

**General Conditions of Purchase
of the Physikalisch-Technische Bundesanstalt (PTB)
As of: 13 June 2019**

1. General

For the contractual relationship between PTB, as the Purchaser (in the following called the "Customer"), and the Contractor, these *General Conditions of Purchase* shall apply, unless otherwise agreed in writing.

Besides, the provisions of the *General Contractual Terms and Conditions for the Execution of Work and Services (VOL/B)* shall apply in their currently valid version

(see:

<https://www.bmwi.de/Redaktion/DE/Downloads/Gesetz/allgemeine-vertragsbedingungen-fuer-die-ausfuhrung-von-leistungen.pdf?blob=publicationFile&v=1> (published in German only)).

By submitting a quotation for which a request has been made, or by confirming, accepting or executing an order, the Contractor acknowledges these *General Conditions of Purchase*, provided that the Customer has made these known within the scope of an "Ausschreibung" (*Invitation to Tender*), an inquiry or an order. The *General Conditions of Purchase* are also made generally known via the Internet (see: <http://einkauf.ptb.de>)

so that the Contractor can reasonably take cognizance of them and must reckon with their application. They are thus a general integral part of the contract in the individual purchasing/ordering process.

Any general terms and conditions of the Contractor which deviate from these *General Conditions of Purchase of PTB* will be applicable only if and as far as they have been expressly accepted in writing by the Procurement Office of the Customer. This will also apply if the Contractor refers to his own *General Terms and Conditions*; in such case, the Customer need not object. On all documents, including invoices, the order number, the reference number and the date of letters of the Customer are to be stated.

If, for any reasons whatsoever, individual terms of these *General Conditions of Purchase* cannot be applied, the other terms remain unaffected.

2. Offer, order and confirmation of order

The quotation is to be submitted free of charge. In the case of an "Ausschreibung" (*Invitation to Tender*) according to the German "*Ordinance on Procurement below the Thresholds*" ("*Unterschwellenvergabeordnung*" – UVgO), quotations may be submitted in the following ways: by mail; directly; electronically via "eVergabe" (*in English: "eTender"*) (see: <https://www.evergabe-online.de>); or by a combination of these means of communication. In the case of an "Ausschreibung" (*Invitation to Tender*) according to the German "*Ordinance on Procurement*" ("*Vergabeordnung*" – VGV), the quotations must be submitted via "eVergabe" (*in English: "eTender"*) (see: <https://www.evergabe-online.de>). In his quotation, the Contractor has to adhere to the inquiry or to the "Ausschreibung" (*Invitation to Tender*) with regard to the quantity, the condition and the workmanship; any deviation must be expressly indicated. If the quotation does not include incidental expenses, their amount is to be shown separately. The Contractor is bound to his quotation at least until the binding period has expired – except if he has withdrawn his quotation in writing before the deadline for the submission of quotations has expired. As a matter of principle, alternative quotations are ruled out – except if, in the individual case, it is declared that they are permitted. Orders will be binding only if they are placed or confirmed in writing by the Procurement Office of the Customer. This applies to both commercial/legal and scientific/technical agreements. Arbitrary deliveries or services furnished arbitrarily by the Contractor will not be remunerated. It is not necessary to raise express objection during the acceptance procedure.

Orders have to be confirmed by the Contractor without delay, and in writing.

The Customer reserves the right to withdraw the order if the confirmation is not received within a reasonable period of time. Subsequent changes of an order shall be binding only with the consent of the staff of the Customer's Procurement Office. The changes must be laid down in writing.

3. Prices and Expenses

The agreed prices are fixed prices without value-added tax. They are to be understood free place of use, including packing.

Freight and packing expenses, as well as other incidental expenses, will be borne by the Customer only if these have been expressly agreed upon.

When calculating the prices, the regulations of the *Ordinance PR No. 30/53 on the Prices for Public Contracts of 21 November 1953*, including its annex "*Guiding Principles for the Price Calculation on the Basis of Cost Prices (LSP)*" have to be applied in their currently valid version (https://www.gesetze-im-internet.de/preisv_30_53/).

If advance payments have been agreed upon, the Contractor has to furnish, as security, an unlimited, absolute guarantee by a European major bank or major insurance company.

If the Customer withdraws from the contract, any payments which have already been made in advance have to be refunded, and from the date of payment onwards, interest has to be paid for such payments, at a rate of 8 percentage points above the currently valid basic rate of interest according to Section 247 of the German Civil Code (*Bürgerliches Gesetzbuch* - BGB) (https://www.gesetze-im-internet.de/bgb/_247.html).

4. Execution of the contract, observance of regulations, sub-contracting

The Contractor undertakes to comply, during the execution of the contract, with the relevant legal and official regulations and provisions. The delivery or the service must comply with the regulations for safety, labour protection and accident prevention, with the regulations of the relevant standards, with the regulations of DIN and of VDE, and with other regulations. Any protective devices prescribed by such regulations are contained in the quotation of the Contractor and are mandatorily included. If the Contractor has reservations about the workmanship desired by the Customer, he shall inform the Customer accordingly in writing.

The Contractor undertakes to make sure that a potential subcontractor will fulfil the same suitability criteria as he does himself, and that he will observe the regulations outlined above. The subcontractor must furnish the same proofs as the Contractor. The Contractor must duly monitor and supervise the subcontractor in his executing of the contract.

5. Drawings, documents and specimens

The Contractor has to make available to the Customer in due time, free of charge and in a copyable form, all the documents (operating instructions, drawings, plans, and the like) that are necessary for the use, maintenance or repair of the delivered objects, and to transfer the respective rights of use involved. Through the surrender, the Contractor declares that he (the Contractor) has full power of disposition and that third-party rights do not exist.

6. Period of delivery

The period of delivery shall begin with the day on which the Contractor receives the written order. Agreed dates of delivery are to be strictly adhered to. The Contractor has to inform the Customer immediately in writing of any delays, of the reasons for these delays, and of the presumable duration of these delays. If the time of delivery is exceeded, the

Customer can claim, for each full week of delay, a penalty of 0.5 percentage points above the respective basic rate of interest according to Section 247 of the German Civil Code (*Bürgerliches Gesetzbuch - BGB*) (at the most, however, of 8 percentage points of the total value of the order), except if the Contractor is not responsible for the time delay. Any delay of the subcontractors of the Contractor shall be the risk of the Contractor.

The Customer needs not expressly reserve the right to claim the penalty if he accepts the delayed services.

Any further rights of claiming damages shall remain unaffected. The penalty shall be allowed as credit against any claim for damages of the Customer for non-fulfilment.

7. Right of the Customer to gain information and to carry out inspections

The Customer and his authorized representatives shall be entitled to: provide themselves with information at the Contractor's works, within the working hours, of whether the service is being executed in compliance with the contract; take part in in-plant inspections; and to carry out inspections on their own. The costs of the inspections initiated by the Customer shall be borne by the Customer if the staff or the material for the execution of the inspections is made available by the Customer. The expenses for repeat inspections carried out on the part of the Customer due to defects having been found in previous inspections shall be borne by the Contractor to their full amount.

If the Contractor places subcontracts, he undertakes to ensure that the subcontractor grants the Customer by contract the right to gain information and to carry out inspections at the subcontractor's works to the extent described above.

The inspections will not release the Contractor from his warranty and liability. The Contractor cannot derive any rights from these inspections.

8. Assignment of claims

The Contractor may relinquish claims against the Customer only if the Procurement Office of the Customer has given its written consent.

9. Acceptance

If the delivery or service has been effected in a condition which complies with the contract, or if the defects found have been eliminated, the delivery or the service will be accepted. Any time limit having been agreed upon for the acceptance has to be complied with, except if the acceptance is delayed due to difficulties for which the Customer is not responsible. In the latter case, the time limit for the acceptance will be prolonged by the period of the delay. If a trial operation is envisaged, "acceptance" will be declared by a joint acceptance report, after the trial run has been carried out successfully.

10. Ownership

At the moment of acceptance, and after the respective object has been handed over, the Customer acquires the unrestricted ownership of the object of the delivery or of the service. Through the handing-over, the Contractor declares that he (the Contractor) has full power of disposition and that third party's rights do not exist.

Material provisions of any kind will remain the property of the Customer. They are to be marked as such, and they are to be stored, designated, and managed separately. The Contractor has to give, without undue delay, written notice of any recognizable defects of the material provided. If any material provided is processed, transformed, joined to or mixed with other objects, the Customer will acquire the sole ownership of the new object. The Contractor shall safely store such object for the Customer free of charge. The ownership and the copyright of documents of the Customer

which he has made available to the Contractor will remain with the Customer. Upon request, the documents and all copies thereof have to be returned without undue delay. The documents of the Customer may only be used for the purposes laid down within the scope of the contract. In the case of infringement, the Contractor shall be liable for the overall loss.

11. Invoice and payment

In all invoices submitted, the order number of the Customer must be stated.

The value-added tax is to be shown separately.

The terms of payment and the terms of discount shall begin at the earliest on the day after all deliveries have been received in perfect condition, or on the day after all services have been perfectly rendered, and upon receipt of the respective invoice. Partial deliveries or partial services will, as a matter of principle, only be invoiced if they have been agreed upon by contract. The discount period shall be 14 days. If no cash discount has been agreed upon, invoices must be paid not later than 30 days after the due date and receipt of the invoice. The time allowance will not begin to run if a delay in the processing of the invoice has been brought about because the Contractor has not stated the order number of the Customer or has stated it incompletely.

The fact that a payment has been made does not have to be regarded as a confirmation that the contractual obligations of the Contractor have been fulfilled. The Contractor is obliged to refund to the Customer any amounts paid in excess. He cannot plead loss of enrichment.

12. Warranty

The Contractor shall be liable for defects in title and material defects in accordance with the legal regulations. He shall warrant the careful and proper execution of the contract, in particular compliance with the specifications and compliance with any other provisions of the Customer for workmanship in accordance with the latest state of technology. He shall also warrant the quality of the delivery and its appropriateness with regard to the material, design and workmanship, and of the documents forming part of the delivery (operating instructions, drawings, plans, and the like). The specifications laid down are to be considered as contractually warranted characteristics of the object of the delivery or of the service.

The costs to be borne by the Contractor when defects have to be remedied or when a new delivery becomes necessary comprise also the expenses for packing, freight and transport, for the work arising for any assembly and disassembly, for travelling expenses, and for any expenses arising for the elimination of defects at the Customer's premises.

Usually, the statutory period of limitation for claims based on defects shall be 24 months, unless a longer period is provided by legal regulations. If the acceptance is not confirmed in writing, the statutory period of limitation for claims based on defects will begin two weeks after the delivery has arrived at the Customer's premises. This shall also apply to the liability of the subcontractors for material defects.

For replacement parts and new parts supplied by the Contractor, and for work carried out by him to remedy defects, the Contractor will be liable in the same way as for the original object of the delivery; the limitation period for warranty claims shall begin after the defects complained of have been remedied. For delivered parts which could not remain in operation because of material defects, a currently running limitation period shall be prolonged by the period of service interruption.

13. Property rights

It is the Contractor's responsibility to ensure that during the execution of the contract, and during the delivery and

utilisation of the object of the delivery or of the service, the property rights of third parties are not violated. He shall indemnify the Customer from the claims of third parties that might arise from a possible violation of property rights.

14. National minimum wage according to the German Minimum Wage Act (*Staatlicher Mindestlohn - MiLoG*)

The Contractor guarantees his employees continuous, timely payment of the general national minimum wage per clock hour in compliance with MiLoG (German Minimum Wage Act) (<https://www.gesetze-im-internet.de/milog/>) as laid down according to the "*Lohnanpassungsverordnung*" ("*Ordinance on the Adjustment of Wages*") being valid at the time of execution of the work. If subcontractors are used, the Contractor undertakes to ensure that these subcontractors likewise undertake to pay the general national minimum wage per clock hour in compliance with MiLoG (German Minimum Wage Act) that is valid at the time of execution of the work and that, on their part, they include such an obligation in their contract.

The Contractor is obliged to regularly keep monthly records of the payment of the general national minimum wage per working hour in compliance with Section 17 of the German Minimum Wage Act (MiLoG). The Customer is entitled to check these records after giving prior notice. The Contractor is obliged to check his subcontractors accordingly.

The Contractor must, in a timely manner, inform the Customer of the use of subcontractors and obtain the Customer's prior consent. The Contractor is obliged to select reputable and well-established subcontractors (the case may arise where detailed prescriptions will be stated from a catalogue of criteria).

The Contractor will bear within the scope of this Agreement the costs for each claim that is raised against the Customer in compliance with Section 13 of the German Minimum Wage Act (MiLoG), and all of the expenses involved including possible fines in compliance with Section 21 of the German Minimum Wage Act (MiLoG).

The Customer is entitled to terminate the contract without notice if the Contractor has violated the Minimum Wage Act and/or if he has violated the Contractor's obligations that have been agreed upon in this connection.

15. Advertising material

In advertising material, the Contractor may mention his business relations with the Customer only with the Customer's express written consent.

16. Termination and rescission

Notwithstanding other rights to terminate the contract or to withdraw from it, the Customer will be entitled to terminate the contract or to withdraw from it if the Contractor has committed culpable acts as defined by Section 334 of the German Criminal Code ("*Bribes*") (https://www.gesetze-im-internet.de/stgb/_334.html). In addition, the Customer can claim, vis-à-vis the Contractor, the reparation of all damages.

17. Safety and administrative regulations

In the case of deliveries and services on the premises of the Customer, the safety and procedural regulations of the Customer are to be complied with which, in this case, shall form an integral part of the contract. Any information which becomes known in connection with a delivery carried out on the premises of the Customer is to be treated confidentially.

18. Place of performance and jurisdiction

The place of performance for the Contractor shall be at the seat of the Customer or at another application site designated by the Customer.

Any disputes arising hereunder will be settled before a competent Braunschweig court of law. The legal system of the Federal Republic of Germany shall apply exclusively.