

Supplementary contractual terms of the Max Planck Society for the Advancement of Science

(pursuant to §9 of the Contracting Rules for Performances – excluding public works contracts – VOL Part A)

1. Substantive scope

The following terms shall apply to all contracts governing performances, in particular service contracts, purchase and sale contracts and service and work contracts, as well as contracts governing the supply of movables to be prefabricated or produced, that are concluded by the establishments within the Max Planck Society.

Should there be no imperative legal provisions to the contrary, the following provisions shall apply in the order given as the basis for the execution of orders:

1.1 the wording of the order (written order or award, or contract/agreement), including any performance descriptions and enclosures;

1.2 if agreed: supplementary contractual terms;

1.3 the following “Supplementary Contractual Terms” of the Max Planck Society;

1.4 the “General Contractual Terms for the Execution of Performances” (VOL/B) as amended;

1.5 the German Civil Code (BGB) and other relevant laws and regulations as amended.

In submitting a tender, the tenderer accepts these “Supplementary Contractual Terms” of the Max Planck Society, which are thereby an integral part of the tender and become part of the contract on their acceptance. The applicability of the General Terms and Conditions of the tenderer/contractor shall hereby be excluded.

Deviations from the “Supplementary Contractual Terms” shall be effective only if they are explicitly specified as deviations and were confirmed in writing by the client.

Should any individual provisions of these “Supplementary Contractual Terms” not be applied for any reason, this shall not affect the validity of the remaining provisions.

2. Nature and scope of performances

Tender:

The tender shall be submitted free of charge and in writing. It shall be binding for a period of six months after its submission date if the tenderer does not specify any other period.

For machines, equipment and other working materials, a declaration of conformity with the relevant European standards must be available or provided as part of the performance to be rendered and must be proven by means of a CE label. Operating instructions in German must also be provided. All of the costs that these measures involve shall be included in the price quoted in the tender.

Proof of compatibility with the environment, such as the awarding of the ecological label “Blauer Engel”, must be enclosed along with the tender.

Dangerous substances as defined by the prevailing Dangerous Chemicals Ordinance must be labeled specifically as such (see also Item 7).

If a subsequent disposal of the contractual subject matter or individual components of that subject matter comprises hazardous waste, this fact must be referred to and a possible disposal method indicated.

In the case of non-consumer goods, costs incurred in taking these back for disposal after their use must be indicated separately. In other cases the taking back and disposal shall be agreed to be free of charge.

Order:

Only the written and signed version of the order shall be binding for the entire content of the order.

Order confirmation:

The receipt of the order must be confirmed in writing immediately.

If the confirmation of the order deviates from the content of the order, this must be substantiated and shall be regarded as a new contractual tender. The same shall apply if the order confirmation – in derogation of the original tender – contains limiting conditions as to supply or exclusions of liability.

Place of performance:

Place of performance shall be the registered seat of the ordering establishment within the Max Planck Society or one place of performance fulfillment to be specified by that establishment in the order. Deviations from the above shall require the written consent of the client.

3. Alteration of performance

The performance that constitutes the subject matter of the contract can be altered by means of a written agreement. If an alteration of performance involves an increase or decrease in costs, the new price must be agreed before the performance alteration is implemented. Any impact on other contractual terms, particularly on execution periods, must be taken into account.

Performances that the contractor executes without an order or on the basis of arbitrary deviations from the contract shall not be remunerated. The contractor must reverse or rectify such performances on request within a reasonable period, otherwise they can be returned or rectified at his/her expense and risk.

4. Execution documents

The execution documents in textual, pictorial or object form that are handed over to the contractor may be neither published, reproduced nor used for any purpose other than that which is agreed. They must be returned to the client after completion of the order at the latest.

If the order is awarded in accordance with a specimen provided by the contractor, this, provided that nothing to the contrary is agreed, shall devolve upon the client without being offset against the performance or remunerated separately.

5. Execution of the performance

The contractor may assign the execution of the performance or material parts of that performance to others only with the prior written agreement of the client. In doing so, he/she must give an appropriate share in the work to small and medium-sized companies.

The contractor shall have sole responsibility for the fulfillment of the legal, official, fiscal and employer's insurance obligations in respect of his/her employees.

The contractor and/or his/her vicarious agents must comply with the instructions of the client when executing performances on the premises or the property of the client. If material instructions are violated, the client can rescind the contract without notice.

The contractor and the client shall be liable for bodily injury, damage to property and pecuniary loss within the scope of the legal provisions. The product liability for the performance, including any provision of materials, shall be incumbent solely upon the contractor.

The client can inform himself/herself about the execution of the performance as specified in the contract, particularly with regard to the technical conditions and delivery dates, during business hours on the premises of the contractor.

6. Hindrance and interruption of performance

Hindrances that impede the proper execution of the performance must be reported immediately in writing to the client by the contractor and the reasons for them must be indicated.

If a properly reported hindrance leads to an interruption in the performance for which neither contracting party is to blame, both parties can rescind the contract either wholly or partly with immediate effect by means of a written declaration on expiration of a three-month interruption to the performance.

7. Delivery/Forwarding

If nothing to the contrary is agreed in the contract, the price shall contain the delivery free place of performance. In cases where (re)construction work is required to fulfill the performance, the price - if nothing to the contrary is agreed - shall be understood as free place of use including all costs that the contractor incurred as a result of this (re)construction work.

If the client is billed separately for the forwarding costs, these shall be paid up to the maximum rate for the least expensive forwarding method, but only if they are proven by means of receipts. Any ancillary costs such as charges and the like that are occasioned by forwarding must in any event be covered by the price of the performance. Additional charges for priority and express consignments shall be refunded only upon prior agreement.

Packaging materials:

Packaging materials shall remain the property of the contractor, provided that nothing to the contrary is agreed. This shall apply to both transportation packaging and sales packaging. It shall be deemed agreed that the packaging materials are taken back free of charge.

Harmful substances:

The contractor undertakes to enclose the appropriate safety data sheets in accordance with the relevant EU Guidelines, TRGS 220 or DIN 52900 along with the consignment in all cases in which the subject matter of the contract on fulfillment of the order falls within the provisions of the Dangerous Chemicals Ordinance from 26.8.1986 as amended.

8. Rescission, termination

Should the client rescind the contract in the event of

- a dereliction of duty for which the contractor was responsible,
- the institution of insolvency proceedings against the assets of the contractor or the application to institute such or comparable proceedings or the rejection of such an institution due to insufficiency of assets or the not merely temporary cessation of payments by the contractor,
- inadmissible restriction of competition when the order was awarded,

he/she can demand that the conditions prevailing before the contract was concluded be recreated.

If the client rescinds the contract for the reasons specified above, he/she can retain the services rendered up to that point if he/she has a use for them. These must be charged in accordance with the contractual prices and/or in the ratio of the partial performance rendered to the contractual performance in its entirety on the basis of the contractual prices. Unusable performances shall be returned at the expense of the contractor.

The other statutory and contractual rights and claims of the client arising from derelictions of duty by the contractor shall remain unaffected by this.

9. Quality checks

The contractual price shall also contain the costs that the contractor incurs as a result of checking the performance to ensure the fulfillment of the contractually agreed requirements. The labour, premises, machinery, equipment, testing and measuring devices and operating supplies that are required to conduct quality checks must be provided by the contractor.

Part-performances can also be subjected to checks at the request of the client.

Items that have become unusable shall not be offset against the performance.

10. Passing of risk, acceptance

The delivery shall be deemed performed when the merchandise is received at the delivery point of the agreed place of fulfillment.

If no other performances have been agreed ((re)construction, installation or similar work), the risk of

accidental perishing and/or accidental deterioration of the merchandise shall pass to the client when the merchandise is handed over in orderly fashion at the delivery point. If other performances over and above mere delivery have been agreed, the passing of risk shall not ensue until the performance has been accepted in its entirety by the client. Advance or part-payments on the purchase price shall signify neither the acceptance of the performance nor acknowledgement of its freedom from defects.

Prior or intermediate inspections shall merely be checks without any relevance for the passing of risk or the course of time periods.

If calendar periods are agreed in connection with inspections/acceptance, these shall serve to establish delays in rendering performance, but shall under no circumstances constitute automatic acceptance when they expire.

If a trial run is provided for, the acceptance shall be declared by means of a joint inspection report following a faultless trial run.

11. Liability of the contractor for violation of property rights

The contractor shall assume sole liability in respect of industrial property rights held by third parties. This shall also apply if drawings or other production documents or substantive materials are provided by the client for the execution of the performance.

If claims arising from the violation of an industrial property right or a copyright are asserted against the client, the contractor shall be obliged to protect the client from such claims at his/her own expense and to exempt the client completely from any costs or damages contributions awarded to the holder of the industrial property right by the court or accepted by the contractor.

The contractual price shall contain property right charges and all of the necessary license remuneration.

12. Liability arising from warranty of quality and title

The liability period for defects shall commence upon acceptance of the performance (cf. Item 10), and upon final acceptance where there are partial acceptance procedures, and shall comprise 24 months in all cases where no contractual provisions to the contrary are agreed.

The contractor shall also assume liability for defects where the items delivered display insignificant deviations from the agreed specifications, if these increase or reduce the value or suitability in respect of the usual or contractually presumed use.

These provisions shall apply analogously to replacement parts that are delivered or any supplementary measures that may be necessary. Time periods shall commence when the client has established that the defect has been rectified.

The expiration of the liability period for defects shall be suspended for that period in which the performance/delivery is not in the condition as agreed in the contract.

Claims based on defects can also be asserted after expiration of the period provided for this purpose if the defects in question had been reported to the contractor before the period expired.

13. Invoice, part-payment

Invoices must be submitted in triplicate in accordance with the legal requirements. Payment and cash discount periods shall commence upon receipt of an invoice corresponding to requirements by the client, but not before the proper rendering of the performance.

If part-payments are made on the basis of the contractual agreement, the furnishing of a bank guaranty in the same amount shall be deemed agreed.

In the case of part-invoices, the final invoice must be designated as such.

14. Applicable law

German law shall apply to this contract.