

Additional contractual terms and conditions of the Free University of Berlin
for the execution of services (excluding building services) status: 30/04/2018

1. General information

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

- a) the contract including applicable supplementary agreements;
- b) possible supplementary contractual provisions;
- c) the following additional contractual terms and conditions;
- d) the “General Terms and Conditions for the Execution of Services, Part B” (VOL/B) in the respective valid version.

(2) The “Supplementary Contractual Terms and Conditions for the Procurement of IT Services (EVB-IT)” in the respective current version are to be applied to the procurement of IT services until the final replacement of the Special Contractual Terms and Conditions for the Procurement of DP Systems and Devices (BVB).

(3) Terms of Delivery or Payment and Business Terms and Conditions of the contractor will only become a part of the contract if they were explicitly agreed in writing. A sending of an order confirmation with deviating business terms and conditions shall not be deemed as an “explicit written” agreement and will not be recognised tacitly with the acceptance of the order confirmation. A written confirmation of the customer is rather required for the acceptance of the deviating business terms and conditions.

2. Orders via the E-Procurement-System of the FU Berlin

The Free University of Berlin operates an own E-Procurement Catalogue. The orders received by the contractor that are generated via this system do not bear any personal signature and are also valid without a personal signature of the orderer.

3. Environmental protection

(1) The Free University of Berlin prefers the procurement of environmentally-compatible products and materials as well as environmentally-friendly processes with the fulfilment of services. Resources such as energy, water, etc. should be saved with the procurement of sustainable products and services compared to the procurement of customary products and services, danger to health as well as the environment should also be prevented. The sustainable procurement should combine economic with ecological objectives hereby. The basis of the awarding of contracts in competition are financial benchmarks.

(2) The contractor undertakes to fulfil and, if applicable, prove the conditions on the basis of Section 7 Paragraph 3 of the Berlin Law on Invitations to Tender and Public Procurement (BerlAVG) as well as stated in the Administrative Regulation Procurement and Environment (VwVBU).

(3) The customer has the right to check whether the environmental protection requirements from the object of order stipulated as mandatory within the scope of the invitation to tender are complied with by the offers submitted by the bidders. The proof can be carried out by the bidders with reference to an Eco-Label, if the offered good or service is fitted with such a label, or by equivalent proof such as technical documents of the manufacturer or test reports of recognised bodies. In case of false or incomplete details as well as in case of the absence of requested documents with regard to the environmental protection requirements, the customer is entitled to refrain from accepting the offer.

4. Prices

(1) Insofar as not otherwise agreed in writing the contractor’s price shall include packaging, transport, transport insurance, freight and expenses.

(2) The contractor shall deliver free of charge to the point of acceptance described by the customer at the agreed

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time.

(3) The agreed prices are fixed prices within the meaning of the Regulation PR 30/53 governing the prices with public orders of 21 December 1953 (Federal Gazette (BAnz.) 1953 No. 244) in the respective valid version.

5. Delivery, additional- and shortfall in services

(1) Interferences to delivery and services are to be reported to the customer immediately by stating the reasons.

(2) With marketable, serial products, for which unit prices are envisaged in the contract, the contractor is obligated to provide additional services up to 10 per cent of the quantities stipulated in the contract at the unit prices stipulated in the contract. Shortfalls of up to 10 per cent of the quantities stipulated in the contract shall not substantiate any claim for a change to the unit prices stipulated in the contract. Changed provisions can be agreed upon request by a mutual agreement.

6. Packaging

Packaging materials, which can be used several times, are to be taken back by the contractor free of charge. Transport packaging made of carton must at least contain 70 per cent (mass) of recycled material.

7. Acceptance and approval

(1) The risk of a damage or accidental loss shall pass to the customer with the acceptance (receipt) of the delivery or service at the customer's place of use. The more detailed regulation of Section 644 BGB [German Civil Code] shall remain unaffected. The contractor must have the delivery or service confirmed in writing.

(2) If the delivery or service corresponds with the agreements the customer shall declare the approval in writing without delay, if applicable after the quality inspection. If the approval of the delivery or service is not declared in writing it shall be deemed as effected with the final payment.

8. Claims for defects and statutes-of-limitations for claims for defects

(1) Deliveries and services will be inspected for defects by the customer within the scope of a proper course of business. The defects shall be reported to the contractor with obvious defects without delay beginning from the provision of the delivery or service or in case of hidden defects without delay from the discovery of the defect.

(2) The statute-of-limitations for claims for defects shall begin with the approval of the delivery or service. The warranty claims shall not be jeopardised by the disposal of original packaging material.

(3) Pursuant to Section 14 VOL/B the deadline for the statute-of-limitations of the claims for defects shall be extended to 2 years pursuant to Section 438 Para. 1, No. 3 BGB.

9. Payments

(1) The basis for all payments of the customer are simple submitted invoice documents, in which reference must be made to the respective order form number and the stipulated billing address. Invoices, on which the stipulated details are missing, cannot be processed and will be returned. Resulting delays shall thus be at the expense of the contractor. No deadlines will begin to run if delays have occurred in the invoice processing as a result of the failure to provide or the inaccurate provision of the order number.

(2) Invoices are exclusively to be issued to the following addresses:

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

The requirements for the electronic despatch are to be complied with. See www.fu-berlin.de/rechnung

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or by post

Free University of Berlin
P.O. Box 330763
14177 Berlin

- (3) The customer shall pay after fulfilment of the delivery or service within one month after the receipt of the verifiable invoice, cashless into the account that is to be stated by the contractor. The payment deadline shall be deemed as adhered to on the day on which the customer has instructed its credit institution to transfer the agreed invoice amount.
- (4) In case of payments within 14 days after receipt of a verifiable invoice, if not otherwise agreed, a cash discount of 2 per cent of the invoice amount will be deducted. This shall not apply with services, with which the granting of cash discount is excluded owing to statutory provisions, in particular with publishing products subject to price maintenance.
- (5) Cash discount will be deducted from all payments (including payments according to a payment plan, advance, discount, final and partial final payments).

10. Warranty

- (1) The contractor will be liable for defects of title and material defects according to the statutory provisions. It guarantees the careful and proper fulfilment of the contract, in particular the compliance with the stipulated specifications and other execution regulations of the customer in line with the latest status of science and technology, as well as the quality and usefulness of the delivery or service with regard to material, construction and design and the documents (drawings, plans, etc.) belonging to the delivery or service. The stipulated specifications shall be deemed as contractually assured and guaranteed properties of the object of the delivery or service.
- (2) The provisions of Sections 633 Para. 2 to 639 BGB shall also apply to contracts of purchase and for work and materials; the customer can, at its choice, also exercise the rights pursuant to Sections 434 et seqq. BGB.
- (3) The costs to be borne by the contractor with the remedy of defects shall also comprise the expenses for packaging, freight and delivery, the work required for dismantling and installation, travelling costs and the execution of the remedy of defects at the customer.
- (4) If the warranty period is not agreed separately, then it is 24 months, unless a warranty period no longer applies by law. The deadline for the report of defects shall begin in case of machines, apparatus and apparatus parts with the first commissioning.
- (5) The contractor will assume warranty for delivered spare parts and subsequent improvement work as for the object of the delivery; the warranty period will begin after the remedy of the defects for which a complaint was made.

11. Conversion of long-term contracts

If the delivery or service is due to a contract, which was concluded no later than four calendar months before the entry into force of a change in value added tax, the one contractual party can request a reasonable compensation of the additional or less burden from value added tax from the other contractual party. If the amount of the additional or reduced burden is disputed Section 287 Para. 1 of the German Code of Civil Procedure is to be applied accordingly.

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12. Suitability

- (1) The contractor assures with the acceptance of the order that
 - its company is properly registered under trade law respectively that corresponding trade law permits were granted;
 - its company has been registered in the corresponding register, if this is stipulated by law, business liability insurance has been concluded;
 - the persons, who are envisaged for the execution of the service, are certified or qualified accordingly;
 - it has satisfied its obligations for payment of taxes and duties as well as the contributions to the statutory social insurance and authorises the customer to obtain information about the registration files independent of persons or it will submit this at the request of the customer;
 - it has satisfied its obligations to pay the contributions to the health insurances and trade associations and will also continue to do this;
 - in the last two years no fine has been imposed upon it pursuant to Section 23 German Employee Secondment Act or Section 21 German Minimum Wage Act of more than EUR 2,500 and no current breach of the aforementioned regulations and no impending fine notification relate(s) or is known to it against the company or the responsible acting person(s);
 - it is not aware of any entry in the Berlin corruption register, which relate(s) to its company or the responsible acting person(s);
 - it fulfils the prerequisites under trade law for the execution of the offered services;
 - at the time when the offer is submitted, no insolvency proceedings or comparable statutory proceedings have been opened over its assets or no application has been filed for the opening of insolvency proceedings or this application has not been filed due to insufficient assets;
 - it complies with the state safety regulations (in particular Occupational Health and Safety Act, Occupational Safety Act including the associated legal ordinances, in particular ArbeitsstättenV [Workplace Ordinance], DruckluftV [Compressed Air Ordinance], GefahrstoffV [Ordinance on Hazardous Substances], BetriebssicherheitsV [Industrial Safety Ordinance], PSA Benutzungsv [Personal Protective Equipment Use Ordinance], Lastenhandhabungsv [Load Handling Ordinance]) and the safety regulations of the trade associations;
 - it complies with the provisions against illicit work, illegal employee leasing and against abuse of social benefits within the meaning of the Third Volume of the Social Code, the German Employee Personnel Leasing Act or the law governing the combating of illicit work.

- (2) The contractor assures that the customer can check the compliance with the statutory provisions by random samples at the place of the service as well as based on supporting documents that are to be submitted. The supporting documents must at least contain:
 - the names of the trade workers assigned for the fulfilment of the order;
 - the hours of work performed within the scope of fulfilment of the order of this month of the random sample as well as
 - the gross hourly wages paid to the trade workers without surcharges.

- (3) The contractor undertakes to transfer wages and salaries – also of foreign workers, if these provide the service within the Federal Republic of Germany – at least monthly through salary accounts and to make full, verifiable documents in the German language regarding the employment relationships in the company available and to submit these to the customer upon request.

- (4) The contractor undertakes in the potential order case pursuant to the German Employee Secondment Act or the German Minimum Wage Act, to announce personal data (last name, first name, name at birth, date of birth, place of birth, residential address).

- (5) The contractor undertakes to only commission subcontractors under the prerequisite that the subcontractor

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submits an equivalent declaration.

(6) The contractor is aware that, under certain prerequisites, a deliberate false declaration may result in its exclusion from the further placement of orders and the contractor may be excluded from the procurement of public orders for the duration of up to five years.

13. Minimum remuneration, ILO-core labour standards, promotion of women

(1) With the acceptance of the order from an order value of **EUR 500/net**:

- the contractor undertakes to pay its employees the same remuneration with the execution of the service with the same or equivalent work (regulations in collective wage agreements shall remain unaffected thereby);
- to grant its employees at least those working conditions with the execution of the work including the remuneration as stipulated by the collective agreement that is to be complied with according to the German Employee Secondment Act (AEntG) of 20/04/2009 (Federal Law Gazette I p. 799) or to comply with other statutory provisions governing minimum wages;
- to pay its employees (without apprentices) at least an hourly wage of EUR 9.00 gross for the execution of the service;
- to obligate the subcontractors or leasing companies commissioned by it in writing to grant its employees at least the working conditions within the scope of the contractual service that is to be fulfilled, which are decisive for the service that is to be provided by the subcontractor or the contractual partner of the leasing company according to the German Employee Secondment Act (AEntG) of 20/04/2009 (Federal Law Gazette I p. 799) or according to other statutory provisions governing minimum wages;
- to ensure that the obligation is assigned to a subcontractor or leasing company commissioned by it in writing and to prove the written assignments to the public sector customer upon request;
- to ensure that the subcontractors or leasing companies commissioned by it on their part assign the aforementioned obligations in writing to the subcontractors or leasing companies commissioned by them and obligate to prove the written assignments to the public sector customer upon request.

(2) The obligations shall not apply to services, which are provided by foreign subcontractors overseas.

(3) The contractor is aware that a breach of these provisions will result in its exclusion from the further placement of orders and the contractor may be excluded from the procurement of public orders for the duration of up to three years.

(4) The contractor undertakes with orders for certain products (genuine leather, natural textiles, handmade carpets, natural stones, products made of wood, coffee, cocoa, tea, tropical fruit, fruit juices, wine, spices, honey, rice, dried fruit, nuts, sugar, confectionery, fishing products, fireworks, matches, cut flowers, pot plants) with orders from EUR 10,000/net to carry out the order pursuant to the service specification exclusively with goods, which has proven to have been extracted or produced by complying with the minimum standards stipulated in the ILO core labour standards to the best possible extent. The minimum standards of the ILO core labour standards can be derived from:

- the Treaty No. 29 concerning forced or compulsory labour of 28 June 1930 (Federal Law Gazette 1956 II p. 641);
- the Treaty No. 87 concerning the freedom of association and the protection of the right of association of 9 July 1948 (Federal Law Gazette 1956 II p. 2073);
- the Treaty No. 98 concerning the application of the principles of the right of association and the right to conduct collective negotiations of 1 July 1949 (Federal Law Gazette 1955 II p. 1123);
- the Treaty No. 100 concerning equal pay for male and female workers for equivalent work of 29 June 1951 (Federal Law Gazette 1956 II p. 24);
- the Treaty No. 105 concerning the abolishment of forced labour of 25 June 1957 (Federal Law Gazette

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- 1959 II p. 442);
- the Treaty No. 111 concerning discrimination in employment and professions of 25 June 1958 (Federal Law Gazette 1961 II p. 98);
- the Treaty No. 138 concerning the minimum age for admission to employment of 26 June 1973 (Federal Law Gazette 1976 II p. 202) and
- the Treaty No. 182 concerning the ban on and immediate measures for removing the worst forms of child labour of 17 June 1999 (Federal Law Gazette 2001 II p. 1291).

The applicable minimum standards of the ILO core labour standards can be viewed under <http://www.ilo.org>.

-The contractor has to submit proof or a declaration in this respect to the customer without request.

(5) Pursuant to Section 4 FFV [Regulation governing the promotion of women] with orders from **EUR 25,000/gross** the contractor undertakes:

- to comply with the applicable equal treatment law;
- depending on the number of employees pursuant to Section 3 Regulation governing the promotion of women (FFV) to carry out one or more of the measures listed in Section 2 FFV for the promotion of women and/or the promotion of the reconciliation of work and family;
- to ensure that subcontractors involved in order to fulfil the contract according to Section 3 Regulation governing the promotion of women (FFV) declare that they are willing to carry out measures pursuant to Section 2 FFV and to comply with the obligations according to Section 4 FFV. A breach of this obligation by the subcontractor will be attributed to the contractor.

The contractor has to submit the declaration in this respect to the customer before delivery without request.

http://www.fu-berlin.de/sites/abt-2/zentraler-einkauf/Vergabegrundlagen/eigenerklaerungen-in-deutsch/anlage_fub_04_Frauenfoerderverordnung.pdf

(6) The customer or a third party commissioned by it may inspect the remuneration settlements of the executing companies, the documents concerning the remittance of taxes and contributions to domestic and foreign social insurance funds, the documents concerning the remittance of contributions to domestic and foreign social welfare funds of the building trade and the contracts concluded between the executing companies for the purpose of control. The executing companies have to inform their employees in writing about the possibility of such controls. The executing companies have to make full and verifiable documents available for examination of the documents stated above and to submit these to the public sector customer upon request.

14. Contractual penalty

(1) If the contractor or one of its subcontractors culpably breaches the obligations for the minimum remuneration pursuant to Point 13, a contractual penalty is, as a rule, agreed between the customer and the contractor for each culpable breach in the amount of 1 per cent, with several breaches together up to the amount of 5 per cent of the order amount. The contractor is also obligated to pay a contractual penalty for the event that the breach is committed by a subcontractor used by it or a subcontractor used by this subcontractor.

(2) If the contractor or one of its subcontractors culpably breaches the obligations relating to the applicable ILO core labour standards pursuant to Point 13, a contractual penalty is, as a rule, agreed between the customer and the contractor for each culpable breach in the amount of 1 per cent, with several breaches together up to the amount of 5 per cent of the order amount. The contractor is also obligated to pay a contractual penalty for the event that the breach is committed by a subcontractor used by it or a subcontractor used by this subcontractor.

(3) If the contractor or one of its subcontractors culpably breaches the obligations pursuant to Point 13 Regulation governing the promotion of women, a contractual penalty is, as a rule, agreed between the customer and the

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contractor for each culpable breach in the amount of 1 per cent, with several breaches together up to the amount of 5 per cent of the order amount. The contractor is also obligated to pay a contractual penalty for the event that the breach is committed by a subcontractor used by it or a subcontractor used by this subcontractor.

15. Special rights of termination- and rescission

(1) Irrespective of other rights of termination and rescission the customer is entitled to rescind the contract or to terminate the contract with immediate effect if:

- the contractor promises, offers or grants gifts or other benefits to employees of the Free University of Berlin within the meaning of Section 331 et seqq. StGB [German Criminal Code] and Section 12 UWG [Law against unfair competition] or the contract has been concluded by breaching the regulations of the law against restraints on unfair competition;
- the contractor or third parties commissioned by it commit acts within the meaning of Sections 333, 334 StGB;
- the contractor achieved the conclusion of the contract by violating the law against restraints on unfair competition (GWB);
- the contractor not only temporarily suspends its payments and/or other acts of fulfilment (also towards third parties), in case of impending insolvency or an insolvency application is filed;
- the contractor and/or its subcontractors culpably breach minimum working conditions and minimum wage regulations according to Point 13;
- the contractor and/or its subcontractors culpably breach the ILO core labour standards according to Point 13;
- the contractor and/or its subcontractors culpably breach the Regulation governing the promotion of women according to Point 13.

(2) With the rescission of the contract the customer is entitled, however not obligated, to keep received deliveries or services in full or in part against remuneration of their respective value.

(3) Incidentally, the consequences of the rescission and the termination shall be oriented to the statutory provisions.

16. Written form and place of jurisdiction

Each amendment, addendum or deviation of the contract shall require the reciprocally confirmed written form (Section 126 BGB).

The exclusive place of jurisdiction is the court of jurisdiction for the registered seat of the Free University of Berlin. The relationships between the contractual parties are exclusively regulated according to the law that is applicable in the Federal Republic of Germany. The application of international private law (IPR) as well as the UN Convention on Contracts for the International Sale of Goods (CISG) to the contractual relationships between the contractor and customer is explicitly waived.