

# General Terms and Conditions of the University of Dresden

## § 1 Basic Principles

- (1) The general terms and conditions of the University of Dresden (GTaC) take into consideration the general circumstances which have become generally accepted in concluding contracts due to regular awarding practice. The GTaC are additional contract terms in accordance with § 1 of the *Allgemeinen Vertragsbedingungen für die Ausführung von Leistungen (VOL/B)*.
- (2) By agreement of these GTaC, VOL/B shall be a component of the contract.
- (3) The *Verordnung PR No. 30/53 über die Preise bei öffentlichen Aufträgen*, dated 21.11.1953 (Bundesanzeiger No. 244, dated 18.12.1953) shall apply in its relevant version to the contract.

## § 2 Scope

- (1) The GTaC shall be valid for contracts on providing services as well as on the purchase or production of goods.
- (2) They shall be valid for other contract types (e.g. rent, leasing) accordingly.

## § 3 Contracting Body

- (1) The University of Dresden shall be the contracting body.
- (2) The University of Dresden shall be represented by the Chancellor of the University of Dresden, he is deputised by the Head of the Department for the Budget, Central Acquisition and General Administration (Dezernentin Haushalt, Zentrale Beschaffung und Allgemeine Verwaltung).

## § 4 Contact and Negotiating Partner

- (1) Usually, the Sachgebiet Zentrale Beschaffung will be the contact and negotiating partner concerning contract issues.
- (2) The Sachgebiet Zentrale Beschaffung may name other university unities as contact partner and may authorise them to issue certain statements and to carry out certain actions.

## § 5 Integral Parts of the Contract

- (1) The manner and the extent of the mutual obligations shall be determined by the contract.
- (2) Integral parts of the contract shall be:
  - a) The service and performance specification,
  - b) The contractual offer and the acceptance letter,
  - c) Amendatory contract terms,
  - d) These general terms and conditions (Additional amendatory contract terms)
  - e) *Allgemeine Vertragsbedingungen für die Ausführung von Leistungen (VOL/B)*.
- (3) In case of disagreements, the integral parts of the contract shall be valid in the order of precedence mentioned above.
- (4) Technical guidelines and technical terms of delivery shall also be effective as service and performance specification as mentioned above.
- (5) Performance features of approved samples may be used to substantiate the service and performance specification.
- (6) The GTaC of the contractor shall not become an integral part of the contract.

## § 6 Conclusion of Contract

- (1) Agreements pertaining the contract shall be laid down in writing. To become effective, oral agreements as well as statements in the form of texts require an acknowledgment as laid down in sentence 1. Without this acknowledgment, the party which refers to the oral agreement bears the burden of proof. In this case, the contents and the claim that no written acknowledgement was deemed necessary must be proved.
- (2) The contractor must confirm in writing the receipt of the acceptance letter to the Sachgebiet Zentrale Beschaffung.

## § 7 Quality Assurance / Quality inspection

- (1) The requirements for the operational quality assurance system shall be included in the service and performance specification.
- (2) The contractor guarantees the contracting body to comply with the agreed quality assurance procedure and to give notice about changes.
- (3) The University of Dresden reserves its right to examine the quality management system used by the contractor.
- (4) In the context of the quality inspection, the University of Dresden is entitled to obtain information from the contractor about the performance as specified in the contract. This may be done on site and during the on-going production. Access to the performance documents and to any further necessary information must be guaranteed at all times.
- (5) The University of Dresden may demand of the contractor the submission of a standardised quality inspection certificate instead of carrying out the quality inspection.
- (6) Further provisions regarding the quality inspection arise from § 12 VOL/B.

## § 8 Place of Performance / Place of Payment

- (1) The place of performance shall be the place where the contractual performance must be fulfilled. Without contractual agreement, the place of performance shall be the seat of the Sachgebiet Zentrale Beschaffung in Dresden.
- (2) The place of payment shall be the seat of the Landesoberkasse in Dresden in charge of the University of Dresden.

## § 9 Packaging, Transport, Transport Costs

- (1) For secure transportation, the contractor must use appropriate packaging materials according to the requirements of nature and weight of the goods as well as the selected means of conveyance.
- (2) In principle, the costs for packaging materials and transportation are borne by the contractor. They must be included in the calculation for the price of the contractual offer. This applies also to additional costs, as for example insurance costs, commission charges for cash on delivery, freight charges, application charges, stall money or the charges for a statement on transportation charges.
- (3) The contractor is required or alternatively the contractor must put his carrier under the obligation to take back packaging (in accordance with the *Verpackungsverordnung* in force from time to time) free of charges on delivery from the recipient of the delivered goods. There shall be no transfer of ownership of packaging material in this case. However, the recipient of the delivered goods may demand on delivery that the ownership of the packaging material be transferred to him, if the material may be disposed of.

## § 10 Delivery Notes

- (1) To prepare the delivery, the contractor shall draw up the delivery notes.
- (2) A delivery note must be prepared in duplicate (set). For each order number, one set of delivery notes per recipient must be prepared. For each partial delivery, one set of delivery notes per recipient must be prepared.
- (3) The order number and, if necessary, the appropriate labelling of the delivered goods must be declared on the delivery note.

## § 11 Delivery

- (1) Unless otherwise agreed, the object due shall be delivered to the contractually determined recipient on his premises (place of application).
- (2) On delivery, the contractor must prompt the recipient to give an acknowledgment of receipt for the object on the set of delivery notes. One copy of the delivery note shall remain with the recipient, one copy shall remain with the contractor.
- (3) If the contractor does not carry out the delivery himself, he undertakes to obligate the auxiliary person to act according to subparagraph 2.

## § 12 Acceptance

- (1) The declaration of the University of Dresden that the main subject matter of the contract has been fulfilled shall be regarded as acceptance. In observance to the precedent sentence § 13 VOL/B shall remain unaffected.
- (2) A preceding quality inspection in accordance with § 7 GTaC shall not substitute the acceptance.
- (3) In case of a considerable defect of quality or considerable legal imperfection in title (f. ex. §§ 434, 435, 633 BGB) or if the object due cannot be used as determined in the contract, the University of Dresden or its representative may decline acceptance.

## § 13 Presentation of the Invoice

- (1) The contractor must present the invoice in duplicate. § 15 VOL/B shall remain unaffected.
- (2) A separate invoice must be made out for each order number. Different delivery places may be combined.
- (3) If partial performances have been agreed for one order (f. ex. delivery at different times), a separate invoice may be presented for each partial service.

## § 14 Payment of the Invoice

- (1) The payment of invoices shall be carried out according to the terms of the contractual agreements, at the latest 30 days after the maturity and receipt of the invoice. Maturity only occurs after successful performance according to the contractual provision.
- (2) The day of releasing an order for payment or posting the order for payment shall be regarded as the day of payment.
- (3) In observance to the precedent subparagraphs 1 and 2, § 17 VOL/B shall be effective.

## § 15 Discount

- (1) If discounts have been agreed in the contract or have been offered by the contractor on the invoice, the discount period shall start with the receipt of the invoice and with the orderly fulfilment of the contract by the contractor. If the University of Dresden raises justified objections or defence pleas, the discount period shall be delayed for this period.

- (2) The discount period should not fall below 14 days.

## § 16 Secrecy

- (1) The contract parties undertake to disclose information about the contents of the contract to third parties only if and to the extent to which it is necessary for the fulfilment of the contract.
- (2) The provisions on performance documents (§ 3 VOL/B) shall remain unaffected.

## § 17 Termination of the Contract for Special Reasons

- (1) The University of Dresden may, apart from the provisions of § 8 VOL/B, withdraw from the contract or terminate it with immediate effect
  - a) if the contractor violates its obligation of secrecy or an obligation to keep secret facts which have become known to him in connection with the contract;
  - b) if the contractor has participated in illegal competition restrictions within the meaning of the Gesetz gegen Wettbewerbsbeschränkungen (GWB) in the course of the establishment or execution of the contractual obligation. These comprise specifically an agreement with third parties about tendering or non-tendering as well as the agreement with third parties about prices.
  - c) if reasons for disqualification arise in accordance with § 333 StGB (German Penal Code) (granting of advantages) or § 334 StGB (bribery) or in the case of deliberate false statements regarding reliability as well as the expertise and the efficiency on the part of the contractor.
- (2) Further legal provisions, especially the right to terminate the contract in accordance with §§ 314, 626 BGB (German Civil Code) shall remain unaffected.

## § 18 Contractual Penalty

- (1) If execution periods are exceeded, the contracting body may demand a contractual penalty in the amount of 0.5 of 100 of the overall contract volume per week, but not exceeding 5 of 100 exclusive of the legal VAT (value added tax).
- (2) The contracting body may claim the penalty in addition to the successful performance of the contract.
- (3) If the contractor can prove that he is only culpable of slight negligence in case of a breach of the execution periods or that only little damage has been done, the contracting body may abstain from the request of a penalty.
- (4) Additional claims and rights shall remain unaffected.

## § 19 Governing Law

- (1) The laws of the Federal Republic of Germany will govern this contract and any dispute of any sort related to the contract that might arise.
- (2) The written correspondence with the contracting body must be carried out in German.

## § 20 Place of Jurisdiction

Dresden shall be the legal venue.