

Additional Contractual Terms and Conditions Set by Freie
Universität Berlin for the Performance of Services (Except for
Construction Services)

Last updated: Thursday, February 1, 2024

Remark:

Where personal designations are used, the chosen form applies to all genders.

1. General Information

(1) The following apply to deliveries and services in the given order:

- a) The contract including applicable additional agreements
- b) Any supplementary contract terms and conditions
- c) The additional contractual terms and conditions below
- d) The “General Terms and Conditions for the Performance of Services, Part B” (VOL/B) as amended

(2) For the procurement of IT services, the “Additional Contractual Terms and Conditions for the Procurement of IT Services (EVB-IT),” which are applicable in individual cases, are considered agreed as amended. They are additional contractual terms and conditions until the Special Contractual Terms and Conditions for the Procurement of DP Systems and Equipment (BVB) are finally superseded.

(3) Opposing terms of business and delivery that differ from these purchase conditions or terms of business and delivery set by the contractor that supplement these purchase conditions are not recognized, unless Freie Universität Berlin expressly agrees to their validity in writing or in text form. If the contractor confirms a work order, an offer (order) differing from these purchase conditions, or, if Freie Universität Berlin unreservedly accepts deliveries and services in the knowledge of opposing or differing contractual terms and conditions set by the contractor, or if Freie Universität Berlin unreservedly makes a payment, then still only these contractual terms and conditions shall apply.

2. Orders through the E-Procurement System of Freie Universität Berlin

The orders made by the contracting authority do not bear a personal signature and are also valid without being signed by the ordering party.

3. Environmental Protection

(1) Freie Universität Berlin prefers to procure environmentally compatible products and materials, as well as environmentally friendly processes to perform services. By procuring more sustainable products and services than conventional ones, the aim is to save resources such as energy, water, etc. and to prevent risks to health and the environment. In the process, sustainable procurement should combine economic goals with ecological ones. Economic standards form the fundamentals of contract awarding in competitions.

(2) The contractor is obliged to fulfill the conditions named on the basis of the Berlin Tendering and Awarding Act (*Berlin Ausschreibungs- und Vergabegesetz, BerlAVG*) and the Administrative Regulation on Procurement and the Environment (*Verwaltungsvorschrift Beschaffung und Umwelt, VwVBU*) and provide proof thereof.

(3) The contracting authority is entitled to check whether the offers submitted by the bidders comply with the environmental protection that is stringently required as part of the tender. Bidders can provide proof with a reference to an eco-label if the goods or services offered bear one, or provide equivalent proof like technical documents from the manufacturer or test reports from recognized testing authorities. If incorrect or incomplete information is provided or required documents related to environmental requirements are missing, the contracting authority is entitled to distance themselves from the offer.

Additional Contractual Terms and Conditions Set by Freie
Universität Berlin for the Performance of Services (Except for
Construction Services)

Last updated: Thursday, February 1, 2024

4. Prices

- (1) Unless otherwise agreed in writing, the contractor's price includes all additional costs, for example, packaging, transport, transport insurance, freight, and expenses.
- (2) The contractor delivers to the reception point named by the contracting authority free of charge at the agreed time.
- (3) The agreed prices are fixed prices within the meaning of ordinance PR 30/53 covering the prices for public contracts dated November 21, 1953, (German Federal Gazette [BAnz.] 1953 No. 244) as amended.

5. Delivery, Additional Services, and Inadequate Performance

- (1) The contracting authority should be informed immediately about delivery and performance problems indicating the reasons.
- (2) In the case of marketable, mass-produced products for which unit prices are given in the contract, the contractor is obliged to perform additional services up to 10 percent of the quantities set in the contract at the unit prices set in the contract. Reductions up to 10 per cent of the quantities set in the contract do not give rise to a claim to a change to the unit prices set in the contract. Upon request, amended regulations can be agreed by mutual consent.

6. Packaging

Packaging materials that can be reused shall be taken back by the contractor free of charge. Transport packaging made from cardboard must contain at least 70 percent (mass) recycled material.

7. Receipt of Delivery and Acceptance

- (1) Upon receipt of the delivery or service at the contracting authorities place of use, the risk of damage or accidental destruction is transferred to the contracting authority. The broader regulation from Section 644 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB) remains unaffected. The contractor must have the delivery or service confirmed in writing.
- (2) If the delivery or service corresponds with the agreements, the contracting authority shall declare the acceptance in writing immediately, if necessary, after checking the quality. If the acceptance of the delivery or service is not declared in writing, it applies as effected once the final payment has been made.

8. Claims for Defects and Period of Limitation for Claims for Defects

- (1) Deliveries and services are checked for defects by the contracting authority in the proper course of business. The contractor is given notice of defects immediately at the time the delivery or service is carried out or, in the case of hidden defects, at the time the defect is discovered.
- (2) The period of limitation for claims for defects begins with the acceptance of the delivery or service. Warranty claims are not affected if original packaging material is disposed of.
- (3) In accordance with Section 14 of the General Terms and Conditions for the Performance of Services, Part B (VOL/B), the period of limitation for claims for defects is extended to two years in accordance with Section 438.1.3 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB).

9. Payments

- (1) The basis for all payments by the contracting authority is formed by singly submitted invoices that need to state the respective order number and the specified invoicing address. Invoices that do not have the required

Additional Contractual Terms and Conditions Set by Freie
Universität Berlin for the Performance of Services (Except for
Construction Services)

Last updated: Thursday, February 1, 2024

information cannot be processed and will be returned. The resulting delays will be charged to the contractor. Specified deadlines do not apply if delays in the invoice processing have occurred due to the order number not being indicated or being given incorrectly.

(2) Invoices shall be written exclusively to the following addresses:

Email address: rechnung@clearingstelle.fu-berlin.de

The requirements for electronic sending should be observed.

See www.fu-berlin.de/rechnung

or by mail

Freie Universität Berlin
Postfach 330763
14177 Berlin

(3) Following fulfillment of the delivery or service, the contracting authority shall pay within one month of receiving the auditable invoice via electronic bank transfer on the account named by the contractor. The payment deadline shall be deemed to have been met on the day on which the contracting authority instructs his bank to transfer the agreed invoice amount.

(4) Unless otherwise agreed, a discount of 2% of the invoice amount shall be deducted for payments made within 14 days of receipt of an auditable invoice. This does not apply to services for which the granting of a discount is excluded by law, in particular for publishing products subject to fixed prices.

(5) Discounts are deducted from all payments (including payments according to the payment plan, advance payments, payments on account, final payments, and partial final payments).

10. Guarantee

(1) The contractor shall be liable for legal and material defects in accordance with legal provisions. They guarantee the careful and proper fulfillment of the contract, in particular compliance with the specifications and other execution regulations set by the contracting authority in accordance with the latest state of science and technology as well as the quality and suitability of the delivery or service with regard to material, design, and execution, and the documents that form part of the delivery or service (drawings, plans, etc.). The set specifications are deemed to be contractually warranted and guaranteed properties of the delivery or service.

(2) The provisions of Sections 633.2 to 639 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB) shall also apply to purchase contracts and contracts for work and materials; the contracting authority may also exercise their rights pursuant to Sections 434 ff. of the German Civil Code at their discretion.

(3) The costs to be borne by the contractor to rectify defects shall also include the expenses for packaging, freight, and transportation, the work required for removal and installation, travel expenses, and the work to rectify defects at the contracting authority's premises.

(4) If the warranty period is not specifically agreed, it shall be 24 months unless a longer statutory warranty period applies. If the contractor grants a longer warranty period than the statutory period, this shall be deemed agreed. The period for claims for defects begins starting from when machines, equipment, or equipment parts are put into commission.

(5) The contractor shall provide a warranty for replacement parts supplied and rectification work performed in the same way as for the delivered object; the warranty period shall commence after the defects found have been rectified.

Additional Contractual Terms and Conditions Set by Freie
Universität Berlin for the Performance of Services (Except for
Construction Services)

Last updated: Thursday, February 1, 2024

11. Changeover of Long-Term Contracts

If the delivery or service is based on a contract that was concluded within the four months before the introduction of a new VAT rate (value added tax), one contract party may demand reasonable settlement from the other for the additional or reduced VAT burden. If the extent of the additional or reduced burden is disputed, Section 287.1 of the German Code of Civil Procedure (*Zivilprozessordnung*) shall be applied accordingly.

12. Suitability

(1) Upon accepting the order, the contractor assures that

- ...their company is duly registered under trade law or has been granted the relevant trade licenses.
- ...their company is entered in the relevant register and, if this is required by law, a business liability insurance policy has been taken out.
- ...the persons assigned to perform the service hold the required certificates or qualifications.
- ...they have fulfilled their obligations to pay taxes and duties as well as contributions to the statutory social insurance and have authorized the contracting authority to obtain information on the registration files independently of specific individuals or shall submit this information at the request of the contracting authority.
- ...they have met and continue to meet their obligations to pay contributions to health insurance and employers' liability insurance associations.
- ...they have not been fined more than €2,500 in the past two years in accordance with Section 23 of the German Posted Workers Act (AEntG) or Section 21 of the Minimum Wage Act (*Mindestlohngesetz*) and they are not aware of any current violation of the above-mentioned regulations or any pending fine notice against the company or the person(s) with legal responsibilities.
- ...they are not aware that there are entries in the German Competition Register Act (WRegG) that concern their company or the person(s) with legal responsibilities.
- ...they fulfill the requirements under trade law for the performance of the services offered.
- ...insolvency proceedings or comparable statutory proceedings have not been opened, an application for the opening of insolvency proceedings has not been filed, or this application has been rejected for lack of assets at the time the offer is submitted.
- ...they comply with the state safety regulations (in particular the German Occupational Health and Safety Act (ArbSchG) and Occupational Safety Act (ASiG) including the associated legal ordinances, in particular the Workplace Ordinance (ArbStättV), Compressed Air Ordinance (DruckLV), Hazardous Substances Ordinance (GefStoffV), Industrial Safety Ordinance (BetrSichV), PPE Usage Ordinance (PSA-BV), and Load Handling Ordinance (LasthandhabV) and the safety regulations of the employers' liability insurance associations.
- ...they comply with the provisions against undeclared work, illegal temporary employment and against the misuse of services within the meaning of Germany's Third Social Security Code, the Temporary Employment Act and the Act to Combat Undeclared Work.

(2) The contractor assures that the contracting authority can check compliance with the statutory provisions by means of random checks at the place of performance and on the basis of documents to be submitted. The documents need to indicate the following at least:

- The names of the commercial employees assigned to fulfill the order
- The hours worked in the course of fulfilling the order for the given month of the random sample
- The gross hourly wages paid to industrial employees excluding bonuses

(3) The contractor shall undertake to transfer wages and salaries – including those of foreign employees, as long as they provide the service within the Federal Republic of Germany – at least monthly via salary accounts and to keep complete, verifiable, German-language documentation on the employment relationships at the company available and to submit them to the contracting authority upon request.

Additional Contractual Terms and Conditions Set by Freie
Universität Berlin for the Performance of Services (Except for
Construction Services)

Last updated: Thursday, February 1, 2024

- (4) The contractor is obliged to disclose personal data (last name, first name, name at birth, date of birth, place of birth, and residential address) in the case of a potential order in accordance with the German Posted Workers Act (*Arbeitnehmer-Entsendegesetz, AEntG*) and/or Minimum Wage Act (*Mindestlohngesetz*).
- (5) The contractor may only hire subcontractors under the condition that the subcontractor submits an identical declaration.
- (6) The contractor is aware that, under certain conditions, a knowingly incorrect declaration can result in their exclusion from receiving further orders in the future, and the contractor can be excluded from the awarding of public contracts for a period of up to five years.

13. Special Rights of Termination and Withdrawal

- (1) The contracting authority is entitled, regardless of any other termination or withdrawal rights, to withdraw from the contract or to terminate the contract with immediate effect if:
 - The contractor fails to comply with their contractual obligations even after having received a written warning or a warning in text form with an appropriate deadline.
 - The contractor promises or offers gifts or other benefits to employees of Freie Universität Berlin within the meaning of Sections 331 ff. of the German Criminal Code (*Strafgesetzbuch, StGB*) and Section 12 of the German Act against Unfair Competition (*Gesetz gegen unlauteren Wettbewerb, UWG*), or the contract was concluded in violation of the provisions of the German Act against Restraints of Competition (*Gesetzes gegen Wettbewerbsbeschränkungen, GWB*).
 - The contractor or third parties they assign commit acts specified in Sections 333 and 334 of the German Criminal Code (*Strafgesetzbuch, StGB*).
 - The contractor has brought about the conclusion of the contract in breach of the German Act against Restraints of Competition (*GWB*).
 - The contractor suspends their payments and/or other fulfillment action (also vis-à-vis third parties) not only temporarily, faces possible insolvency, or an application for insolvency is filed.
 - The contractor and/or their subcontractors fail to comply with minimum working conditions and minimum wage regulations as described in point 13.
 - The contractor and/or their subcontractors fail to comply with ILO core working standards as described in point 13.
 - The contractor and/or their subcontractors fail to comply with conditions related to the advancement of women as described in point 13.
- (2) In the event of withdrawal from the contract, the contracting authority shall be entitled, but not obliged, to retain deliveries or services received in whole or in part in return for payment of their respective value.
- (3) Otherwise, the consequences of withdrawal and termination shall be governed by the statutory provisions.

14. Data Protection and Freedom of Information Laws

- (1) The contractor is obliged to comply with the statutory provisions related to data protection, in particular with the provisions of the EU General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (*Bundesdatenschutzgesetzes, BDSG*) as amended. Information obtained from Freie Universität Berlin may not be passed on to third parties.
- (2) The contractor shall have sufficient documentation on the implementation of the statutory data protection requirements, which it shall make available to Freie Universität Berlin upon request.
- (3) The contractor shall ensure that all persons they entrust with the processing or fulfillment of this contract also

Additional Contractual Terms and Conditions Set by Freie
Universität Berlin for the Performance of Services (Except for
Construction Services)

Last updated: Thursday, February 1, 2024

observe these provisions and shall obligate them in this respect. The same shall also apply to vicarious agents and affiliated companies of the contractor, who shall not, however, be deemed third parties. The obligation of the contractor to maintain data confidentiality shall continue to exist even after the contractual relationship has ended.

(4) The contractor agrees to the contracting authority disclosing information created or obtained within the scope of this contractual relationship in accordance with the statutory provisions concerning the promotion of freedom of information in the State of Berlin (*Berliner Informationsfreiheitsgesetz, IFG BE*), if and to the extent that the contracting authority establishes a legal obligation to do so. The contractor shall support the contracting authority in the fulfillment of their legal obligations within the framework of the Berlin legislation on promoting freedom of information.

15. Written Form and Legal Venue

(1) Any change to, addition to, or deviation from the contract requires confirmation by both parties in written form (Section 126 of the German Civil Code, BGB).

(2) The exclusive legal venue is the court responsible for the site of Freie Universität Berlin. The relations between the contract parties are governed exclusively by the laws applicable in the Federal Republic of Germany. The application of international private law (IPR) and the UN Convention on Contracts for the International Sale of Goods (CISG) to the contractual relationship between the contractor and the contracting authority is expressly waived.