

General Terms and Conditions

1. Scope of Application

- (1) The purchasing and ordering of goods or services, according to the specifications indicated in the order form by the purchaser or party placing the order, are to be effected either through the University of Regensburg, represented by the Head of Administration, or in the name and on behalf of the Free State of Bavaria, represented by the University of Regensburg, in turn represented by the Head of Administration (henceforth referred to as "UREG").
- (2) These terms and conditions apply to all agreements concluded through UREG by the purchaser or party placing the order.
- (3) The terms and conditions shall form part of the agreement regardless of the form of the contract, provided the legal requirements for their inclusion are satisfied.
- (4) The terms and conditions apply to all vendors and service providers (henceforth „contractors“).
- (5) The contractor's general terms and conditions of business, even when referred to or not rejected by UREG, have no validity insofar as they depart from or add to these terms and conditions.
- (6) Individual agreements with contractors (including ancillary agreements, additions and changes) take priority in all cases over these terms and conditions. The content of such agreements shall be subject to a written contract or to the written confirmation of UREG.
- (7) These terms and conditions do not apply where the contractor is a consumer within the meaning of § 13 of the German Civil Code (BGB).

2. Orders

- (1) Contracts shall become legally effective only on receipt by the contractor of a written order from UREG. Written declaration of acceptance from the contractor is not required by UREG.
- (2) Changes to the subject matter of the agreement must be in writing.
- (3) The order shall be deemed to have been accepted subject to the terms and conditions of UREG provided UREG does not receive a written rejection from the contractor within two weeks.
- (4) All contractors will receive an order number. This number must be quoted in all written documents, in particular in order confirmations, delivery notes, transport documents and invoices.

3. Bidder Declaration

- (1) A contractor with an order value of DM 20,000 (€10,225.84) shall, pursuant to the publication of the Bavarian State Ministry for Finances of 11th February 1993 (Nr. 41a/38 - S 0270 - 4/89 - 3739), make a declaration that all his legal obligations in regard to payment of taxes and social contributions have been fulfilled. In such cases, the additional form sent with the written order is to be completed, signed and returned to UREG without delay.
- (2) Until receipt of the declaration, UREG may withhold performance of all contractual obligations in regard to the contractor. § 273 of the German Civil Code (BGB) remains unaffected.

4. Delivery

- (1) The delivery time stated in the order confirmation is binding for the contractor and must be strictly adhered to. The period for delivery will be determined according to the date of order.

- (2) Delivery of goods shall be free of charge to the place of use. The delivery includes the installation and placing into operation of equipment as well as the providing of instructions and advice to staff operating the equipment. In the case of deliveries from countries subject to customs duties, the contractor shall contact UREG in regard to customs and clearance inwards in due time. Transport, packaging or installation costs, together with other expenses or levies arising from the transaction or the fulfilling of the agreement can be charged only by prior agreement.
- (3) Unless otherwise agreed or specified in the order, the place of use shall be the incoming goods department (Warenannahme) of the University of Regensburg.
- (4) Specifications of delivery vehicles and packaged goods must be in accordance with the conditions of the premises. Maximum clearance is 3.40 m. Dimensions of lifts and doors, as well as floor loading capacity, should be considered. For deliveries of large or bulky goods, in particular those that require installation, the contractor shall contact UREG three working days before the delivery date.
- (5) Partial consignments must be described as such. Deliveries must in every case be accompanied by two copies of delivery notes clearly detailing the content of the shipment, in particular the quantity, order number and number of packages.

5. Passing of Risk

- (1) The risk passes to UREG on arrival and acceptance of goods at the place of use.
- (2) Damage to other objects caused during transport of goods or installation of equipment on our premises can, at the expense of the contractor, be remedied by UREG. The expenses incurred can be set off against the claims of the contractor.

6. Property, Provision of Materials, Third Party Rights

- (1) On delivery, UREG acquires unlimited title to the goods. Clause 8 (3), s 2 remains unaffected.
- (2) Samples, raw materials and the like (material provisions) as well as documentation provided by UREG to the contractor for the purpose of the agreement remain the property of UREG. Property rights in regard to material provisions and documentation also remain unaffected. Materials and documents surrendered by UREG may be used only as far as is necessary for the fulfilment of the contract; duplication, reproduction or alteration for any other purpose is prohibited. On completion of the contract, originals and any copies are to be returned free of charge and without delay to UREG. Details of objects and documentation provided by UREG are not to be disclosed to third parties, even after completion of the contract. The non-disclosure obligation lapses only when and in so far as the knowledge contained in the surrendered material enters the public domain.
- (3) Such items – as long as they remain unprocessed – are, at the expense of the contractor, to be stored separately and to be insured to the normal extent against destruction and loss.
- (4) Processing, mixing or combining by the contractor of objects provided by UREG shall be undertaken for UREG. In the event that ownership rights of third parties are retained upon processing, mixing or combining with their goods, UREG acquires the co-ownership right, in proportion to the value of the material made available by UREG and the value of the other materials.
- (5) The contractor shall indemnify UREG from any claims of third parties arising from violations of proprietary rights occurring as a result of delivery of goods or performance of services.

7. Execution of Service, Quality Control

- (1) Subcontractors of the contractor may act only with the prior consent of UREG.

- (2) The contractor shall ensure that the safe functioning (for its intended purpose), construction and potential uses of the equipment are in accordance with the current state of technology. Compliance with all applicable regulations, in particular operational safety and accident prevention regulations, health and safety rules as well as relevant DIN, EN and VDE regulations, is required.
- (3) The operating instructions applying to employees of the centre for technical services and of outside companies for work in laboratories, which can be found at <http://www.uni-regensburg.de/Einrichtungen/Verwaltung/Abteilung-V/Referat-V-3/BetriebsanweisungTRGS526.pdf>, has to be noted.
- (4) Should safety regulations necessitate the use of safety devices, the provision and installation of such devices shall be included, without additional charge, in the service provided by the contractor.
- (5) A nominal voltage of 230 or 400 V will be provided for the operation of electrical appliances.
- (6) Agreed specifications in regard to all ordered goods include documentation necessary for operation, maintenance and repair, in particular operating instructions, spare parts lists and circuit diagrams. These are to be enclosed free of charge and in the German language.
- (7) During normal hours of operation, UREG can itself or through a representative conduct a quality inspection at the contractor's plant. UREG shall bear the costs of this, provided that a re-inspection is not rendered necessary by any identified defects. In this event, the contractor shall bear the costs of the re-inspection. In regard to the awarding of sub-contracts, the contractor shall ensure that the right to quality inspections by UREG is retained in respect of the sub-contractor.

8. Packaging, Environmental Protection

- (1) Packaging is to be restricted to that which is absolutely necessary. The provisions of the regulation concerning avoidance and recycling of packaging waste apply. (VerpackV).
- (2) The contractor shall take back, without charge, all packaging material, regardless of its nature. The same applies to empty containers. The contractor shall in all cases dispose of waste in an environmentally sound manner. Packaging materials will be returned to the contractor at his expense.
- (3) Where UREG releases the contractor from the take-back obligation described in section 2 (above), the ownership of the packaging material is transferred, without entitlement to remuneration, to UREG. This does not apply to loan packaging, provided this is clearly marked as such; in no event is the contractor entitled to extra remuneration.
- (4) In accordance with the directives of the Free State of Bavaria, suggestions for environmentally compatible delivery and performance of services are specially requested.
- (5) The provisions of law concerning the bringing into circulation, taking back and environmentally sound disposal of electrical and electronic equipment (ElektroG) remain unaffected.

9. Defects and Warranty

- (1) UREG is fully entitled to all legal warranty rights.
- (2) Specifications of goods or services defined in the order shall be included within the contractually agreed condition of these goods and services.
- (3) Notwithstanding § 442 (1) s. 2 BGB, UREG shall have an unrestricted right to claim for defects even if these defects were unknown, as a result of gross negligence, at the conclusion of the contract.
- (4) § 377 of the German Commercial Code (HGB) applies only in regard to obvious defects and where the notice of defect is given within two weeks of the discovery of the defect.

10. Prices and Payment

- (1) The price specified in the order is binding. The agreed prices are fixed prices without VAT. Where no price is quoted in the order, the valid price on the date of the sending off of the order confirmation shall apply as a fixed price.
- (2) Prices must be determined in accordance with the relevant legal provisions relating to regulation of prices; all payments are subject to an assessment of compatibility with pricing legislation. This provision shall be expressly acknowledged by the contractor. The contractor shall refund excess payments without delay.
- (3) On fulfilment of the order, a written invoice is to be submitted separately in duplicate; the invoice must not be enclosed with the shipment. The second copy is to be clearly marked as a duplicate. Invoices must comply with the requirements of § 14 (4) of the Value Added Tax Act; in particular, VAT must be specified separately on the invoice.
- (4) The contractually agreed price is payable within thirty days of completed delivery and service (including any agreed acceptance) and following receipt of the invoice, which must be completed according to section 3 (above). Payments within thirty days of receipt of the invoice shall be made with a deduction of 2% on the gross amount of the invoice, unless otherwise agreed.
- (5) Payment and discount periods begin on receipt by UREG of the invoice (hard copy); not, however, before delivery or acceptance of goods or performance of service.
- (6) UREG is not liable for payment of interest.
- (7) Invoices for partial deliveries should not be sent before completion of the entire order except by prior agreement.
- (8) Payments shall be made by bank transfer to the account specified on the invoice by an authorized recipient.
- (9) Additional costs incurred as a result of failure to comply with these conditions shall be borne by the contractor.

11. Data Protection

- (1) Data obtained from the contractor shall be collected and processed by UREG, within the scope of the contractual relationship, insofar as this is necessary for the execution of the contact.
- (2) The provisions of the applicable Data Protection Acts remain unaffected.

12. Set Off

The contractor may only offset UREG's claims where his own claims are undisputed or are res judicata.

13. Supplementary Provisions for Maintenance Contracts

- (1) In respect of maintenance and consultancy contracts, the additional contractual terms specified in the following sections apply.
- (2) Within the scope of maintenance contracts, the law of contracts for work and services (§§ 631 et seq. BGB) shall apply in regard to individual services provided by the contractor.
- (3) UREG may terminate maintenance contracts at any time without prior notice and without giving reasons. § 628 BGB remains unaffected.

14. Withdrawal and Termination

- (1) UREG is, without prejudice to other rights of termination or rescission, entitled to terminate the contract or to withdraw from it where the assets of the debtor have become subject to insolvency proceedings or where the insolvency application is rejected for want of substance.
- (2) The same applies in the event that actions in terms of §§ 333 and 334 of the German Criminal Code (StGB) are performed by the contractor.

15. Further Provisions

- (1) The place of performance of delivery and payment is Regensburg. Insofar as the contracting party is a person according to § 38 (1) Code of Civil Procedure (ZPO) and no exclusive place of jurisdiction is determined, Regensburg will be the place of jurisdiction.
- (2) All agreements are subject to the law of the Federal Republic of Germany to the exclusion of the UN Convention on the International Sale of Goods.
- (3) Legally relevant declarations and notifications to be submitted to UREG on completion of the contract, in particular setting of deadlines, reminders and withdrawals, are invalid unless presented in written form.
- (4) Should any provision of these general terms and conditions be or become invalid the validity of the remaining provisions shall not be affected.
- (5) Attention is drawn to the provisions of the Regulation on the Representation of the Free State of Bavaria and to the applicable remedial procedures.

These General Terms and Conditions can be downloaded at:

<http://www.uni-regensburg.de/verwaltung/medien/dokumente/general-terms-conditions.pdf>