



Contract between Tübingen University hereinafter referred as UT

And

Contractor

**Tübingen University's specific contractual terms and conditions for delivery and performance
(contractual obligations)**

§ 1 General

1. As a general rule Tübingen University (UT) only place orders on the basis of the following terms and conditions and on the basis of the supplementary agreements mentioned in the order.
2. The contractors general terms and conditions for delivery and payment are not valid even when the contractor uses them in the normal course of his business or formally draws his attention to them.
3. Furthermore the following regulations shall apply: the contract procedures for performance part B (VOL-B); the supplementary terms and conditions for the acquirement of IT-Services (EVB-IT) and in the case where no relevant EVB-IT rules exist for particular types of contracts, the relevant special contract terms and conditions (BVB) will apply.
4. **§ 2 Document of Compliance**
5. The placement of an order worth EUR 10,000 and more is only effective when the contractor:
 1. Submits a certificate (or a notarized copy) from his Taxation Office declaring that from the point of view of tax, no doubts exist in relation to his ability to grant orders.
 2. Submits a declaration stating that he has fulfilled his legal obligations in remitting non-tax payments.
It is the responsibility of the contractor to provide all requested documents as soon as possible so that no delay in the contract proceedings occurs.

§ 3 Order Placement

In order that the placement of order be binding it must be in written form. Exceptions to this rule can take place if orders are required urgently (e.g. replacement parts perishable goods etc.) whose order is placed verbally or by telephone and will be subsequently submitted and confirmed in written form.

§ 4 Price

If no other arrangement is made the underlying offer price shall be the fixed price. This is understood to be free delivery to the point of use including packaging. Exceptions can only be permitted when this is the usual course of business. The costs involved here are accounted for separately.

The price fixture procedure is based on the regulations of the public pricing orders of PR 30/53 from 21.11.1953 in the current verified version. The guidelines for calculation of sales costs (LSP) are used here.

§ 5 Packaging, Transport , Insurance

The costs of packaging shall be born by the contractor unless the charging of packaging is the usual course of business here. In this case the costs should be remitted separated. The same goes for leased or rented packaging like palettes, hobbocks etc all types of packaging shall become the property of the university without the need for a special agreement in this case. In all cases the contractor provides the UT with packaging (lent) free of cost, even

when these cannot be immediately returned. The UT is at liberty to return similar packaging instead of the packaging received.

Delivery is in principle free to the point of use. Transport risks are carried exclusively by the contractor. If the contractor decides to take out an insurance policy to cover transport risks, then he shall cover these costs himself. It is not permitted to transfer the costs of insurance to the UT.

§ 6 Delivery

The delivery has to be to the place of order i.e. the site of installation. Each delivery must be accompanied by a duplicate bill of delivery. One copy shall be stamped and returned to the contractor. In the case of the use of hired labour, the number of hours required need to be confirmed by the corresponding university facility (Institute, Seminar, Clinic).

In the case of foreign deliveries which go through customs the contractor should inform the UT in plenty of time regarding customs and the customs procedures to be undertaken (also the procedures for those goods which do not need to go through customs).

§ 7 Delay in Delivery

The agreed on delivery dates are fixed dates. In the case that the contractor defaults on the deadline and fails to deliver within the extension of time agreed upon, then the contractor has the right to refuse the receipt of the delivery at the end of the deadline. Furthermore, the UT is at liberty to claim for damages as a result of the failure to fulfil the contract conditions for non-delivery and to claim the difference in cost when the purchase of a replacement product from a third party is required. He is also entitled to withdraw from the contract. In this case §§. 320 ff BGB (German Civil Code) are to be used.

If the contractor is aware of reasons which could cause the delay in delivery within the agreed upon deadline, he must relate this information to the UT without delay. The announcement of a delay in delivery does not exempt the contractor from the delay consequences. In this case the contractor is automatically in delay and therefore the UT can claim consequences immediately.

§ 8 Invoicing

The contractor should complete the invoices in triplicate form and send them with enclosed stamped bill of delivery to the place of use. Where the invoices are incorrect or not complete they shall be considered to be not send. The contractor is in this case not in a position to make claims on the UT for delay in payment. The deadlines for discount shall not be started.

By agreed partial delivery, partial invoices can be acknowledged when the extent of the full delivery and the extent of the invoices set for partial delivery clearly can be seen and understood. An all inclusive invoice does not compel the UT to payment.

§ 9 Terms of Payment

In principle the UT makes payments within 14 days with a discount of 3% or within 30 days purely net. The calculation of discount is based on the arrival time at the place of use and not from the time of deployment of the invoice. In the case of arranged partial delivery, the total discount amount will be deducted from the final invoice, unless the value of the outstanding delivery is below the total amount in the final invoice. In this case the corresponding amount of discount will be deducted from each partial invoice. Terms of payment from the AN which differ to these will be only considered when they have been clearly confirmed. Deviating terms of payment cannot be considered.

§ 10 Execution of the Contract

The contractor bears the financial responsibility until fulfilment of delivery and performance for all costs involved in loss or damage to the delivery and performance and to the materials and objects involved in reaching this end. All samples drawings and models given to him from the UT in order to fulfil the contract are covered by copyright. The contractor is forbidden from duplicating these, making changes to them or passing them on to a third party. This extends also to the business area of the seller. At the end of use the AN is compelled to return all samples, etc to the UT at no extra charge.

The delivery and performance must fulfil the regulations of the German security and protection of workplace norms (TÜV) Technical Control Board CE and GS norms electro medical machines and devices, accident protection and radioactive protection and all other norms governed by public law and regulations. Furthermore proof must be presented on demand.

The contractor is compelled to deliver at no further charge all documents in the form of drawings, plans, instructions for use, inspections notes, certificates in duplicate form required for approval operation maintenance and repair.

§ 11 Instruction of Personnel, Quality Inspection and Acceptance

The contractor is responsible for the free of charge instruction of use of the delivered machines. The UT is entitled to make a quality inspection by himself or through a representative in the contractor works.

The acceptance of the delivered goods will take place at the place of use of the UT unless otherwise agreed on. A previous inspection or test on behalf of the contractor is not considered as acceptance unless this is agreed on in written form in advance. When the delivered goods are accepted the contractor will receive an acceptance certificate where possible on his copy of the delivery bill.

Deliveries of part deliveries which the receiver finds fault with have to be taken back by the contractor immediately. On request they have to deliver the quickest replacement. In principle the costs and the danger of assembly and reassembly shall be born by the AN. The costs and risks for the return of faulty parts is born by the AN. If pre-trial discovery proceedings are started in relation to a contract part, the refused pieces will be stored at the costs and risk of the contractor.

In the case where a conflict takes place in relation to a partial delivery, this should not cause delay or refusal of the further contractual matters unless the UT agrees to postponement.

§ 12 Warranty, Liability

The UT is entitled to the full legal warranty claims. Apart from this the contractor guarantees that the delivery and performance contain no defect by which the value of the goods would be compromised and that the specified quality or durability are guaranteed. In every case the contractor is completely liable for the consequential harm caused by a defect. The guarantee period shall be 24 Months unless otherwise agreed on.

All defects which occur during the warranty period and which are not due to inappropriate handling, shall be dealt with and overcome without delay by the contractor unless the UT requires rectification in the form of the delivery of a defect free replacement part. If the contractor delays in

dealing with the defect, the UT is entitled to undertake the elimination of the defect on contractors costs.

The warranty covers all parts delivered and all parts subsequently ordered from the supplier. In relation to the latter the period of limitation for warranty begins on the day of delivery. The limitation period and guarantee deadlines for claims on defect deliveries are suspended during the total period needed to deal with the defects.

§ 13 Violation of Intellectual Property Rights

The contractor is liable for any infringement on third party Intellectual Property Rights during the period of contract procedures and during the delivery and performance. He exempts the purchaser from claims resulting from any infringement of Third Party Rights. Should the infringement of Third Party Rights be exposed subsequently, the contractor is committed to ensuring further use as specified in the contract. The contractor, after consultation with the purchaser, is compelled to find a suitable replacement as soon as possible if further use within an economically reasonable framework cannot be safeguarded. The Purchaser is also entitled to withdraw from the contract in the case where his interests in a contractual basis are no longer being met.

The contractor is liable, according to the regulations for delivery delay, for the period in which the utilisation of the delivery or performance is not possible due to legal grounds. He exempts the purchaser from third party claims from any intellectual property rights infringements.

§ 14 Order Cancellation

In principle the UT has the right to claim costs and damages or to claim the right to withdraw from the contract in the case that a breach of general conditions of the contract exist. The UT also has the right to withdraw from or terminate the contract, regardless of other termination or withdrawal regulations, in the case that the contractor has been deemed to have carried out activities falling within §§. 333,334 StGB8 (German Criminal Code) (granting undue advantage, bribery). Moreover the UT can claim damages in such a case. If the assumption can be justified after the contract has been completed, that the contractor has been involved in illegal activities, similar to those mentioned above leading to completion of the contract, the UT has the right to withdraw, even subsequently, from the contract and where possible to return the goods step by step on the reimbursement of the negotiated purchase price. In this case compensation cannot be claimed.

§ 15 Factoring, Insolvency Procedure

The contractor is not entitled to assign a claim against the UT to a third party unless the UT has agreed beforehand to this assignment of claims. If the contractor attempts to render the delivery or performance under conditional sale i.e. without proprietary rights, the contractor should disclose to the UT on his own accord whether an assignment as security has taken place. The UT has the right to withdraw from the order without notice if the assets of the contractor undergo an insolvency procedure or similar procedure. Payment of damages will not be paid.

In this case the contractor is automatically considered to be in default whereby the UT can immediately implement the consequences of failure to comply with appointed dates of later stage deliveries.

§ 16 Governing law and Jurisdiction

The contract shall be governed by the laws of the Federal Republic of Germany excluding the application of CISG(Convention of International Sale of Goods).

Jurisdiction is Tübingen for both parties of the contract.

Please note: this translation of the Contractual Terms and Conditions adheres to and follows the German Legal Stipulations.