

**General Terms and Conditions
of the BMI Procurement Office,
as of: 17 November 2021**

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Section 1 Basic principles

- (1) The General Terms and Conditions of the BMI Procurement Office contain regulations on the general circumstances regularly applying to all contracts entered into by the BMI Procurement Office (individual contracts and framework agreements). These are additional terms of contract within the meaning of Section 1(2d) of the General Terms of Contract for the Provision of Supplies and Services (VOL/B).
- (2) The VOL/B shall become part of the contract through agreement to these General Terms and Conditions. The VOL/B were published in Federal Gazette No. 178a of 23 September 2002 and are available on the Internet at <http://www.bescha.bund.de> as are these General Terms and Conditions.

- (3) Regulation PR No. 30/53 concerning the Prices of Public Contracts of 21 November 1953 (Federal Gazette No. 244 of 18 December 1953) shall apply as amended in connection with contractual relationships. As far as the Contractor includes third parties in the contract, the Contractor shall notify these parties before their inclusion that this regulation applies.

Section 2 Scope of application

- (1) These General Terms and Conditions shall apply to contracts concerning the provision of services and the purchase or production of goods.
- (2) They shall apply accordingly to other types of contracts (e.g. rental, leasing).

Section 3 Parts of the contract

- (1) Any Contractor's terms and conditions shall not become part of the contract.
- (2) The contract shall always include the following parts:
 - a) the contract
 - b) the statement of work, specified by answers to tenderer's questions, if applicable
 - c) the Contractor's tender
 - d) the individual call-off, if a framework agreement exists
 - e) any supplementary terms of contract (e.g. EVB-IT – Supplementary Terms of Contract for the Procurement of IT Supplies/Services)
 - f) these General Terms and Conditions (additional terms of contract within the meaning of Section 1 VOL/B)
 - g) any general technical terms of contract
 - h) General Terms of Contract for the Provision of Supplies and Services (VOL/B)
- (3) In the case of discrepancies, the parts of the contract shall apply in the above order of precedence.
- (4) Technical guidelines and technical specifications shall also be considered as statements of work in the aforementioned sense.
- (5) Features of approved samples shall further define the statement of work.

Section 4 Contracting Authority

- (1) Unless otherwise stated in the contract documents, the Federal Republic of Germany shall be the Contracting Authority.
- (2) The Federal Republic of Germany shall be represented by the Federal Ministry of the Interior, Building and Community, represented in turn by the BMI Procurement Office.
- (3) The responsible action officers, who are announced to the tenderers or parties to the contract by contract notices or by other means, shall be authorised, when performing the duties assigned to them, to issue contractual statements to third parties that are legally binding on the Contracting Authority. The same shall apply to the heads of the directorates-general and heads of division if their names are listed in the organisational chart. The authorisation shall cover in particular unilateral legal transactions and unilateral acts of a similar type, e.g. statement of reminder, price reduction or contractual notice of termination. Any formal requirements applicable to these statements shall remain unaffected.

Section 5 Points of contact

- (1) The BMI Procurement Office generally is the point of contact regarding contractual matters.
- (2) The BMI Procurement Office may nominate other agencies as responsible points of contact and authorise them to issue specific declarations and perform specific actions.

Section 6 Employment of subcontractors

- (1) At the latest when the performance of the contract commences, the Contractor shall indicate to the Contracting Authority the names, contact details and legal representatives of the subcontractors employed under the contract at least in text form in accordance with Section 126b German Civil Code (BGB). Notwithstanding Section 4 No. 4 VOL/B, any planned changes regarding the subcontractors shall require the consent of the Contracting Authority and shall be communicated to the Contracting Authority without delay at least in text form in accordance with Section 126b BGB.
- (2) This duty to inform shall also apply further down the subcontracting chain.
- (3) If the Contractor employs a subcontractor to perform its duties, the Contractor shall ensure by contractual arrangements with the subcontractor that the Contracting Authority's rights will not be infringed by lack of or insufficient arrangements between Contractor and subcontractor.

Section 7 Confidentiality

- (1) The parties to the contract undertake not to disclose the contents of the contract and any information obtained during contract performance to third parties unless this is required to fulfil the contract or as far as they are legally bound to do so.
- (2) The regulations concerning technical documents (Section 3 VOL/B) shall remain unaffected.

Section 8 Contractual penalty

- (1) If the Contractor culpably exceeds periods of performance, the Contracting Authority shall be entitled to request a contractual penalty for each completed week amounting to 0.5 percent of the net value of that part of the performance that cannot be used. The maximum contractual penalty for every time the deadline is exceeded shall be 5 percent of the net value of that part of the performance that cannot be used. The sum of all contractual penalties must not exceed 5 percent of the total net contract value.
- (2) The Contracting Authority shall be entitled to claim the contractual penalty in addition to fulfilment.
- (3) Claims for damages shall be reserved, with the contractual penalty being fully set off.
- (4) Otherwise, Section 11 VOL/B shall apply.

Section 9 Infringement of third-party industrial property rights

- (1) The Contractor shall always verify whether its performance infringes industrial property rights.
- (2) This obligation shall also apply to requirements contained in the statement of work and specifications in other parts of the contract.
- (3) Should the Contractor ascertain that the performance of the service is not possible without infringing third-party industrial property rights, the Contractor shall inform the Contracting Authority without delay.
- (4) The Contractor shall keep the Contracting Authority indemnified against third-party claims arising from any culpable infringement of industrial property rights, and shall bear the costs incurred by the Contracting Authority in this context. Section 254 BGB shall remain unaffected.

Section 10 Quality assurance and inspection, government inspection

- (1) The requirements for the operational quality assurance system are contained in the statement of work.
- (2) The Contractor undertakes to comply with the defined quality assurance procedure and to communicate any changes.

- (3) The Contracting Authority reserves the right to review the quality management system applied by the Contractor.
- (4) The Contracting Authority shall be entitled to be informed of the contractual conformity of the provision of supplies or services on the Contractor's premises also while production is in progress, to review the technical documents and request any other pertinent information.
- (5) In order to verify whether the Contractor complies with the contractually agreed technical requirements, the Contracting Authority shall be entitled to have chemical and physical tests carried out by public or publicly acknowledged specialised institutes, if the verifying party cannot carry out these tests beyond doubt with its own resources or the Contractor's resources. The Contractor shall bear the costs of these tests.
- (6) If an official calibration certificate is not provided, the measurement accuracy of the testing equipment shall be verified at the inspector's request for the company-owned test facilities which the Contractor is to provide for the quality inspection free of charge.
- (7) Instead of a quality inspection carried out by a person to be identified by the Contracting Authority, the Contracting Authority may request that the Contractor submit a quality inspection certificate in accordance with DIN 55350-T18-4.2.2, 4.2.1 or equivalent.
- (8) If agreed upon, the Contracting Authority shall carry out government inspections on the Contractor's premises. The deliverables shall be registered for government inspections at least 2 weeks before delivery.
- (9) If the agreed government inspection is waived in individual cases, the Contractor shall be informed in due time.
- (10) The Contracting Authority shall be entitled to repeat a failed government inspection. In this case, the Contracting Authority may claim reimbursement of costs from the Contractor incurred due to a failed government inspection.
- (11) Otherwise, Section 12 VOL/B shall apply.

Section 11 Contracts for series production

- (1) Contracts for series production shall require the presentation of the production type. Series production shall correspond to the condition and quality of the production type presented.
- (2) Series production shall start after the Contracting Authority has approved the production type.
- (3) The presentation of the production type shall not be an exemption from quality inspections provided for the series production.

Section 12 Passing of risk

- (1) Unless otherwise agreed, the Contractor shall provide the supplies or services at the Contracting Authority's place of business. In this case, the risk of an accidental loss or an accidental degradation shall be transferred to the Contracting Authority on delivery of the goods at the agreed place of delivery or on acceptance of the work.
- (2) If a place of delivery has not been contractually agreed upon, the goods shall be delivered to the official seat of the Customer.

Section 13 Packaging, transportation, transportation cost

- (1) The Contractor shall use packaging material that is suitable for safe transport, taking into account the requirements by type and weight of the goods and the means of transport used.
- (2) If 'Incoterms' abbreviations are used, the version or revision applicable at the date of contract conclusion shall apply.

- (3) As a rule, the Contractor shall bear the costs for packaging material and transportation. This shall also apply to additional costs like insurance fees, cash on delivery fees, cartage, connection charges, demurrage charges or a fee for a transportation cost certificate.
- (4) If the Contracting Authority agrees to pay the transportation costs (e.g. in the event of a sales shipment as referred to in Section 447 BGB), the Contractor shall disburse the costs free of charge until receipt by the consignee. The Contractor shall choose the means and type of transport based on economic efficiency. Otherwise, Section 6 VOL/B shall apply.
- (5) The Contractor shall take back, or shall oblige the assigned carrier to take back, packaging (within the meaning of the Packaging Ordinance as amended) free of charge from the recipient of performance on delivery. In this case, there shall be no transfer of ownership of the packaging material. However, the recipient of performance may still demand on delivery that a transfer of ownership for the packaging material be effected as far as it may be disposed of.

Section 14 Delivery note

On issuing the delivery note, the Contractor shall observe the following points:

- (1) One delivery note shall be issued for each recipient per order number.
- (2) One delivery note shall be issued for each recipient per part performance.
- (3) The order number and, if applicable, the preset labelling shall be indicated on the delivery note.

Section 15 Delivery

- (1) Unless otherwise agreed, the deliverable, including the delivery note, shall be delivered to the contractually agreed recipient on the recipient's compound or on the recipient's premises.
- (2) There is no obligation to wait for the deliverable to be collected by the recipient.

Section 16 Acceptance

- (1) Where a contract for work and services has been concluded, acceptance becomes effective with the Contracting Authority's declaration that the contract has been fulfilled in substance. Section 13 VOL/B shall remain unaffected.
- (2) A previous quality inspection in accordance with Section 10 of the General Terms and Conditions shall not supersede acceptance.
- (3) The Contracting Authority or its representative may refuse acceptance of supplies or services if a material defect or a defect in title exists. This shall not apply in the case of a minor defect, if and when the Contractor explicitly recognises its obligation to remedy the defect.

Section 17 Submission of invoice

- (1) Unless otherwise agreed, invoices shall be submitted as specified in the E-Invoicing Regulation, i.e. electronically; submission of invoices in written form is therefore no longer admissible as a rule. An invoice that has not been submitted electronically as specified in the above regulation shall not constitute default in accordance with Section 286(3) BGB.
- (2) Separate invoices shall be issued for each order number; different places of delivery may be combined.
- (3) If part performances for an order have been agreed upon (e.g. delivery at different times), a separate invoice may be submitted for each part performance.
- (4) If the Contracting Authority bears the costs for transport to the place of performance, the Contractor shall verify these costs for each order and invoice them separately.
- (5) Section 15 VOL/B shall remain unaffected.

Section 18 Payment of invoice

- (1) Payments shall be made by bank transfer. Unless otherwise agreed, payment of invoices shall be made at the latest 30 days following the contractual provision of supplies or services and receipt of the invoice.
- (2) In any case, payment shall not be due until the contractual supplies or services have been provided.
- (3) The obligation to pay will have been met on the day when the payment amount is credited to the payee's account (value date).
- (4) Otherwise, Section 17 VOL/B shall apply.

Section 19 Discount

- (1) Provided discounts have been contractually agreed upon or the Contractor has offered them on the invoice, the discount period shall start on receipt of the invoice and proper contract fulfilment by the Contractor. If the Contracting Authority raises any justified objections, the discount period shall be suspended for this period.
- (2) Unless otherwise agreed, the discount period shall be 15 days.

Section 20 Termination of the contractual relationship for a compelling reason

- (1) The Contracting Authority may withdraw from the contract or cancel it with immediate effect,
 - a) if the Contractor violates its obligation to maintain confidentiality or an obligation imposed on the Contractor to maintain secrecy about knowledge obtained in connection with the awarded contract.
 - b) if the Contractor has not presented a production type to be prepared before series production even after a time limit has been set.
 - c) if a production type prepared before series production deviates from the contractually agreed condition to such a degree that further production types do not give reason to expect contractual performance.
 - d) if insolvency proceedings have been instituted against the Contractor's assets and have been dismissed for lack of assets or if the proper settlement of the contract is challenged because the Contractor suspends payment on more than a temporary basis.
 - e) if the Contractor has employed unlawful restraints of competition as defined by the German Act against Restraints of Competition (GWB) in the course of creating or discharging the obligation. This includes in particular arrangements with third parties on the submission or non-submission of proposals, on the prices to be charged, on payment of a compensation for loss (profit sharing or other payments) and on the determination of price recommendations.
 - f) if reasons exist that would lead to exclusion during an award procedure in accordance with Section 123 GWB.
- (2) The right of extraordinary termination of the contract under the legal provisions, in particular the right of termination of the contract in accordance with Sections 314 and 626 BGB shall remain unaffected.

Section 21 Effects of the termination of the contract for a compelling reason

- (1) In the case of a termination of the contract, any supplies or services that have already been provided and that the Contracting Authority can make use of shall be invoiced at the contract prices or according to ratio of the completed part against the overall supplies or services contracted based on the contract prices; any supplies or services not required shall be returned to the Contractor at its expense.
- (2) If the Contracting Authority withdraws from the contract, any supplies or services provided by the Parties shall be returned.
- (3) Otherwise, Section 7 No. 3 VOL/B shall apply.

Section 22 Form

- (1) Unless otherwise agreed, declarations pertaining to the contract require written form (Section 126 BGB), electronic form (Section 126a BGB) or text form (Section 126b BGB) to become legally effective. Section 305b BGB shall remain unaffected.
- (2) Mandatory statutory formal requirements and the right of the parties to the contract to request authentication shall remain unaffected.
- (3) Correspondence with the Contracting Authority shall be in German.

Section 23 Warranty

Unless otherwise agreed, the warranty period shall be 24 months, starting with the delivery (transfer) of the goods or acceptance of the work.

Section 24 Severability clause

- (1) The invalidity, nullity or impracticability of individual clauses or validations contained in clauses shall not affect the validity of the other clauses or any validations contained in these clauses if they are separable in terms of contents.
- (2) If individual provisions or parts thereof are invalid, the contents of the contract shall be in accordance with the statutory regulations as far as their legal and economic content corresponds to the invalid, void or impracticable provision and the overall purpose of the contract.

Section 25 Applicable law, place of jurisdiction

- (1) The law of the Federal Republic of Germany shall be applicable.
- (2) Application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.
- (3) The exclusive place of jurisdiction for any dispute arising from and in connection with this contract shall be Bonn.