust account.

19. INSURANCE

The Contractor shall hold an appropriate liability insurance policy during contractual relationships with insured sums of at least EUR 5 million for personal injury and material damage and shall provide evidence of this insurance to us on request.

20. EXPORT, CUSTOMS, TAXES

The Contractor shall provide us as soon as possible with all information and data which we require (a) to adhere to applicable foreign trade law in the case of export, shipment and import, (b) in the case of further distribution in conjunction with the re-export of goods and (c) for the purpose of meeting the requirements of customs and taxation law.

21. CONTRACT TERMINATION

21.1. We can terminate the contract with the Contractor at any time in writing, whether partly or wholly, in particular if our customer terminates their contract with us. In this event, the Contractor is only entitled to receive the remuneration due for services rendered up until contract termination.

21.2. If the contract is terminated for reasons for which the Contractor is responsible, we are entitled to a flat-rate damage compensation of 10% of the order amount. We reserve the right to claim higher damage claims; the Contractor reserves the right to provide evidence to us that no damage or only negligible damage was caused.

22. FINAL PROVISIONS

22.1. The place of fulfilment is our headquarters.

22.2. If the Contractor is a business person, a legal entity under public law or a state-operated fund, the place of jurisdiction for all disputes arising from and in connection with contractual relations shall be our headquarters or, according to our choice, the Contractor’s headquarters. This likewise applies in cases where the Contractor has no general place of jurisdiction in Germany, they have moved their place of residence or habitual abode abroad after conclusion of the contract or neither the Contractor’s place of residence or habitual abode are known when action is brought.

22.3. The sole place of jurisdiction is the court responsible for our headquarters: however, we are also entitled to assert claims at the location of the Contractor’s headquarters.

22.4. German law applies under inclusion of CCISG.

22.5. If one or more of these conditions are ineffective or become ineffective, the effectiveness of the other conditions shall not be affected by this.