

# Standard Conditions of Sale of Deliveries and Services of KIT (AVB/LL)

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## 1. General

**1.1.** The relationship between the Customer and the Karlsruhe Institute of Technology (KIT) (hereinafter referred to as "Contractor") shall be subject to the standard conditions of sale outlined below (AVB/LL), unless otherwise agreed in writing.

**1.2.** Acceptance by the Customer of the Contractor's offer shall imply the Customer's acceptance of the present terms and conditions. Any different or additional terms and conditions of the Customer, in particular the Customer's standard terms and conditions, shall apply only if they have been expressly acknowledged in writing by the Contractor in his confirmation of the order. It shall not be sufficient for the Customer to refer to his standard terms and conditions in his request for an offer or his order and for the Contractor to confirm the order without explicit reference to the different or additional terms and conditions of the Customer.

**1.3.** Ineffectiveness of one or several provisions of the present standard conditions of sale (AVB/LL) shall not affect the validity of the other provisions. In this case, the ineffective provision shall be replaced by a corresponding legally effective provision.

## 2. Subject Matter and Execution of the Contract

**2.1.** The subject matter of the contract shall be defined in the respective offer. Any deviations in the order process shall require reference in writing by the Contractor in his confirmation of the order.

**2.2.** Documents exchanged between the parties, such as figures, drawings, weights and dimensions, specifications, and other descriptions of characteristics as well as other information for execution of the contract shall only be subject of the offer/contract if expressly included or agreed upon in writing. Reference to standards or agreed specifications only shall describe the products or services in more detail without implying the assumption of special guarantees.

**2.3.** The Contractor shall execute the contract with due and proper care and diligence according to the state of the art known to it. The Contractor shall not assume any guarantee for a specific research and development result being reached, for the economic or technical usefulness of the results, or for the results being free from any rights of third parties.

**2.4.** The Contractor shall have the right to have the service rendered by members under the Landeshochschulgesetz Baden-Württemberg (Baden-Württemberg Higher Education Act). The Contractor shall have the right also to subcontract third parties for rendering parts of the service with the Customer's approval. This approval may not be refused unreasonably.

**2.5.** In case the Contractor realizes that the contract cannot be executed within the period of time and/or at the price agreed upon, the Contracting Parties shall reach additional agreement on the continuation of work and payment of the respective costs.

**2.6.** Contract execution by the Contractor shall be subject to the absence of any obstacles barring execution due to national or international customs and foreign trade regulations, embargos and/or other sanctions.

## 3. Pricing, Payment

**3.1.** All prices shall be understood to exclude legal turnover tax. The Customer shall pay any taxes incurred, such as foreign withholding tax, use tax, wealth tax, excise tax, service tax or similar taxes, duties, and other charges. In case KIT is obliged to pay such taxes, the Customer shall reimburse KIT for these taxes as well as all pertinent costs or expenses, interests, and fines.

**3.2.** The Customer shall be obliged to make available to the Contractor all data and information (such as confirmation of registration as a taxpayer) required for proper invoicing. The Customer agrees to invoices being sent electronically (cf. Article 14, par. 1, cl. 7, UStG).

**3.3.** Unless agreed upon differently, payment shall be made by the Customer upon provision of the service and invoicing by bank remittance to the account indicated on the invoice. If no bank remittance is used, we shall reserve the right to pass on to the Customer any charges arising.

**3.4.** Deliveries to customers from the European Union are tax-exempt, provided that the conditions specified in the German Turnover Tax Act are fulfilled. In case the Customer does not meet his obligation to confirm receipt of the goods or transport of the goods to a state of the European Union, we shall be obliged to charge German turnover tax to the Customer.

**3.5.** Deliveries to customers outside of the European Union are tax-exempt, provided that the conditions specified in the German Turnover Tax Act are fulfilled. Export shall be proved by an export certificate of the customs office. If this certificate is not available, we shall be obliged to charge German turnover tax to the Customer.

## 4. Existing Intellectual Property Rights

**4.1.** Each Contracting Party shall remain the owner of its intellectual property (protected and unprotected) existing at the time of conclusion of the contract.

**4.2.** For the duration and the purposes of the contract, the Customer shall grant the Contractor a cost-free, non-transferable, sublicensable, non-exclusive right of use of the existing intellectual property needed for execution of the contract.

**4.3.** In case the Customer absolutely needs intellectual property contributed by the Contractor for contractual utilization of work results under the contract, the Contractor, at the Customer's request, shall be prepared to offer the Customer a non-exclusive right of use on normal market terms, provided that this is not excluded by any rights of third parties and the Customer's request is made within six months after completion of the contract or, in case of a contract for work, upon acceptance. The details shall be agreed upon by the Contracting Parties in a separate agreement in writing.

## 5. Work Results: Inventions/Property Rights/Rights of Use

**5.1.** Except for the patentable work results in 5.3, in particular inventions, the work results obtained from the execution of the contract shall be available to the Customer under the provisions listed below upon complete payment of the compensation agreed upon.

**5.2.** (Proprietary work results) In case the work results relating to the subject matter of the contract are protected by copyrights of the Contractor, the latter shall grant the Customer a non-exclusive, temporarily and locally unrestricted and non-sublicensable right of use restricted to the subject matter of the contract.

**5.3.** (Commercial property rights) Any work results which are obtained in the execution of the contract by employees of the Contractor and can be protected by commercial property rights shall be due to the Contractor exclusively. When applying for the respective commercial property rights, the Contractor shall inform the Customer accordingly. Any use of information and objects obtained from the Contractor shall not constitute any right of prior use according to Article 12 of the German Patent Act.

At the Customer's request and subject to a specific agreement the Contractor, within a period of six months upon application for a commercial property right, shall be ready to grant the Customer, on normal market terms, rights of use of the commercial property rights resulting from the execution of the contract.

**5.4.** In any case, the Contractor shall retain a non-exclusive, sublicensable, cost-free right of use of the work results that is unrestricted in terms of time, place, and subject matter. Under Article 42, No. 3 of the German Act on Inventions of Employees (ArbnErfG), the Contractor's inventors each shall be granted a non-exclusive right of use of the inventions made by them in the execution of the contract for teaching and research purposes.

**5.5.** Notwithstanding para. 5.2 (proprietary work results), rights of use of proprietary work (in particular drawings, drafts, and plans) and computer codes according to Article 69a, Copyright Act (UrhG) shall be granted in case of contracts for work only if the creation or development of such proprietary work or computer code directly represents the service to be rendered or a part thereof.

## 6. Retention of Title

**6.1.** The Contractor shall retain title to any items delivered until the complete payment agreed upon has been made.

**6.2.** In case of resale of items delivered or their processing or installation in a plot of land, the Customer already now shall assign to the Contractor the compensation to which he is entitled in connection with the resale, processing, or installation up to the amount of the immovable share of payment to which the Contractor is entitled to protect his claim to receiving payment under this contract.

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Payments not transferred to the Contractor shall be set off against the share of claims not assigned to the Contractor, unless the payer expressly makes different arrangements.

To the extent to which claims have been assigned to the Contractor, the Customer shall be obliged to provide the Contractor with information and deliver to the Contractor any and all documents. Until revoked, the Customer shall be authorized to collect the claim on behalf of the Contractor. The right of the Contractor to collect shall remain unaffected by this provision.

## 7. Dates of Delivery

**7.1.** The dates of performance given shall be binding only if agreed upon expressly and in writing.

**7.2.** Unless otherwise agreed in the contract, the period of performance shall start upon conclusion of the contract, but not before the Customer has submitted the samples, documents, certificates, permits, and other papers required.

**7.3.** Delayed acceptance by Customer

The Contractor shall have the right to specify in writing an appropriate period of time for acceptance by the Customer if the latter does not accept the performance at the time it is rendered. Upon expiry of the said period, the Contractor shall have the right to withdraw completely or partly from the contract by written notice and to claim damages. The right of the Contractor to claim the payment agreed upon in the contract shall remain unaffected.

## 8. Liability

**8.1.** The Contractor shall only be liable for damage to property and pecuniary damage caused by intent and gross negligence.

**8.2.** In case of violation of major contractual obligations, the Contractor shall be liable for intent and negligence. In case of simple negligence, liability shall be limited to foreseeable, direct damage typical of this type of contract. Major contractual obligations shall be obligations protecting essential legal positions of the Contracting Parties they have to be granted under the contract in terms of subject matter and purpose. Major contractual obligations shall also be those whose fulfillment makes proper execution of the contract possible and on observance of which the Contracting Party can regularly rely.

**8.3.** The limitations/exclusions of liability shall not apply to claims under the Product Liability Act, claims based on fraudulent behavior, liability for guaranteed characteristics, and injuries of life, body, or health.

**8.4.** The Customer shall indemnify the Contractor from any claims by third parties connected with the execution of the contract unless liability is based on intentional or grossly negligent actions of the Contractor.

**8.5.** To the extent to which liability of the Contractor is excluded or limited, this shall apply also to the personal liability of representatives and employees of the Contractor and other persons used by the Contractor to perform his obligations.

## 9. Contractual Penalty

A contractual penalty or liquidated damages shall be excluded and shall not be subject of this agreement.

## 10. The Following Provisions Shall Apply to Contracts for Work

**10.1.** (Obligation to inspect and complain)

In case of a delivery/service not in agreement with the contract, the Customer shall have the right to make claims based on defects only if he has duly fulfilled his obligations to inspect and complain (Article 377, Commercial Code).

**10.2.** (Customer's obligation to accept)

If the delivery/service has minor, insignificant defects, it shall be accepted by the Customer irrespective of his rights outlined in the sections below. If the Customer has made use of the service, acceptance shall be deemed to have been made, unless otherwise agreed upon.

**10.3.** (Remedy, substitute delivery/service, rescission, compensation)

**10.3.1.** In case of a defect, the Contractor shall be free to choose between a remedy by eliminating the defect or a substitute delivery/service.

**10.3.2.** In case remedy is unreasonable for or refused by the Contractor, or if remedy is delayed beyond an appropriate period of time or if it fails, the Customer shall be entitled to either cancel the contract or to reduce payment. Claims for damages based on defects shall be excluded. The provisions of Section 8 shall remain unaffected.

**10.4.** (Reduction of payment) In case of a minor defect only, the Customer shall only be entitled to reduce payment.

## 11. Confidentiality/Publication

**11.1.** Any documents and information obtained by one Contracting Party from the other Contracting Party during the execution of the contract and marked confidential shall be treated confidentially and not disclosed to any third party for three years after the end of contract.

**11.2.** Third parties shall not be members of bodies of KIT and members of KIT according to the Landeshochschulgesetz (Baden-Württemberg Higher Education Act).

**11.3.** Oral information shall be treated confidentially as outlined under the confidentiality obligations above only if designated confidential during communication and then summarized in writing, marked confidential, and transmitted to the other Contracting Party within a period of 30 days after communication.

**11.4.** The above confidentiality obligation shall not apply if and to the extent to which the respective information/object

- is generally known, or
- becomes common knowledge without the receiving party's fault, or
- is received by a third party without any confidentiality obligation, or
- already exists at the receiving party, or
- has been developed or is developed independently by the receiving party irrespective of communication, or
- has to be disclosed due to a law or an administrative or court order or if a legal right of publication cannot be restricted.

**11.5.** The Customer shall agree to publication of the results obtained within the framework of the contract by the Contractor.

Publications containing confidential information and objects of the Customer shall require the Customer's approval, which may not be refused without good reason. In case the Customer does not object to a publication submitted to him within a period of four weeks upon receipt of the documents, approval shall be deemed to have been given.

In case of academic graduation theses, doctoral theses, or theses for post-doctoral lecture qualification projects, the Customer shall consider the legal obligations and justified interests of the Contractor and of the candidates, doctoral students, post-docs, and junior researchers, respectively. When coordinating the publication, the Customer shall agree that academic graduation theses, doctoral theses, or theses for post-doctoral lecturer qualification written within the framework of the project must be drafted and published, respectively, within a given period of time.

The Customer's interests in maintaining confidentiality shall be taken into account in these steps as far as possible.

**11.6.** Without the prior written consent of the Contractor in each individual case, the Client may not refer to the business relationship with the Contractor towards third parties and that the work results were achieved by the Contractor."

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## 12. Force Majeure

No Party shall be liable for non-performance with any one of its obligations if this non-compliance is due to reasons beyond its control or to one of the following reasons in particular: fire, natural catastrophes, war, seizure or other administrative measures, general shortage of resources, limitation of energy consumption, labor disputes, or violations of the contract by subcontractors for one of these reasons.

## 13. Termination of the Contract

**13.1.** The contract may be terminated prematurely without any period of notice for an important reason only. Termination shall be in writing to be effective.

**13.2.** An important reason shall be, among others, the suspension of contract execution for more than six months due to force majeure according to Section 12.

**13.3.** In case of a termination of the project according to 13.1, the Contractor shall no longer perform any further contractual services after the time of termination. However, the Contractor shall submit to the Customer a final report about the work results achieved until the time of termination of the contract.

The Customer shall pay the Contractor for all services rendered until the time of termination. After that time, the Customer shall reimburse the Contractor for any expenses still arising in connection with the execution of the contract and compliance with legal obligations (in particular personnel costs), unless the Contractor fails to fulfill his obligation to provide for termination of the services in due time.

**13.4.** In case of Contracts for Work, Article 648, Civil Code, shall apply in addition.

## 14. Limitation Period

**14.1.** In principle, any claims arising from this contract shall be subject to the legally specified limitation periods, unless otherwise agreed below.

**14.2.** Notwithstanding Section 14.1, claims based on defects of the subject matter of the contract shall be subject to a limitation period of one year from the start of the legal limitation period according to Article 634a, Para. I, No. 1 and No. 3, Civil Code. This shall also apply to consequential damage unless this damage represents an injury to life, body, or health.

**14.3.** Also notwithstanding Section 14.1, the limitation period for other claims based on the violation of protection obligations not related to any defects shall be two years from the start of the legal limitation period, unless these defects were caused by intent or gross negligence or represent an injury to life, body, or health.

**14.4.** Suspension of the limitation period because of ongoing negotiations as per Article 203, Clause 1, Commercial Code shall require the Customer to assert his claims in writing.

## 15. Miscellaneous

**15.1.** Any modifications, amendments, and other agreements relating to the contract, including annexes, and relating to these AVB/LL, shall be in writing to be effective. This shall also apply to any waiver of this requirement of written form.

**15.2.** Any and all previous agreements on the subject matter of the contract between the Contracting Parties shall be replaced by this contract. There shall be no subsidiary agreements.

**15.3.** The Customer shall have the right to set off payments only for undisputed or legally established claims. The Customer shall only be entitled to withhold payments if they are based on the same legal relation.

## 16. Place of Performance, Jurisdiction, Applicable Law

**16.1.** The place of performance shall be the Karlsruhe Institute of Technology (KIT), Kaiserstrasse 12, 76131 Karlsruhe, Germany.

**16.2.** Any disputes arising from this agreement shall be referred to the courts having jurisdiction in Karlsruhe. German law shall apply, but not so the UN Convention on the International Sale of Goods.

**16.3.** We point out that the EU Commission runs a platform for on-line settlement of disputes ("OS-Platform"). This enables consumers to settle out of court any disputes connected with a legal transaction conducted online, i.e. without involving a court of law. The OS-Platform can be reached under the external link <http://ec.europa.eu/consumers/odr/>. In this context, we are legally obliged to draw attention to our email address, which is: [verkauf@evm.kit.edu](mailto:verkauf@evm.kit.edu).

**16.4.** Moreover, we are neither prepared nor obliged to participate in proceedings for dispute settlement before a consumer settlement agency.

## 17. Data Processing

The Contractor shall have the right to process data in connection with this contract according to the corresponding German legal regulations.

The Contractor shall be obliged to observe data secrecy under Article 3, Para. 2, Baden-Württemberg State Data Protection Act (LD SG) and Article 5, Federal Data Protection Act (BDSG), respectively. The Contractor shall guarantee to obligate to data secrecy in writing his employees involved in the execution of the work unless they are obliged to maintain data secrecy anyway by collective agreements, individual agreements, or for other legal reasons.

If personal data are processed within the framework of the execution of the contract as per Article 28, DS-GVO a separate contract data processing agreement in the sense of Art. 28, Para. 3, DS-GVO shall be concluded at the request of the Customer. Information about data processing in this connection can be taken from the "Data Protection Declaration for Deliveries and Services by KIT" available on our homepage under <https://www.evm.kit.edu/english/962.php>.

## 18. Compliance (Ethics and Prevention of Corruption)

The Contracting Parties shall be obliged to observe German laws and regulations, in particular the relevant anti-corruption provisions. In addition, the Contracting Parties shall be obliged to show responsible and ethical behavior towards staff, society, and the environment. Any additional regulations of one party in connection with ethics and prevention of corruption shall require explicit inclusion in the contract to be applicable to the other party as well.