

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

1. General

1.1. The relationship between the Customer and 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 of the Contractor's offer by the Customer shall imply the latter's acceptance of the present terms and conditions. Any different or additional terms and conditions of the Customer and 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 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 any 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 remaining 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 the 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 alone shall describe the products or services in more detail only and not imply the assumption of special guarantees.

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

2.4. The Contractor shall have the right to have the service rendered by members according to the Landeshochschulgesetz Baden-Württemberg (Law of Baden-Württemberg on Universities and Colleges). The Contractor shall also have the right to subcontract third parties for rendering parts of the service with the Customer's approval. This approval may not be unreasonably refused.

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 an additional agreement on the continuation of work and the payment of the respective costs.

2.6. Contract execution by the Contractor shall be subject to the absence of obstacles excluding 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 be plus the legally valid 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 fees. In case KIT is obliged to pay such taxes, the Customer shall reimburse to KIT 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 required for proper invoicing.

3.3. Unless agreed differently, net payment shall be made by the Customer upon the execution of the service and invoicing.

3.4. Deliveries to customers from the European Union are tax-free, provided that the conditions specified in the German Turnover Tax Act are fulfilled. In case the customer does not fulfill 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 the German turnover tax to the customer.

4. Existing Intellectual Property Rights

4.1. Each 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 purpose of the contract, the Customer shall grant to the Contractor a cost-free, non-transferable, sublicensable, and non-exclusive right of use of the existing intellectual property needed for the execution of the contract.

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

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

5.1. Except for the patentable work results according to 5.3, in particular inventions, the work results obtained from the execution of the contract shall be available to the Customer according to the regulations given 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 to 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 from 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 corresponding commercial property rights, the Contractor shall inform the Customer accordingly. Acts of 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 the application for a commercial property right, shall be ready to grant to the Customer rights of use of the commercial property rights resulting from the execution of the contract on normal market terms.

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. According to Article 42, No. 3 of the German Act on Inventions of Employees (ArbnErfG), the inventors of the Contractor shall be granted each a non-exclusive right of use of the inventions made by them during the execution of the contract for teaching and research purposes.

5.5. By derogation from par. 5.2 (proprietary work results), rights of use of proprietary work (in particular drawings, drafts, and plans) and computer programs according to Article 69 of the Copyright Act (UrhG) shall only be granted in case of service contracts, if the creation or development of this proprietary work or computer program directly represents the owed service or a part hereof.

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6. Retention of Title

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

6.2. In case of the 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 the payment to which the Contractor is entitled to protect his claim to receiving payment under this contract

6.3. 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.

6.4. 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 delivery given shall be binding only, if agreed upon expressly and in writing.

7.2. Unless otherwise agreed in the contract, the period of delivery shall start upon the 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 the 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 service at the time it is rendered. Upon expiry of the said period, the Contractor shall have the right to completely or partly withdraw 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 contract parties which have to be granted to them under the contract in terms of subject matter and purpose. Major contractual obligations shall also be obligations, whose proper fulfillment makes the due performance of the contract possible and on the compliance of which the contract partner regularly relied on.

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

8.4. The Customer shall indemnify the Contractor from claims of third parties in connection with the execution of the contract, unless liability is based on intentional or grossly negligent acting of the Contractor.

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

9. Contractual Penalty

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

10. The Following Provisions Shall Apply to Service Contracts

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

10.2. (The Customer's obligation to accept) If the delivery/service has minor, insignificant defects, it shall be accepted by the Customer without prejudice of his rights outlined in the following sections. 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 rescind from the contractor 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 party from the other party during the execution of the contract and marked as confidential shall be treated confidentially and not disclosed to any third party for three years upon the end of the agreement.

11.2. Third parties shall not be members of bodies of KIT and members of KIT according to the provisions of the Landeshochschulgesetz (Law of Baden-Württemberg on Universities and Colleges).

11.3. Oral information shall be treated confidentially according to the above confidentiality obligations only, if it is designated confidential during communication and then summarized in writing, marked as confidential, and transmitted to the other party within a period of 30 days upon communication.

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

- is generally known, or
- becomes common knowledge without the fault of the receiving party, or
- is received by a third party without any obligation of confidentiality, or
- does already exist 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 legal order or if a legal right of publication cannot be restricted.

11.5. The Customer shall agree to the 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 that 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.

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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 on the fact that academic graduation theses, doctoral theses, or theses for post-doctoral lecture qualification written within the framework of a project have to be drafted and published within given periods of time.

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

12. Force Majeure

Any party shall not be liable for non-compliance with one of its obligations, if this non-compliance is due to reasons beyond its control or to one of the following reasons: Fire, natural catastrophes, war, seizure or other administrative measures, general shortage of resources, limitation of energy consumption, labor conflicts, or violations of the contract by subcontractors due to 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 execute 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.

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

13.5. In case of service contracts, Article 649, 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. By way of derogation from Section 14.1, claims based on defects of the subject matter of the contract shall be subject to a limitation period of one year upon the start of the legal limitation period according to Article 634a, par. 1, No. 1 and No. 3, Civil Code. This shall also apply to consequential damage, unless this damage represents an injury of life, body, or health.

14.3. Also by way of derogation from 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 upon the start of the legal limitation period, unless these defects were caused by intent or gross negligence or represent an injury of life, body, or health.

14.4. Suspension of the limitation period due to ongoing negotiations according to Article 203, clause 1, Commercial Code, shall require the Customer to assert his claims in writing.

Unless expressly stated by the present AVB/LL, any other contractual or legal claims against the Contractor, in particular those for rescission, reduction of payment, or compensation of damage of any type, including damage not of the object delivered/service itself, shall be excluded.

15. Miscellaneous

15.1. Any modifications, amendments, and other agreements relating to the contract, including annexes, and relating to the present 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 parties shall be replaced by the present contract. Oral ancillary agreements shall not exist.

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 hold back payments, if they are based on the same legal relationship.

16. Place of Performance, Jurisdiction, Applicable Law

16.1. The place of performance shall be 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 the UN Convention on Contracts for the International Sale of Goods.

17. Data Processing

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

The Contractor shall be obliged to observe data secrecy according to Article 6 of the Baden-Württemberg State Data Protection Act (LDSG) or Article 5 of the Federal Data Protection Act (BDSG). The Contractor shall assure that he commits his employees involved in the execution of the work to data secrecy in writing, unless they are obliged to maintain data secrecy anyway by collective agreements, individual agreements, or for other legal reasons.

If personal data are processed on behalf of other parties according to Article 7, LDSG, or Article 11, BDSG, within the framework of the execution of the contract, a separate contract data processing agreement shall be concluded at the request of the Customer.

18. Compliance (Ethics and Prevention of Corruption)

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