General Terms and Conditions of Purchase

of the Facility for Antiproton and Ion Research in Europe GmbH (FAIR GmbH), with registered offices in Darmstadt

1. General:
Contractor's Standard Terms of Trade (AGB) and terms in the FAIR's purchase order letter or terms diverging from these General Terms and Conditions of Purchase only apply if and insofar as they were expressly acknowledged by the Facility for Antiproton and Ion Research GmbH in Europe (FAIR) in writing. The same also applies where the Contractor makes reference to their Standard Terms of Trade (AGB) in their offer or in the order confirmation. The purchase order number, reference and date of FAIR's correspondence must be included in all correspondence, also in invoices.

2. Offer, purchase order and order confirmation:
To have binding effect, the purchase order must be made in writing. Oral agreements are only valid when confirmed in writing by FAIR. The Contractor must confirm purchase orders in writing without undue delay.

3. Prices:
The agreed prices are fixed prices, excluding VAT and are free point of use, including packaging and shipping insurance. If agreed otherwise, the Contractor must advance freight and packaging costs which must be shown separately on the invoices. According to Section 4 German Packaging Ordnance [Verpackungsverordnung -VerpackV], the Contractor is required to return the packaging used to ship the goods and, should it fail to meet this obligation, the Contractor shall bear the costs for returning the packaging.

4. Implementing the Agreement, compliance with regulations:
If the Contractor has concerns about the kind of implementation requested by FAIR, it must notify FAIR without undue delay.
The Contractor is required to include in their delivery - at no charge - all documents required for acceptance, operation, maintenance and repair (test/inspection reports, works certificates, drawings, plans, operating manuals, etc.), where necessary in duplicable form.

5. Delivering the necessary assembly materials, spare parts, etc.
The Contractor is itself responsible for the delivery, transport and storage of the materials (e.g.,assembly materials, replacement parts, etc.) needed for implementation. These materials may only be delivered to the GSI/FAIR premises in exceptional circumstances and by arrangement with the contact person for technical matters at GSI/FAIR and the main warehouse. In these exceptional cases, the following shall apply:

- hauptlager@gsi.de must be notified of the shipment, whereby a contact person for the Contractor with mobile phone number must be named.
- All shipments must be picked up from the main warehouse without undue delay. FAIR/GSI reserve the right to return shipments which were incorrectly addressed, or which were not collected within the allowed 14 day period at the Contractor's expense.

FAIR's liability for potential damage to materials during storage and associated handling (for instance, unloading) is limited to intent and gross negligence. The Contractor bears the risk of deterioration or loss of these goods.

6. Delivery period, procurement risk
The delivery period begins on the day on which the Contractor receives the purchase order letter. The Contractor shall enter into default without a reminder being necessary, should the agreed delivery date pass [fruitlessly].
The Contractor vouches for the procurement of the performance and the necessary inward supplies and performances - even if not at fault- without any limitation (full acceptance of the procurement risk).

7. Right to information and inspection:
FAIR and its agents/delegates are entitled to obtain information from the Contractor during business hours about the performance of the delivery in accordance with the Agreement, to take part in the Contractor's in-house inspections and to carry out [it's own] inspections. FAIR bears the costs of inspections it has commissioned insofar as FAIR provides the personnel or materials for performance of these inspections. The Contractor shall bear in full the costs of repeat inspections by FAIR owing to defects discovered in earlier inspections.
When awarding sub-contracts, the Contractor must ensure that the subcontractor contractually grants FAIR the right to inform and perform tests on the subcontractor's premises to the extent indicated above. The inspections do not exempt the Contractor from its warranty and liability.

8. Amendments to the Agreement, assignment of claims:
The Contractor cannot assign claims against FAIR.

9. Shipping and customs/duties:

Two delivery notes shall be included with the delivery. For deliveries from outside the customs union, the Contractor must contact FAIR regarding the customs and import procedures.

10. Acceptance, transfer of risk

a) As a general rule, the ordered goods, unless otherwise agreed, must be delivered to Goods Receipt at GSI Helmholtzzentrum für Schwerionenforschung GmbH, Planckstr. 1, 64291 Darmstadt, Germany).

b) The risk of accidental loss or accidental damage to the goods shall pass to FAIR upon acceptance of the goods by FAIR or upon FAIR coming into default of acceptance. Insofar as Sections 644(2) or 650, 447 German Civil Code [Bundesgesetzbuch - BGB] are to be applicable, these provisions will be excluded, this means that the preceding 1 also applies in the event of a 'Schickschuld'.

c) If a test run is planned, acceptance will be pronounced by means of a joint acceptance report following a fault-free test run. Advance payments or down payments on the purchase or delivery price do not denote acceptance nor that the performance is free of defects. Preliminary- or interim acceptances are merely tests that are neither relevant for the transfer of risk nor for meeting deadlines.

11. Ownership relationships:
Upon acceptance, FAIR shall acquire unrestricted ownership of the subject matter of the delivery or service after its handover; the same shall apply to the documents supplied by the Contractor (No. 4 Para. 2). By handing over the goods, the Contractor declares that it is fully entitled to dispose of the same and that no third parties rights to the goods exist.
Material provisions of any kind remain the property of FAIR. These must be marked as such and stored, labelled and managed separately. If material provisions are processed, transformed, combined or mixed with other items, FAIR shall acquire sole ownership of the new item. The Contractor shall keep these supplies safe on behalf of FAIR at no charge. FAIR retains ownership and copyright over documents belonging to FAIR which it handed over to the Contractor. Upon request, these documents are to be handed over, with all copies or reproductions, without undue delay. Documents belonging to FAIR are only allowed to be used for the purposes set out as part of this Agreement. In the event of violation(s), the Contractor is liable for all losses.

12. Invoice and payment:
Invoices must be submitted as a single copy. The amount of VAT must be shown separately.
The payment term of 30 days and the discount term of 14 days begin on the day on which the invoice was received and the delivery goods were accepted. The discount is 3% of the invoice amount net. Payment is deemed made when the bank transfer mandate is received by FAIR's financial institution that is processing the transaction. The payment is not a confirmation that the Contractor's contractual obligations have been met. A written warning is required before FAIR can be deemed to be in arrears.

13. Industrial Property rights:
The Contractor shall indemnify FAIR from all third party claims and shall assume liability for the delivery goods free of third party rights in Germany, the country in which the registered offices of the Contractor is located, and, where applicable, additional destination countries as named by FAIR at the latest when ordering the goods, unless the Contractor is not responsible for the infringement of third party rights. The Contractor's obligation to indemnify shall apply to all expenses which are incurred by FAIR from or in conjunction with the utilization [of the goods] by a third party. The limitation period for these claims is three years, beginning on the day on which the Agreement involved was concluded.

14. Advertising materials:
The Contractor is only allowed to make reference to its commercial dealings with FAIR with the express permission of GSI.

15. Termination and revocation:
Notwithstanding other termination- or revocation rights, FAIR is entitled to terminate the Agreement or withdraw from the Agreement if the Contractor has acted within the meaning of Sections 333 and 334 German Criminal Code [Strafgesetzbuch – StGB] (granting benefits, giving bribes). Other reasons for exclusion are:

- Acts which fall short of proper commercial practice.
- The failure to properly meet the obligation to pay taxes and expenses as well as social security contributions.
- Intentionally incorrect statements concerning reliability, technical expertise and capability

FAIR can also demand the reimbursement for all losses.
FAIR can also withdraw from or terminate the Agreement if insolvency proceedings have been initiated on the assets of the Contractor or if judicial settlement proceedings have been initiated, or if the Contractor stops payments on anything but a temporary basis.

16. Safety regulations and house rules:
When making deliveries and performances on the premises of FAIR, FAIR safety regulations and house rules must be followed, which in such a case are an integral part of this Agreement.

17. Place of performance, place of jurisdiction, final provisions
The place of performance is the registered offices of FAIR, unless an alternative shipping address is specified in the purchase order. The exclusive place of jurisdiction - insofar as the parties to the Agreement are business people, corporate bodies under public law or special funds under public law - is Darmstadt. The Agreement is subject to the law of the Federal Republic of Germany under exclusion of the UN Sales Law and international private law of the Federal Republic of Germany.
Should individual provisions of this Agreement or these General Terms and Conditions of Purchase be invalid, the remainder of this Agreement and the General Terms and Conditions of Purchase shall remain valid. This shall not apply should adhering to the Agreement or the Standard Terms of Trade (AGB) be an unreasonable hardship for one of the parties.

Last revised: July 2022