

General Purchasing Terms and Conditions of Helmholtz-Zentrum Dresden - Rossendorf e. V.

Last revised: July 2016

1. Scope, general

(1) These General Purchasing Terms and Conditions (GPTC) only apply to entrepreneurs, legal persons under public law or special assets under public law as defined by § 310 paragraph 1 of the German Civil Code (suppliers).

(2) The GPTC apply to contracts concerning goods and services. The GPTC also apply to future contracts concerning goods and services with the same supplier, even if HZDR does not refer to the GPTC in a given case.

(3) Differing, conflicting or supplementary General Terms and Conditions (GTC) of the supplier only become part of the contract if HZDR has expressly approved their validity in writing. This requirement for approval applies in every case, for example even if the supply refers to its GTC in its quote or acceptance (order confirmation, etc.) or if HZDR unconditionally accepts the delivery and/or performance while being aware of the customer's GTC.

(4) Individual agreements made with the supplier on an individual basis (including side agreements, additions and amendments) take precedence over these GPTC in every case. Such agreements as well as legally-relevant declarations and notifications which have to be made to HZDR by the supplier after the contract has been concluded (e.g. deadlines, reminders, notice of withdrawal) are required in writing in order to become effective.

For the execution of the contract, the General Terms and Conditions for the Performance of Services (VOL/B) also apply as amended.

2. Quote, order and order confirmation

(1) The quote has to be submitted in writing and free of charge.

(2) In its quote the supplier has to keep to the volume, quality and design stated in the enquiry or specification and expressly advise of any deviation.

(3) The contract concerning the goods and/or service will take effect with the written or electronic confirmation (acceptance) of the quote (order).

(4) HZDR's order will not be deemed to be binding until it has been submitted in writing or sent or confirmed electronically.

(5) The supplier is required to confirm the order electronically by email or in writing or to execute the order in particular by sending the goods unconditionally (acceptance). HZDR reserves the right to withdraw the order if the confirmation is not received within 30 days. A late acceptance will be deemed to be a new quote and requires acceptance by HZDR.

3. Delivery time and default of delivery

(1) The delivery date stated in the order is binding. The supplier must inform HZDR immediately in writing if it is unlikely to be able to meet agreed delivery times.

(2) If the supplier does not deliver or perform its service or does not deliver or perform the service by the agreed delivery time or is in default, HZDR'S rights, in particular concerning withdrawal and compensation, will be determined by the statutory regulations. The provision in para. 3 will remain unaffected.

(3) If the supplier is in default, HZDR can, alongside further legal claims, demand a flat-rate compensation for the damage caused to it by the default in the amount of 1 % of the net price per completed calendar week, in total however not more than 5 % of the net price of the goods that have been delivered late. HZDR reserves the right to prove that the level of damage incurred was higher. The supplier retains the right to prove that no damage at all has been caused to HZDR or that the damage was of a significantly lower amount.

4. Service, delivery, transfer of risk and default of acceptance

(1) The supplier bears the procurement risk for its services, unless it concerns a one-off production.

(2) The delivery will be made and/or service will be performed within Germany in accordance with Incoterms 2010 "DAP" to the place stated in the order.

(3) Two delivery notes stating the date (of issue and despatch), the content of the delivery (item number and quantity) and HZDR's order identification (date and number) is to be attached to the delivery. If the delivery note is missing or is incomplete, HZDR will not be responsible for the resultant delays in processing and payment.

(4) The risk of accidental loss or deterioration of the goods is transferred to HZDR with hand-over at the place of fulfilment. If an acceptance inspection has been agreed, this will be relevant for the transfer of risk.

5. Shipping and customs

(1) The supplier has to inform HZDR if the goods to be supplied are subject to export restrictions of any kind. With deliveries from third countries, i.e. all non-EU countries, the supplier has to contact the specified HZDR place of use in good time regarding the customs and import clearance.

(2) With deliveries which are subject to the US export control regulations (EAR, ITAR), the European Dual-Use Regulation or the German Export List, the supplier has to inform HZDR of this in writing beforehand.

(3) With intra-Community deliveries, the supplier has to provide HZDR with all of the necessary information such as the country of origin, the statistical goods number (HS Code) and the net weight per order item. With goods and services from an EU country, the VAT ID has to be stated.

6. Prices and payment terms

(1) The price stated in the order is binding. The agreed prices are fixed prices not including VAT. The VAT has to be shown separately.

(2) The price includes all of the supplier's services and additional services (e.g. assembly and installation) and all additional costs (e.g. correct packaging and transport costs including any transport and liability insurance).

(3) The agreed price is due for payment within 30 calendar days of the completed delivery and service (including any acceptance of performance that may have been agreed) and receipt of a correct invoice. If HZDR makes the payment within 14 days of receipt of the invoice and correct delivery, the supplier will grant a 2 % early payment discount on the invoice amount.

(4) Payment is not confirmation that the supplier has met its contractual obligations.

If payment in advance has been agreed, the supplier has to present an unlimited directly-enforceable guarantee from a German bank.

(5) HZDR will not owe any interest after the due date. The supplier's entitlement to the payment of default interest remains unaffected.

(6) HZDR is entitled to offsetting and retention rights and objection on the grounds of non-performance of the contract to the extent permitted by law. HZDR is in particular entitled to retain payments which are due, so long as it is entitled to make claims against the supplier due to incomplete or defective performance.

(7) The supplier only has an offsetting or retention right if its counterclaim is established in law, undisputed or due for judgement.

7. Confidentiality agreement and retention of title

(1) HZDR retains the rights of ownership and copyrights to illustrations, plans, drawings, calculations, implementation instructions, product descriptions and any other documents. Such documents are to be used exclusively for the performance of the contract and are to be returned upon completion of the contract. The documents are to be kept secret from third parties, including after the contract has come to an end. The confidentiality agreement will only expire if and to the extent which the knowledge contained in the documents provided has become generally known.

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(2) The preceding provision applies accordingly for substances and materials (e.g. software, finished and semi-finished products) as well as tools, templates, samples and other objects which HZDR provides the supplier with for manufacture. Such objects are, so long as they are not processed, to be stored separately at the supplier's expense and are to be insured to the usual extent against destruction and loss.

(3) Any processing, mixing or combining of objects provided is done by the supplier on HZDR's behalf. If in processing, mixing or combining with a third party's goods the third party has retention of title, HZDR will acquire joint ownership of the new goods in proportion to the value of the goods HZDR has provided to the other goods.

(4) The goods are transferred to HZDR unconditionally and regardless of whether the price has been paid. All forms of extended or prolonged retention of title are excluded in all events, so that a retention of title declared by the supplier only applies up until payment for the goods delivered to HZDR and only to these goods.

8. Defective delivery

(1) For HZDR's rights with liability for material defects and defects of title concerning the goods and any other breaches of duty by the supplier, the statutory regulations will apply, unless otherwise is agreed below.

(2) The product descriptions which are the subject matter of the respective contract or are included in the contract in the same way as the GPTC constitute the agreement concerning quality.

(3) HZDR will also be entitled to make claims for defects without limitation if the defects were not identified due to gross negligence.

(4) The statutory regulations (§§ 377, 381 of the German Commercial Code) will apply for the commercial duties of inspection and notification, subject to the following conditions: HZDR's duty of inspection is limited to defects which can be identified visually at our goods-in inspection including the delivery paperwork and in the sampling procedure at our quality control (e.g. transport damage, wrong and short delivery). If an acceptance inspection has been agreed, there is no need to examine the goods. Apart from that, it depends to what extent an examination is feasible within the normal course of business taking into account the circumstances of the individual case. HZDR's duty to notify defects which are discovered later remains unaffected.

(5) The costs spent for the purpose of examination and rectification by the supplier will also be borne by the supplier if it turns out that there were in fact no defects. HZDR's liability for compensation with unjustified requests for rectification of defects remains unaffected; in this respect, however, HZDR is only liable if HZDR was aware or was not aware due to gross negligence that there were no defects.

(6) If the supplier does not meet its obligation concerning supplementary performance or rectification by a reasonable deadline set by HZDR, HZDR may rectify the defect itself and demand compensation from the supplier for the necessary expenditure incurred or an appropriate advance. If the supplementary performance by the supplier has failed or is unacceptable for HZDR (e.g. due to particular urgency, risk to operational safety or the threat of disproportionate damage), there will be no need to set a deadline. The supplier is to be informed without delay and where possible in advance.

9. Producer liability

(1) If the supplier is responsible for a product liability loss, it has to indemnify HZDR against claims of third parties if the cause for the product liability loss lies within the supplier's organisation and sphere of control and the supplier itself is liable in relation to third parties.

(2) Under its obligation to indemnify, the supplier has to reimburse in accordance with §§ 683, 670 of the German Civil Code expenses which arise from or relate to a claim by a third party including recall actions carried out by

HZDR. HZDR will inform the supplier of the content and extent of the product recall actions, as far as possible and reasonable, and give it the opportunity to make a statement. Further legal claims remain unaffected.

(3) The supplier has to take out and maintain product liability insurance with an inclusive sum insured of at least EUR 1 million per injury to person and damage to property.

10. Property rights

The supplier is responsible for ensuring that the property rights of third parties are not infringed in the performance of the contract and in the supply of goods and services. The supplier will indemnify HZDR against any claims by third parties relating to any infringements of property rights.

11. Limitation

The general limitation period for claims for defects is 3 years from transfer of risk.

12. Choice of law and place of jurisdiction

(1) The law of the Federal Republic of Germany applies to these GPTC and all legal relationships between HZDR and the supplier to the exclusion of all international and supranational legal systems (for contracts), and in particular the United Nations Convention on Contracts for the International Sale of Goods (CISG). The requirements and effects of retention of title are subject to the law at the respective location of the goods, if in accordance with this the choice of German law is not allowed or is ineffective.

(2) The sole place of jurisdiction, including international jurisdiction, for all disputes relating to the contractual relationship is the location of the registered office in Dresden. HZDR also has the right to take legal action at the place of fulfilment for the delivery obligation.

13. Compliance with regulations

(1) In its performance of the contract, the supplier has to comply with the relevant statutory and administrative regulations and requirements. The goods or services must comply with the safety, labour protection, accident prevention and any other regulations as well as relevant standards (in particular DIN, VDE). The supplier confirms that the object of the contract conforms to the regulations of the Equipment Safety Act (Gerätesicherheitsgesetz) and the related directives issued with CE marking or a declaration of conformity. All technical documentation of the goods including any necessary safety data sheets have to be handed over to HZDR and are included in the order or delivery.

(2) The supplier has to include protective devices required under such regulations in the delivery and within the agreed price. If the supplier has any concerns about the type of performance required by HZDR, it has to inform HZDR of this immediately in writing.

(3) The supplier will bear from the time of handover by HZDR the risk of loss or destruction for those items which it has been lent by HZDR within the scope of the contract.

(4) The supplier has to include in the delivery free of charge, in a reproducible form and if possible on electronic data carriers all of the documents required for acceptance, operation, maintenance and repair (test reports, factory certification, drawings, plans, operating instructions and the like).

14. Salvatorius clause

If one or more of these provisions should be or become ineffective in whole or in part, the validity of the remaining provisions will not be affected by this.