

General Terms and Conditions of Technische Universität Berlin
for the Execution of Services
(excluding Construction Services) as of 15.11.2023

1. General

- (1) The following shall apply to the procurement of goods and services in the order listed:
 - a) the contract including any applicable supplementary agreements;
 - b) any supplementary contractual provisions;
 - c) the following General Terms and Conditions of TU Berlin;
 - d) the latest version of the "General Conditions for the Execution of Services, Part B" (VOL/B).
- (2) The "Supplementary Terms of Contract for the Procurement of IT Services (EVB-IT)" in the respective current version shall apply to the procurement of IT services.
- (3) The contractor's terms and conditions of delivery, payment and business shall only be included in the contract if they have been expressly agreed in writing. An order confirmation with different terms and conditions shall not be deemed an "express written agreement" and shall not be tacitly accepted with the acceptance of the order confirmation. Rather, acceptance of any different terms and conditions requires written confirmation from the contracting authority.

2. Environmental protection

- (1) Technische Universität Berlin is committed to considering ecological criteria when purchasing goods or services. Preference shall be given to environmentally-friendly and energy-efficient products, materials and processes. When awarding supply or service contracts, TU Berlin ensures that negative environmental impacts resulting from the production, use and disposal of goods as well as through the execution of a service are avoided as far as possible. When assessing the economic viability of tenders within the meaning of Section 127 (1) of the Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen), the full life cycle costs shall be taken into account as a matter of principle.
- (2) The contractor is obliged to fulfill the conditions specified on the basis of Section 7 of the Berlin Tender and Award Act (Berliner Ausschreibungs- und Vergabegesetz – BerlAVG) and in the Administrative Regulation on Procurement and the Environment (Verwaltungsvorschrift Beschaffung und Umwelt – VwVBU) and, if necessary, to provide proof of this.
- (3) The contracting authority has the right to verify whether the mandatory environmental protection requirements for the subject of the contract stipulated in the invitation to tender are met by the bids submitted. Proof may be provided by bidders through reference to an eco-label, if the goods or services offered bear such a label, or by equivalent proof, such as technical documentation from the manufacturer or test reports from recognized bodies. In the event of incorrect or incomplete information as well as in the absence of required proof with regard to environmental protection requirements, the contracting authority shall be entitled to reject the tender.

3. Prices

- (1) Unless otherwise agreed in writing, the contractor's price includes packaging, transport, transport insurance, freight and expenses.
- (2) The contractor shall deliver free of charge at the agreed time to the place of acceptance designated by the contracting authority.
- (3) The agreed prices shall be fixed prices within the meaning of Regulation PR 30/53 on Prices for Public Contracts of 21 November 1953 (Federal Gazette 1953 No. 244) as amended from time to time.

4. Delivery, additional and reduced supplies or services

- (1) The contracting authority must be notified immediately of any disruptions in delivery of supplies or services, stating the reasons.
- (2) In the case of marketable serial products for which unit prices are stipulated in the contract, the contractor shall be obliged to provide additional supplies up to 20% of the quantities stipulated in the contract at the unit prices stipulated in the contract. Reduced supplies of up to 20% of the quantities stipulated in the contract shall not give rise to any claim to a change in the unit prices stipulated in the contract. Upon request, revised conditions may be agreed by mutual consent.

5. Packaging

- (1) Goods shall be packaged appropriately so that damage is avoided.
- (2) Packaging materials shall be limited to the extent necessary for this purpose; environmentally friendly packaging materials shall be preferred. Packaging materials that can be reused are to be retrieved by the contractor free of charge. The applicable statutory regulations remain unaffected.

6. Receipt and acceptance

- (1) Upon receipt (taking delivery) of the supplies or service, the risk of damage or accidental loss shall pass to the contracting authority. The provisions of Sections 644 and 447 of the German Civil Code (Bürgerliches Gesetzbuch – BGB) are not applicable.

- (2) If the contractor's supplies or service comply with the agreements, the contracting authority shall declare acceptance in writing without delay, if necessary after carrying out a quality inspection. If acceptance of the supplies or service is not declared in writing, it shall be deemed to have been effected with the final payment.

7. Claims for defects and limitation periods for claims for defects

- (1) Goods and services shall be inspected for defects by the contracting authority in the ordinary course of business. In the case of obvious defects, the contractor shall be notified of the defect without delay, calculated from the date of delivery of the goods or services, or in the case of hidden defects, without delay from the date of discovery of the defect.
- (2) The limitation period for claims for defects shall commence upon acceptance of the delivery or service. Warranty claims shall not be affected by the disposal of original packaging material.
- (3) Pursuant to Section 14 VOL/B, the period for the limitation of claims for defects pursuant to Section 438 (1) no. 3 BGB shall be extended to 2 years.

8. Payments

- (1) All payments made by the contracting authority shall be based on invoices submitted by the contractor, which must include the relevant TUB order number (if available) and the specified invoicing address. Invoices which do not include the prescribed information cannot be processed and shall be returned. Any delays resulting therefrom shall be borne by the contractor. The payment period shall not commence if delays in processing invoices occur as a result of a failure to state or state correctly TU Berlin's order number (if available).
- (2) The contracting authority shall, after delivery of the goods or performance of the service and within one month following receipt of the auditable invoice, make a cashless payment to the account specified by the contractor. The payment deadline shall be deemed to have been met on the day on which the contracting authority instructs its credit institution to transfer the agreed invoice amount.
- (3) If payment is made within 14 days, a discount of 2% of the amount invoiced shall be deducted unless otherwise agreed. This shall not apply to services for which the granting of a cash discount is excluded due to statutory provisions, in particular to price-linked publishing products.
- (4) If installments or advance payments have been agreed, the above provisions shall apply accordingly.

9. Warranty

- (1) The contractor shall be liable for defects of title and quality in accordance with the statutory provisions. The contractor guarantees the careful and proper fulfillment of the contract, in particular compliance with the stipulated specifications and other execution regulations of the contracting authority according to the latest state of science and technology as well as the quality and expediency of the goods or service with regard to material, construction and execution and the documents accompanying the supply or service (drawings, plans, etc.). The stipulated specifications shall be deemed to be contractually assured and guaranteed properties of the goods or service.
- (2) The provisions of Sections 633 (2) to 639 of the German Civil Code (BGB) shall also apply to contracts for sale and contracts for work and materials; the contracting authority may also, at its discretion, exercise the rights under Sections 434 et seq. of the German Civil Code (BGB).
- (3) The costs to be borne by the contractor in the event of rectification of defects shall also include the expenses for packaging, freight and delivery, the work involved in dismantling and installation, travel expenses and the rectification of defects at the contracting authority's premises.
- (4) If the warranty period is not agreed separately, it shall be 24 months, unless a longer warranty period applies by law. The period for notification of defects shall commence for machines, apparatus and apparatus parts with their first commissioning.
- (5) The contractor shall provide the same warranty for delivered replacement parts and rectification as for the object of the contract; the warranty period shall commence after the defects complained of have been rectified.

10. Conversion of long-term contracts

If the supply of goods or services is based on a contract that was concluded no later than four calendar months prior to the entry into force of a change in sales tax, one party to the contract may demand appropriate compensation from the other party for the additional or reduced charge for sales tax purposes. If the amount of the additional or reduced charge is disputed, Section 287 (1) of the Code of Civil Procedure (Zivilprozessordnung) shall apply.

11. Written form

Any amendment, supplement or deviation from the contract must be made in writing (Section 126 BGB).

12. Place of jurisdiction

The place of jurisdiction is Berlin.