

General conditions for deliveries and services
(General purchasing conditions)

Date: 26th April 2004

§ 1 General, area of application

- (1) The General Purchasing Conditions of the German Cancer Research Centre take into account the general conditions prevailing at contract conclusion as a result of normal contract award practice. These constitute additional contract conditions in the sense of § 1 of the General Contract Conditions for the Provision of Services (VOL/B).
- (2) Our General Purchasing Conditions apply exclusively; contrary conditions or those varying from our General Purchasing Conditions on the part of the supplier are not acknowledged, unless we have specifically agreed to their applicability in writing. Our General Purchasing Conditions continue to apply, even if we accept delivery from the supplier without reservation, and in the awareness of contrary conditions or those varying from our General Purchasing Conditions on the part of the supplier.
- (3) By agreement of these General Purchasing Conditions, VOL/B becomes part of the contract.
- (4) Agreements relating to the contract must be made in writing, in text form (§ 126b BGB – German Civil Code) or in electronic form (§ 126a BGB). Verbal agreements require confirmation in the form specified in Sentence 1 in order to be valid.
- (5) The following all form an integral part of the contract:
 - a) the order letter and any other special contract conditions contained therein
 - b) the service/performance specification
 - c) any supplementary contract conditions
 - d) these general purchasing conditions as supplementary contract conditions
 - e) any general technical contract conditions
 - f) the quotation
 - g) the General Contract Conditions for the Provision of Services (VOL/B)
- (6) In the event of contradictions, the components of the contract apply in the priority shown above.

§ 2 Quotation, quotation documents

- (1) The supplier undertakes to accept our order within a period of 2 weeks.
- (2) We reserve proprietary right and copyright to all pictures, drawings, calculations and other documentation provided; they may not be made available to third parties without our express written consent. They are to be used only for the production of materials as specified in our order, and must be returned to us without special request on completion of the order. They must be kept confidential from third parties, and are also subject to the further specifications of § 9 Para. 4.

§ 3 Prices, payment terms

- (1) The price shown in the order is binding. In the absence of any other written agreement, the price includes delivery "carriage-paid", including packaging. The return of the packaging requires special agreement.
- (2) Invoices can only be processed if they show the order number as specified in the instructions in the order. The supplier is responsible for all consequences arising out of failure to observe this requirement, unless he is able to prove that he is not responsible for the omission.
- (3) Unless agreed otherwise in writing, we will pay the purchase price within 3 weeks from receipt of the delivery and invoice, subject to a settlement discount of 2%, or net within 30 days of receipt of the invoice. If we raise any justified complaints or objections, the settlement discount period is suspended until the matter is clarified.
- (4) We reserve reconciliation and retention rights to the extent permitted by law.

§ 4 Delivery time

- (1) The delivery time specified in the order is binding.
- (2) The supplier undertakes to inform us immediately in writing, if circumstances occur or become apparent, which might indicate that the specified delivery time cannot be maintained.
- (3) In the event of late delivery, we are entitled to require fixed late delivery damages in the amount of 1 % of the total delivery value for each complete week of the delay, up to a maximum of 10 % of the total delivery value. We reserve the right to make further legal claims (withdrawal from the contract and compensation for damages instead of the delivery/services). The supplier has the right to substantiate that no damages or significantly lesser damages have been sustained as a result of the delay.

§ 5 Delivery, transfer of risk, documents

- (1) Unless agreed otherwise in writing, delivery must be made carriage-paid to our central goods receipt location. If in individual cases delivery to the point of use is agreed, the supplier must notify our central goods receipt location that delivery has been made.
- (2) The supplier undertakes to quote our order number accurately on all dispatch documents and delivery notes. If he fails to do so, we cannot be responsible for any delays in processing.
- (3) The supplier must use suitable packaging for the safe transport of the goods, taking into account the type and weight of the goods and the means of transport to be used.
- (4) The supplier is fundamentally responsible for the costs of packaging and transport. This also applies to subsidiary costs such as special refrigerated or deep-freeze packaging, insurance charges, collection charges, transport costs, connection charges, standing charges or charges for the certification of transport costs.
- (5) The supplier undertakes, or must instruct the haulier, to take back packaging, at our request, free of charge on delivery. In this case, the packaging remains the property of the supplier.

§ 6 Examination and liability for faults

- (1) We undertake to inspect the goods for any quality faults or quantity variances within an appropriate time. Any complaints are deemed to be within such time if received by the supplier within a period of 5 working days from receipt of the goods, or in the case of concealed faults, 5 working days from their discovery.
- (2) We are fully entitled to make all legal complaints specified by law. In all cases, we are entitled, at our discretion, to require from the supplier either rectification of the fault or the supply of replacement goods. We expressly reserve the right to claim compensation for damages, and especially damages instead of provision of the services.
- (3) In the event that delay would cause a risk, or in special cases of urgency, we are entitled to undertake rectification of the goods ourselves at the cost of the supplier.
- (4) The lapse period is 36 months, calculated from the time of transfer of risk.

§ 7 Product liability, indemnification, liability insurance cover

- (1) In cases where the supplier is responsible for product damage, and in cases where the cause lies within his control and he himself is therefore ultimately responsible, the supplier undertakes to indemnify us to this extent against any claims for compensation for damages made against us by third parties.
- (2) The supplier undertakes to conclude and maintain product liability insurance with a fixed maximum coverage of €10 million per instance of personal or material damages; if we are entitled to any further claims for damages, these remain unaffected.

§ 8 Proprietary rights

- (1) The supplier gives his assurance that his deliveries do not infringe the proprietary rights of any third parties within the Federal Republic of Germany.
- (2) If a claim is made against us on such grounds by a third party, the supplier undertakes, at our initial written request, to indemnify us against all such claims. We are not entitled to make any agreements with such a third party, and in particular to come to any settlement, without the agreement of the supplier.
- (3) The indemnification obligation of the supplier extends to all costs incurred by us by reason of or in connection with claims made against us by third parties.
- (4) The lapse period for claims under § 8 is ten years, calculated from conclusion of the contract.

§ 9 Retention of ownership, provision, tools, confidentiality

- (1) We reserve ownership of any goods or parts provided to the supplier. Processing on the part of the supplier is carried out on our behalf. If these retained goods are processed together with other goods not belonging to us, we thereby acquire joint ownership of the resulting goods in the same ratio of the value of our goods (purchase price plus value-added tax) in relation to the other processed goods at the time of processing.
- (2) If the goods provided by us are inseparably mixed or combined with other goods not belonging to us, we thereby acquire joint ownership of the resulting goods in the same ratio of the value of the retained goods (purchase price plus value-added tax) in relation to the other mixed/combined goods at the time of mixing/combination. If such mixing/combination takes place in such a way that the goods belonging to the supplier can be regarded as the principal goods, it is hereby agreed that the supplier grants us proportional joint ownership; the supplier keeps this sole or joint property on our behalf.
- (3) We reserve ownership of all tools provided; the supplier undertakes to use such tools exclusively for the manufacture of the goods ordered by us. The supplier undertakes to insure tools belonging to us at the replacement cost against fire, flood damage or theft, at his own cost. The supplier hereby relinquishes in our favour all settlement claims arising from such insurance; we hereby accept such relinquishment. The supplier undertakes to carry out any necessary inspection, maintenance and repair work to such tools in good time and at his own cost. Any problems must be reported to us immediately; if he culpably fails to do so, we reserve the right to claim compensation for damages.
- (4) The supplier undertakes to maintain strict confidentiality with regard to all pictures, drawings, calculations and other documentation or information provided by us. They may only be disclosed to third parties with our express agreement. This obligation of confidentiality continues to apply following termination of the contract, and only lapses when and insofar as the manufacturing knowledge contained in such pictures, drawings, calculations and other documentation becomes a matter of common knowledge.
- (5) Insofar as the security rights due to us in accordance with Para. 1 and/or Para. 2 exceed the purchase price of all our retained goods not yet paid for by more than 10%, we will be obliged, at the request of the supplier, and at our discretion, to release any excess security rights.

§ 10 Cancellation of the contract on sufficient cogent grounds

- (1) Apart from the stipulations of § 8 VOL/B we may withdraw from the contract, or cancel it with immediate effect,
 - a) if the supplier contravenes his obligation of confidentiality or any other obligation imposed on him to maintain confidentiality with regard to facts which become known to him in connection with the order placed,
 - b) if the pattern to be manufactured by the supplier for series production is not provided by the supplier in time, even after the setting of an appropriate additional period. Such an additional period is not required if the first pattern gives certain cause to conclude that even new patterns will not meet the contractual conditions.
- (2) The handling of the contract subsequent to cancellation is subject to § 8 No. 3 VOL/B.
- (3) Further legal stipulations, and in particular the right to cancellation in accordance with §§ 314, 626 BGB, remain unaffected.

§ 11 Cancellation of the contract because of unreliability

- (1) Exclusion grounds in the sense of § 7 No. 5c VOL/A entitle us to withdraw from the contract on sufficient cogent grounds. Exclusion grounds are in particular constituted by unreliability of companies due to demonstrable serious misconduct (such as Granting of preference, § 333 StGB; Corruption, § 334 StGB) or improper fulfilment or non-fulfilment of the obligation to pay taxes, charges or contributions to legal social security schemes.
- (2) Exclusion grounds in accordance with Para. 1 are intentionally equivalent to inaccurate declarations with regard to specialist expertise, performance capability and reliability (§ 7 No. 5e VOL/A).
- (3) Exclusion grounds in accordance with Para. 1 are also constituted by involvement in impermissible competitive restrictions (see § 8 No. 2 VOL/B) in the sense of the law against competitive restrictions (GWB), in particular agreements with third parties on the submission or non-submission of quotations, the prices to be set, the paying of compensation (profit share or other payments) or the fixing of recommended prices.

§ 12 Effects of contract cancellation as a result of unreliability

- (1) If we withdraw from the contract in accordance with § 11, we are entitled, although not obligated, to return deliveries received so far. The value of unreturned deliveries or services already accepted will be paid to the supplier proportionally according to the contract price. The supplier is obliged to reimburse us for any deliveries returned which have already been paid for.
- (2) If sufficient cogent grounds exist as specified in § 11, the supplier is liable for the payment of a contractual penalty, irrespective of whether we make full or partial use of our right of withdrawal as specified under § 11. The amount of the contractual penalty will be 50-times the value of the promised or granted inducements or benefits in corruption cases in accordance with § 11 Para., or 50-times the costs saved or damages caused in other cases of § 11, up to a maximum of 10% of the total order price, excluding value-added tax.
- (3) The contractual penalty in accordance with Para. 2 may be applied at any time from receipt of the quotation request until two years following receipt of the invoice. If part-invoices have been agreed, the definitive date is the date of receipt of the last invoice.

§ 13 Compensation for damages on cancellation of the contract on sufficient cogent grounds or unreliability

The supplier is liable for reimbursing us for all damages sustained, either directly or indirectly, as a result of withdrawal from the contract under the terms of §§ 10, 11. The supplier forfeits other claims to remuneration for goods and services provided due to the withdrawal. § 7 No. 3 VOL/B also applies. The legal stipulations with regard to withdrawal remain unaffected.

§ 14 Seat of adjudication, place of fulfilment

- (1) If the supplier is a commercial entity, seat of adjudication is Heidelberg; we are however entitled to bring an action against the supplier at his local court.
- (2) Unless specified otherwise in the order, place of fulfilment is Heidelberg.