

# Supplementary Contractual Terms of the Freie Universität Berlin for the Execution of Services (except Construction Services) of 15 September 2010

## 1. General

(1) The following terms of reference are valid for deliveries in the following order:

- a) the service specification,
- b) any additional contractual terms,
- c) the following supplementary contractual terms of 13 July 2009,
- d) the "General Terms for the Execution of Services, Part B" (VOL/B) as amended on 08/05/2003 (version 2003).

(2) Until the "Special Contractual Terms for the Procurement of Data Processing Services" (BVB) are finally replaced, the current version of the "Supplementary Contractual Terms for the Procurement of IT Services (EVB-IT)" applies for the procurement of IT services.

(3) The contractor's terms and conditions of delivery, payment and trade will only become part of the contract if they were expressly agreed upon in writing.

## 2. Orders by e-commerce

(1) The Freie Universität Berlin operates its own e-commerce. Order processing is also carried out by fax or email.

(2) The orders received by the contractor are generated by e-commerce and not signed. Under the signature space: "On behalf of" they are marked as follows: Name of the person entitled to order with the addition:

"This order was generated by e-commerce and is valid without the personal signature of the person entitled to order."

## 3. Environmental protection

The contractor agrees to preferentially use environmentally friendly products and procedures within the framework of the economic and technical possibilities, not only regarding his own service but also regarding supplies or additional services by third parties. The valid legal standards must be observed.

## 4. Prices

The agreed prices are fixed prices. They are based on regulation PR 30/53 on prices for public contracts of 23 December 1953, last amended by regulation PR 1/89 of 13 June 1989 (Federal Law Gazette - *BGBL.I*, page 1094).

## 5. Delivery, additional deliveries and delivery shortfalls

(1) At the agreed time the contractor delivers free of cost (free delivery to the place of use and not only delivered free) to the delivery address designated by the purchaser.

(2) Delivery delays and defaults must be reported to the purchaser immediately stating the reasons.

(3) The contractor is obliged to provide additional deliveries of marketable standard products, for which standard prices are provided in the contract, for up to 10 p.c. of the contractually fixed quantities at the standard prices determined by contract. Delivery shortfalls of up to 10 p.c. of the contractually fixed quantities do not justify any claim for changing the standard prices determined by contract.

Upon request, changes regarding the periods for completion can be jointly agreed upon.

## 6. Packaging

The contractor must pack and ship goods appropriately in order to avoid shipping damage. Packaging material must be limited to the necessary extent; environmentally friendly packaging material (reusable packaging) is preferred. All packaging must be taken back free of charge. The valid legal regulations shall remain unaffected.

## 7. Acceptance and approval

(1) By accepting (receiving) the delivery or service at the place of use, the risk of damage or accidental loss devolves upon the purchaser. The stricter regulation as defined by section 644 of the German Civil Code (*BGB*) remains unaffected. The contractor must receive a delivery confirmation in writing (normally the delivery note).

(2) If the service meets the agreements, the purchaser immediately declares acceptance in writing, where necessary after a quality control. If acceptance of the delivery or service is not declared in writing, it shall be deemed affected by the final payment.

## 8. Periods of limitation regarding warranty claims

The period of limitation regarding warranty claims begins with the acceptance of the delivery or service. Warranty claims are not jeopardized by disposal of the original packaging material.

## 9. Revocation from the contract

Where a revocation from the contract takes place the purchaser is entitled, but not obliged, to keep received deliveries or services fully or in parts against payment of the respective value. The purchaser is entitled to declare revocation from the contract if insolvency proceedings have been commenced against the contractor. On the purchaser's receipt of the letter about the commencement of insolvency proceedings, all deliveries and services not yet received by the purchaser can be cancelled automatically and regardless of the processing stage at the contractor. The purchaser is obliged to furnish proof about the delivery status within 3 working days.

## 10. Payments

(1) Single handed-in accounting records referring to the respective order form number and the given invoice address are the basis of all payments. If this is not the case, there will be defaults in payment due to the electronic processing of the payment. The purchaser **can not** be held responsible for this.

(2) Within one month of receiving the verifiable invoice after fulfillment of the service the purchaser pays cashless into the account given by the contractor. The term of payment is considered protected from the day the purchaser ordered his credit institution to transfer the agreed invoice amount.

(3) Unless otherwise agreed, an anticipation rate of 2 per cent of the invoice amount is deducted in the event of payment within 14 days. If the contractor allows other purchasers of the FU Berlin higher anticipation rates or longer terms of payment, they will also be considered as agreed part of this purchasing order. If part payment or advance payment was agreed upon in writing, the preceding terms are valid, respectively.

## 11. Tortious acts

The purchaser is entitled to declare revocation from the contract with immediate effect if the contractor promises, offers or grants employees of the FU Berlin gifts or other advantages as defined by sections 331 following of the German Criminal Code (*StGB*) and section 12 of the Act against Unfair Competition (*UWG*), or if the contract was accomplished breaking regulations of the Act against Restraints of Competition.

## 12. Written form and venue

Every amendment, addition or divergence of the contract must be reciprocally agreed upon in writing. The exclusive jurisdictional venue is the court appropriate for the legal seat of the Freie Universität. Relations between the contracting parties are exclusively regulated by the established law in the Federal Republic of Germany. Private International Law as well as the United Nations Convention on Contracts for the International Sale of Goods (*CISG*) are expressly not applicable regarding the contractual relationship between purchaser and contractor.

## 13. Amendment of long-term contracts

If the service is based on a contract concluded not later than four calendar months prior to the effective date of a sales tax amendment, one contract party can claim an appropriate compensation for the additional or lesser charge of sales taxes from the other. If the additional or lesser charge is litigious, section 287 subsection 1 of the Code of Civil Procedure shall apply *mutatis mutandis*.

## 14. Ordinance on the Promotion of Women

In compliance with section 13 subsection 1 of the Federal State Law on Equality (*Landesgleichstellungsgesetz - LGG*) in connection with the Ordinance on the Promotion of Women (*Frauenförderverordnung - FFV*) the Federal State of Berlin will assign public contracts - except construction services - with an estimated value of more than 50.000 € only to those companies with more than ten employees as defined by section 1 subsection 2 of the *FFV* if the contractors undertake to comply with the established principle of equal treatment. Depending on the number of employees (section 3 of the *FFV*), the contractors must agree to implement one or more than one of the specified measures regarding the promotion of women and/or the compatibility of family and career as defined by section 2 of the *FFV*. The obligation can only be waived in case of provable legal impediments. This applies in particular to companies domiciled in other Member States of the European Union. Offers, that contain no declaration or an incomplete declaration as defined by section 1 subsection 2 of the *FFV*, will not be considered.