

## 1. Applicability

- 1.1. The Leibniz Institute on Aging (hereafter called FLI) places orders on the basis of these general terms of procurement (Allgemeine Einkaufsbedingungen - hereafter called AEB). The terms and conditions of the contractor (Auftragnehmer – hereafter called AN) do not apply, unless FLI has explicitly approved them in writing. The acceptance of goods and services does not mean approval of the terms and conditions of the AN.
- 1.2. Beside the AEB, part B of the applicable regulations „Vergabe- und Vertragsordnung für Leistungen / VOL“ or „Vergabe- und Vertragsordnung für Bauleistungen / VOB“ in the current versions will be effective when executing a contract.
- 1.3. Furthermore, starting at the currently determined threshold values in the Thüringen Procurement Law (Thüringer Vergabegesetz - ThürVgG), the regulations of the Thüringen Procurement Law are effective for the execution of the contract, in particular §§ 12, 15, 17 and 18 in the current version.
- 1.4. For the procurement of hardware and software, the conditions of the different kinds of contracts of the „Ergänzenden Vertragsbedingungen für die Beschaffung von Informationstechnik / EVB-IT“ are generally effective, as well as their general business terms in the current version.
- 1.5. If single regulations of these AEB are not applied, the remaining regulations remain unaffected.

## 2. Offers, conclusion of contracts, confirmation of orders, passing on to third parties

- 2.1. The offer has to be made free of charge. Concerning quantity, quality and version, AN has to adhere to the enquiry when making an offer. When calculating the prices, the current rules of the regulation PR 30/53 concerning the prices in the case of public contracts have to be adhered to. In the case of a call for tenders the corresponding regulations apply.
- 2.2. Hazardous substances according to the Ordinance on Hazardous Substances (Gefahrstoffverordnung- GefStoffV) in the current version, as well as hazardous/special waste must be marked separately.
- 2.3. Orders must generally be made in writing. Exceptions can be made in cases of urgent orders (e.g. order of replacement parts). The ordering in oral form or by telephone must be confirmed in writing. The same applies to changes or amendments of the contract.
- 2.4. Orders have to be promptly confirmed by the AN (order confirmation). Besides the general contents of the contract, a binding delivery date must be given. FLI reserves the right to cancel orders that have not been confirmed within five work days.
- 2.5. The order number of FLI has to be provided with every correspondence. Processing without the order number is only possible in exceptional cases and upon agreement.
- 2.6. Passing on orders to third parties is not permissible without FLI's consent in writing. In cases of missing permission FLI is entitled to cancel the contract completely or in part.

## 3. Prices, Delivery, Packaging

- 3.1. The prices agreed upon are binding and include potential customs duties, packaging material and the environmentally appropriate disposal of the packaging material. During the duration of the contract, prices can only be changed in exceptional cases, if they are mutually agreed upon and confirmed in writing. Exceptional cases can be exchange prices for instance.
- 3.2. If not agreed otherwise, the delivery is free to the point of use; the address for shipment as given in the order.

## 4. Appointments, deadlines, contractual penalty

- 4.1. The delivery dates and deadlines that have been agreed upon are binding. Decisive for the compliance is the arrival of the delivery at the receiving office that is stated in the order or the successful acceptance, if such has been contractually agreed or determined by law.
- 4.2. If the AN realizes that he cannot keep appointments or deadlines, FLI has to be informed promptly and in writing, specifying reasons and the expected delay.
- 4.3. If AN is responsible for a delivery delay, FLI is entitled to the legal rights and claims. In particular, FLI is entitled to demand compensation instead of the delivery and withdraw from the contract after the AN let an appropriate extension of time pass.
- 4.4. If the AN is in default and let the extension of time pass, FLI is entitled to claim compensation for delayed completion of 0.5 % per week or part thereof, but altogether not more than 5 % of the order value. The right to raise further claims for damages is reserved.

4.5. Delivery ahead of schedule or part delivery will be accepted by FLI only in singular cases as a gesture of good will, or if this has been expressly agreed. Otherwise the FLI is entitled to return the delivery at the costs of the AN. For the case that part deliveries/performances are accepted, FLI is not obligated to early payment.

4.6. To adhere to the obligations according to §§ 10 – 12 and 17 sect. 2 of the Thüringen Procurement Law (Thüringer Vergabegesetz - ThürVgG), a contractual penalty of 5 % of the order value is considered stipulated for this default.

## **5. Termination and withdrawal**

5.1. Violation of the order conditions by the AN entitles FLI to claim compensation for resulting costs or damages or to demand withdrawal from the contract.

5.2. FLI can withdraw from the contract or terminate it if insolvency proceedings are opened concerning the assets of the AN or judicial settlement proceedings are initiated or AN stops payment not just temporarily.

5.3. Notwithstanding other rights to terminate and withdraw, the FLI is entitled to terminate the contract or withdraw from it, if there are acts on the part of AN as defined in § 333 of the Penal Code (Strafgesetzbuch – StGB/granting undue advantage) or § 224 StGB (Bribery). Additionally, FLI may claim compensation for all damages.

## **6. Passing of risk, acceptance**

6.1. The risk passes over to FLI upon the proper handover of the defect-free delivery at the receiving office, if acceptance is agreed upon or determined by law, upon handover and submission of an acceptance protocol that is signed by both contracting parties.

6.2. Prepayments or part payments do not indicate acceptance or acknowledgement that the delivery is free of defects. Partial acceptances are controls that are not relevant for either the passing of risks or the beginning of time limits. If a trial run is intended, acceptance will be determined by a joint acceptance protocol after a successful trial run.

## **7. Invoice, Payment**

7.1. Invoices have to be handed in including all requested documents and referring to the order data. Payment deadlines begin with the delivery to FLI or, if needed, with the submission of an acceptance protocol which is signed by both contractual parties. Turnover tax has to be shown separately.

7.2. Partial invoices and/or partial payments can only be paid if this has been explicitly agreed upon beforehand. For a partial invoice, a billable delivery or performance must be delivered by AN.

7.3. If partial invoices are agreed upon, the final invoice has to be marked as such.

7.4. Prepayments can only be made on presentation of a bank guarantee in the same amount.

7.5. In general, FLI effects payment within 14 calendar days and deducts 3 % discount or after 30 calendar days net. Payments for VOB (Contracting rules for award of public works contracts - Vergabe- und Vertragsordnung für Bauleistungen) building contracts are made on the basis of the current version of VOB/B § 16.

7.6. Payment is considered completed with the completed submission of the transfer order to the executing bank.

## **8. Warranty**

8.1. AN is obligated to comply with the warranty he has taken over and ensures that the deliveries or performances are free of defects of quality or title. In particular they have to correspond to the relevant public sector regulations, directives and provisions of authorities and professional associations.

8.2. In case of defects, FLI is entitled to the statutory rights arising from product defects. In particular, FLI is entitled to claim removal of defects or delivery/re-production from the AN. AN has to bear the costs in connection with the supplementary performance. The legal right to compensation for damages, compensation for damages instead of fulfilment or warranty claims remain reserved.

8.3. The limitation period for claims concerning quality or manufacturer defects is 24 months, if not determined otherwise by law or agreement. The limitation period begins with delivery or acceptance, if such is agreed upon or determined by law. It will be suspended during negotiations about a defect and starts running again when AN has acknowledged a defect.

8.4. If AN takes over a warranty, it is valid independently of warranty rights laid down in law.

## **9. Industrial property rights**

9.1. AN owes deliveries or performances free of property rights of third parties, in particular concerning the contractually agreed utilization.

- 9.2. AN releases FLI from claims of third parties resulting from violating property rights and compensates FLI for all expenditures that arise with demands of third parties, if these are caused by a culpable breach of duty by the AN or its auxiliary person. FLI will not make any promises, settlements or any other agreements without consulting AN first.

**10. Confidentiality, Data protection**

- 10.1. AN is obligated to keep all images, plans, calculations, documents and other information given to him confidential, as far as those are not commonly known or publicly accessible. He may only pass them on or make them known to third parties if FLI has expressly agreed in writing.
- 10.2. AN commits to adhering to the applicable data protection regulations and to treat any personal data which become known to him in connection with processing our orders confidentially. He will also appropriately commit its employees, who come in contact with these data.

**11. Place of fulfilment, choice of law, place of jurisdiction**

- 11.1. Place of fulfilment for the obligations of the AN is the address for shipment given in the order.
- 11.2. The jurisdiction of the Federal Republic of Germany is valid, to the exclusion of the United Nations Convention on contracts for the international sale of goods from 11.04.1980 (CISG, UN-Kaufrecht).
- 11.3. Place of jurisdiction is the court having jurisdiction at FLI's place of business in Jena. Nevertheless, FLI may at its own choice also sue AN at its own place of general jurisdiction.