

# Additional Contract Terms for the Execution of Services (hereinafter called ACT)

## Preamble:

1. Contracts of Karlsruhe Institute of Technology (hereinafter referred to as KIT) shall be subject to the "General Contract Terms for the Execution of Services" (VOL/B). In addition, the following provisions shall apply.
2. Within the framework of the contractual relationships, the ordinance PR No. 30/53 on Pricing in Public Contracts dated November 21, 1953 (Federal Law Gazette No. 244 of December 18, 1953) shall apply as amended.
3. By agreement on the present ACT, the VOL/B shall become constituent of the contract.

## (Article 1) Type and Scope of Services

- (1) Unless agreed otherwise, the prices agreed upon in the contract shall also include the costs of packaging, packaging material, loading, transportation to the point of delivery or receipt, and unloading, insurance fees, collection fees, cartage, connection fees, transport cost insurance – the Customer is not allowed to conclude insurance contracts that are not required by law - as well as possible patent fees and royalties. The Contractor shall take back the packaging material and, if applicable, dispose of it at his expense. The unit price shall be the contractually agreed price, even if the total amount given in the quotation for an item (position) does not correspond to the quantity multiplied by the unit price.
- (2) Any additional agreements, modifications, or amendments of the present contract shall be in writing to be effective.
- (3) The General Terms and Conditions of the Contractor shall not become constituent of the contract, not even, if they have not been contradicted expressly by the Customer.

## (Article 2) Modifications of the Service

- (1) The request for a modification of the service by the Customer shall only be made by the Customer's contracting party.
- (2) In case the Contractor claims an increased price on the basis of Article 2, No. 3, VOL/B, he shall be obliged to immediately inform the Customer in writing – if possible, prior to the execution of the service and, if possible, with this increase being specified. At request, the Contractor shall be obliged to furnish evidence of the additional or reduced costs resulting from the modification of the service.

## (Article 3) Execution Documents

- (1) In case the Contractor uses documents of the Customer as a basis of the execution of the service, these have to be marked accordingly by the Customer.
- (2) Unless agreed otherwise, the Customer shall have the right to receive a cost-free copy of all documents drawn up by the Contractor in connection with this contract or generated by the Customer supplying data on the construction or production processes or by joint work with the Contractor. The title in these documents shall pass to the Customer. The Contractor shall ensure that the above documents are not subject to any property rights of third parties. In this respect, the Contractor shall indemnify the Customer against any possible claims of third parties for the infringement of such property right.

## (Article 4) Execution of the Service

- (1) Unless agreed otherwise and provided that the contractual service has been used properly by the Customer, the Contractor shall, in accordance with the pertinent provisions of patent, utility model, registered design, trademark, and copyright legislation as well as of the Law Against Unfair Competition, assume exclusive liability to third parties for the infringement of industrial property rights and copyrights and the Contractor shall be liable in tort of the protection of the service under the Law Against Unfair Competition. In this respect, the Contractor shall indemnify the Customer against any possible claims of third parties for such an infringement.
- (2) The Contractor shall be obliged to observe pertinent and legal administrative regulations and requirements when executing the contract. In particular, the Contractor shall observe the safety, industrial safety, and accident prevention regulations as well as standard, DIN, ISO, EN, VDE, and other regulations. The Contractor shall be obliged to report to the Customer prior to the execution of the contract and to be instructed at the workplace by the Customer. At the Customer's request, the Contractor shall prove to the Customer by the submission of protocols that he has instructed the staff entrusted with the execution of the contract on the premises of the Customer in accordance with the pertinent legal provisions and his instruction by the Customer.
- (3) The Contractor shall be obliged to inform third parties about the contents of the contract only, if and to the extent to which this is necessary for fulfilling the contract.
- (4) The Contractor shall exercise due care for all persons entrusted by him with the processing or execution of this contract observing the legal provisions on data protection and neither transmitting the information obtained from the Customer's domain to third parties nor exploiting it in any other way. This shall also apply to work carried out by the Contractor outside of the KIT. Prior to the first start of work at the Customer's, the executing persons of the Contractor shall be committed to data secrecy in accordance with the Data Protection Act by the Contractor, with the corresponding evidence being furnished to the Customer at his request. The Contractor shall protect any document disclosed to him under the contract and marked by the Customer as being in need of protection from being disclosed to unauthorized persons. The Contractor shall be obliged to hand over to the Customer such documents, including copies possibly made, upon the completion of the respective service at the latest. The Customer shall have the right to

terminate the contractual relationship without prior notice, if data regulations are violated by the Contractor. The right of claiming damages shall be reserved expressly.

- (5) The Customer shall have the right to inform himself about the execution of the service under the contract. To do this, the employees of the Customer shall be obliged in principle to announce their visits to the Contractor well in advance.
- (6) The Contractor shall be obliged to immediately check deliveries made by the Customer and third parties contracted by the latter for the type, dimension, quantity, and noticeable defects. Objections shall be notified immediately and in writing to the Customer and the consignor of the goods.
- (7) The fact of the Customer making available to the Contractor technical documents/production documents or providing such documents with an inspection or approval stamp shall not imply that the Customer has checked all technical details to the complete extent. The Customer's liability for the correctness of the contents and the usefulness of such documents shall be limited to intent and gross negligence.
- (8) When using subcontractors, the Contractor shall be obliged to inform the Customer about the employees deployed by the subcontractors at any time. This shall apply accordingly to temporary workers. The Customer's consent with the use of subcontractors shall not affect the Contractor's liability for the proper execution of the service. In case the Contractor awards contracts to subcontractors, he shall ensure by agreements with the latter that the Customer's rights and claims against the subcontractors are the same as against the Contractor.
- (9) With delivery, the Customer shall acquire the unlimited title in and exclusive right of use of the subject matter of the service rendered, including the documents enclosed. Through delivery, the Contractor declares that he is fully authorized to dispose of the subject matter of the service and that rights of third parties do not exist.
- (10) The Contractor shall undertake all efforts to execute his services in an environmentally compatible and industrially safe way. While rendering his service, the Contractor shall be obliged to observe in particular all legal provisions for the protection of the environment, industrial safety, and the protection of health of own staff or of the Customer's or the subcontractors' staff involved in the execution of the service.
- (11) The place of performance shall be that place, at which the success of the service has to occur. If this place is not specified in the contract, the place of performance shall be the Customer's premises.

## (Article 5) Obstruction and Suspension of the Service

- (1) The Contractor shall notify that office of the Customer, which has concluded the contract.
- (2) In case of a termination or rescission of the contract according to Article 5, No. 2 (2), VOL/B, claims for damages shall not be admitted. In case of termination, the Contractor shall have the right to claim payment of the services already rendered.

## (Article 6) Type of Delivery and Shipment

- (1) Delivery shall be accompanied by two delivery notes. The order number and, if applicable, the given identification number of the good shall be indicated in the delivery note. In case of deliveries from foreign customs territories, the Contractor shall contact the Customer in due time to settle matters related to customs clearance and import.
- (2) In case abbreviations of the "Incoterms" are used, the version or revised version valid at the time of conclusion of the contract shall apply.
- (3) To the extent of the Customer bearing the transport costs, the Contractor shall be obliged to disburse at no costs the costs until receipt by the consignee. The transport means and the type of transport shall be selected by the Contractor taking into account aspects of economic efficiency.

## (Article 8) Termination of the Contract by the Customer

- (1) The Customer may withdraw from the contract or terminate it with immediate effect,
  - a) if the Contractor violates an obligation imposed on him to keep confidential facts that have become known to him in connection with the contract awarded,
  - b) if reasons for exclusion in the sense of Article 6, No. 5 VOL/A respectively Article 6 No. 4, 5 VOL/A-EG exist.
- (2) If the Customer makes use of his rights according to (1), he shall be entitled, but not obliged, to return the deliveries made so far. The value of deliveries that have not been returned or services that have already been used shall be reimbursed by the Customer to the Contractor on a pro rata basis. For returned deliveries, the Contractor shall reimburse to the Customer the amount already paid by the latter.
- (3) The Contractor shall pay to the Customer any damages that result directly or indirectly from the dissolution of the Contract according to (1). The dissolution of the Contract shall not result in the Contractor having any rights other than claims for reimbursement of the deliveries and services already used.

## (Article 9) Default of the Customer, Termination by the Contractor

In derogation of Article 286, par. 3, German Civil Code (BGB), the Customer, after payment has become due, shall be in default upon receipt of a written reminder from the Contractor only.

## (Article 11) Penalty

- (1) If major reasons according to Article 8 (1) b) of the present ACT exist, the Contractor shall pay a penalty to the Customer, no matter whether the Customer exercises fully or in part his right to rescind. The penalty shall amount to 50 times the value of the gifts or advantages promised or granted in cases of corruption according to Article 8 (1) b) of the present ACT or 50 times the saved expenses or the damage caused in the remaining cases of Article 8 (1) b) above. However, it shall not exceed a maximum of 10% of the total contract value, exclusive of the legal turnover tax. This shall also apply, if the contract has been terminated or fulfilled already.
- (2) The penalty according to (1) may be incurred during the period from the receipt of the request of a quotation to two years upon receipt of the invoice. In case invoices for partial services have been agreed upon, receipt of the last invoice shall be authoritative. In case the Contractor can prove that he is only slightly responsible for non-compliance according to Article 8 (1) b) above or that the damage caused is small only, the Customer may refrain from claiming the penalty. Claiming of the penalty shall not affect possible claims for damages. They shall not be set off against each other. Articles 339 through 342, German Civil Code (BGB), shall not apply.
- (6) Claims of the Contractor against the Customer may only be assigned with the approval of the Customer. This approval may only be refused for an important reason. It shall be deemed to have been granted, if the Customer does not object within a period of two weeks upon receipt of the Contractor's notification of assignment.
- (7) An assignment shall become effective against the Customer only, if the notification of assignment meets the requirements given below:
- The Customer shall be notified in writing as specified on the Customer's form, with the Customer's office placing the order and the order being indicated precisely.
  - The new creditor shall make a declaration as specified on the form of the Customer, with this declaration having the following contents:
    - "I herewith acknowledge that
      - payment of the debt may only be claimed subject to the contractual provisions;
      - according to Article 404, Civil Code (BGB), objections that were well founded against the previous creditor at the time of assignment may be raised against me;
      - the debt may be set off against counterclaims within the limits of Article 406, Civil Code (BGB);
      - another assignment by me will not be effective against the Customer.

#### **(Article 13) Acceptance**

- Unless agreed otherwise, the risk shall pass to the Customer with
  - the taking over of deliveries at the point of receipt,
  - the acceptance of construction services.
- In case a test run or functional test is envisaged, acceptance shall be expressed after a perfect test run only by a formal declaration of acceptance in writing.

#### **(Article 14) Claims Based on Defects and Limitation of Action**

- Claims of the Customer based on defects shall also cover packaging, conservation, and labeling, unless expressly agreed otherwise in the contract.
- The Customer's approval of plans, drawings, calculations or other documents related to the services and submitted by the Contractor shall not affect the Contractor's obligation to properly render the service.
- As long as both parties negotiate on the existence or the scope of claims based on defects, the Statute of Limitations shall be suspended. Suspension shall start with the notification of the defect. If negotiations are started again, so shall the suspension of the Statute of Limitations.

#### **(Article 15) Invoice**

- Invoices shall be made out with the contract prices, exclusive of turnover tax (net prices) and in duplicate. The turnover tax shall be indicated at the end of the invoice together with the currently valid tax rate. When contract deadlines lying in the responsibility of the Contractor are exceeded, the tax rate valid at the time of expiry of the deadline shall apply.
- In each invoice, the scope and value of all previous services and the already received payments together with the turnover taxes included therein shall be indicated.

#### **(Article 16) Charging of Services According to Hourly Rates**

- When rendering and charging services according to hourly rates, the Contractor shall submit in duplicate lists for each working day. These lists shall include:
  - the date,
  - the exact designation of the place of execution of the service,
  - the type of service,
  - the names of the workers and their profession, wage or salary categories,
  - the hours worked by each worker with the hours of work overtime, in the night, on Sundays, and holidays as well as aggravating circumstances not included in the hourly rate being specified, if applicable, and
  - the sizes of instruments used.
- The contractor shall submit checklists at monthly intervals for all employees deployed at the Customer's and charged on an hourly basis. These lists shall include:
  - the names of the workers,
  - the hours worked by each worker per working day,
  - the respective order numbers.
 These checklists shall be structured such that the entries made can be verified easily against the entries of the respective time reports (for instance, by the take-up of the proof numbers).
- Invoices with hourly rates shall be broken down according to the lists. The original lists shall be kept by the Customer, the certified copies shall be given to the Contractor.

#### **(Article 17) Payment**

- All payments shall be made cashless.
- In case of remittance from an account, the day of payment shall be the day of handing in or sending the payment order to the bank.
- In case of consortiums, payments with the effect of discharging the Customer shall be made to the authorized representative of the consortium, who is responsible for the execution of the contract, or in accordance with this representative's instruction in writing. This shall also apply after the dissolution of the consortium.
- In case of the Customer claiming recovery of overpayments, the Contractor shall not have the right to plead abolition of enrichment (Article 818, par. 3, Civil Code (BGB)). Overpayment is the result of gross negligence of the Customer.
- In case of an overpayment by the Customer, the Contractor shall be obliged to pay interest on the amount to be returned, exclusive of turnover tax, from the date of the payment order of the Customer being sent to his bank. The interest rate shall correspond to the interest rate valid for credits of the

Federal Republic of Germany for coverage of expenses, but not be below 4%/year.

- Payments made by the Customer to the Contractor following the assignment shall be accepted by me, if less than seven working days have passed between the receipt of the notification of assignment by the Customer and the date of payment (day of handing in or sending the payment order to the bank)."
- Assignments from several contracts shall be indicated separately for each contract.

#### **(Article 18) Guarantee**

- Guarantee for the execution of the contract shall cover the compliance with any contractual obligations and, in particular, the contractual execution of the service, including invoicing, claims based on defects, and claims for damages as well as the return of overpayments, including interests.
- For the guarantee, the forms of the Customer shall be used.
- Guarantee shall be made by a credit institute or a credit insurer or surety company accredited
  - in the European Union, or
  - in one of the states of the parties of the Agreement on the European Economic Territory, or
  - in one of the states of the parties of the WTO Agreement on Government Procurement.

#### **(Article 19) Disputes**

- For the interpretation of the Contract, the German version shall be binding exclusively. Provisions concerning the contractual and non-contractual relationships of the contracting parties shall be subject to the law of the Federal Republic of Germany exclusively.
- The United Nations Agreement on Contracts for International Sales of Goods, dated April 11, 1980 (Federal Law Gazette 1989 II, page 586), shall not apply.
- Unless agreed otherwise, the venue shall be Karlsruhe.

Karlsruhe Institute of Technology (KIT)