



General Terms and Conditions of Purchase of the Max Planck Institute for Plasma Physics

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1. General

- 1.1 The General Terms and Conditions of Purchase of the Max Planck Institute for Plasma Physics (hereinafter referred to as the IPP) applies to all contracts for supplies and services commissioned by the IPP, unless otherwise agreed in writing between the IPP and the Contractor.
- 1.2 By submitting an offer, confirming an order, or executing an order, the Contractor accepts these Terms and Conditions of Purchase of the IPP, provided that the IPP has generally conveyed them to the Contractor in connection with a call for tenders, enquiry, order, or in any other way in such a manner as to make them aware of their future applicability.
- 1.3 The Contractor's general terms and conditions and terms and conditions deviating from or supplementing IPP's purchase order letter or these General Terms and Conditions of Purchase shall only apply if and to the extent they have been expressly accepted by IPP in writing. This shall also apply if the Contractor makes reference to their general terms and conditions in the offer or in the order confirmation.
- 1.4 Should individual provisions of these General Terms and Conditions of Purchase not apply, the remaining provisions shall remain unaffected. In all other respects, the statutory provisions of the German Civil Code (BGB) shall apply in addition to the General Terms and Conditions of Purchase.
- 1.5 All correspondence, including invoices, must include the order number, reference number and date of letters from IPP.

2. Offer, order and order confirmation

- 2.1 The offer must be submitted free of charge and in duplicate.
- 2.2 In their offer, the Contractor must adhere to the enquiry or call for tenders with regard to the quantity, quality and execution and, in the event of a deviation, make express reference to this. The Contractor shall be bound to their offer for three months, unless a longer commitment is agreed upon.
- 2.3 The order must be in writing to be binding. It can only be initiated through the IPP's Purchasing Department (Administration - General Services) and, with the exception of electronic orders, requires at least two signatures. Oral agreements shall only be valid if they are confirmed by IPP in accordance with sentence 1. The Contractor must confirm orders in writing without delay, but at the latest one week after receipt.
- 2.4 In addition to these General Terms and Conditions of Purchase, the General Terms and Conditions of Contract for the Provision of Services (VOL/B) shall apply to the execution of the contract. If the Contractor does not have their registered office in Germany and is therefore not familiar with the VOL/B, the IPP shall make it available to the Contractor free of charge upon request.



3. Prices

- 3.1 When determining prices, the provisions of Regulation PR 30/53 on Pricing in Public Contracts of 11/21/1953, as amended, with the Guidelines for Pricing on the Basis of Cost (LSP) must be applied. The price-control boards of the federal state in which the Contractor has their place of business are responsible for price monitoring.
- 3.2 The agreed prices are fixed prices excluding sales tax and shall include free delivery to the place of use including packaging. If otherwise agreed in writing, the freight or packaging costs must be advanced by the Contractor and indicated separately in the invoices.
- 3.3 Price escalation clauses and/or price adjustment clauses shall not be recognized.
- 3.4 The Contractor is obliged to take back the packaging used for transport according to Section 4 of the Packaging Ordinance (VerpackV). Should it fail to fulfill this obligation, it shall bear the costs for the return transport of the packaging.

4. Execution of the contract, compliance with regulations

- 4.1 The Contractor undertakes to comply with the relevant statutory and official regulations and requirements when performing the contract. The delivery or service must comply with the safety, occupational health and safety, accident prevention and other regulations as well as relevant standards (in particular DIN, VDE). The Contractor shall confirm the conformity of the contractual object pursuant to the provisions of the Equipment Safety Law (GSG) together with the regulations issued in this respect by means of CE marking or declaration of conformity. All technical documentation for the goods, including any necessary safety data sheets, must be handed over to the IPP and are an integral part of the order or scope of delivery.
- 4.2 The Contractor must supply protective devices required by such regulations as part of the agreed price. If the Contractor has reservations about the type of execution requested by IPP, it shall notify IPP thereof in writing without delay.
- 4.3 The Contractor shall bear the risk of loss or destruction of any items provided on loan by the IPP under the order from the time of handover by the IPP.
- 4.4 The Contractor shall supply all documents required for acceptance, operation, maintenance and repair (inspection reports, works certificates, drawings, plans, operating instructions, etc.) free of charge, in reproducible form and, if possible, on electronic data carriers.

5. Delivery time/delay

- 5.1 The delivery time shall begin on the date on which the Contractor receives the order. The delivery time is binding. The Contractor shall be in default after expiry of the delivery period without the need for a reminder.
- 5.2 If delays are to be expected, the Contractor shall give notice thereof in writing without delay, stating the reasons and the presumed duration.



- 5.3 If the Contractor is at fault for exceeding the delivery deadline, the IPP will be entitled to set the Contractor a reasonable deadline for performance or subsequent performance and to withdraw from the contract after its fruitless expiry and - if the other statutory requirements are met - to claim damages or reimbursement of expenses.

6. Subcontracts

If the Contractor awards subcontracts, it shall be liable for the culpability of their subcontractors as for their own culpability. They shall also be liable for the indirect subcontractors who have been commissioned by their subcontractors.

7. Right to information and inspection

- 7.1 The IPP and third parties commissioned by the IPP will be entitled at any time during working time to observe the production process at the Contractor's premises and to obtain information regarding the contractual performance of the service, to participate in factory inspections and to carry out independent inspections. Necessary repeat inspections due to detected defects shall be borne in full by the Contractor.
- 7.2 When awarding subcontracts, the Contractor undertakes to ensure that the subcontractor contractually grants the IPP the right to observe production, to provide information and to carry out tests at the subcontractor's premises to the extent specified above.
- 7.3 The inspections shall not release the Contractor from its obligation to provide services and assume liability in accordance with the order and the contract.

8. Amendment of contract and assignment of claims

- 8.1 The IPP may subsequently demand changes in the quality of the delivery or service within the scope of the Contractor's technical capability, unless this is unreasonable for the Contractor. In the event of required technical changes, the Contractor must provide advance notification of their effects on prices, delivery time or other conditions. Modifying agreements must be made in writing in accordance with No. 2.3 of these General Terms and Conditions of Purchase and must take into account effects on other contractual conditions, in particular on execution deadlines.
- 8.2 Services performed by the Contractor without an order or in unauthorized deviation from the contract shall not be remunerated. Upon request, the Contractor shall take back or remove such services within a reasonable period of time, otherwise they may be returned and removed at its expense and risk. However, the Contractor will be entitled to remuneration if IPP subsequently accepts such services.
- 8.3 The Contractor may only legally assign claims against the IPP with its consent

9. Shipping and customs

- 9.1 The Contractor shall send the IPP a dispatch notification in due time before dispatching the delivery items.



- 9.2 The delivery must be accompanied by two delivery notes. In case of deliveries from foreign countries subject to a customs check, the Contractor shall contact the IPP in due time regarding customs and import clearance.

10. Transfer of risk, acceptance

- 10.1 Delivery shall be deemed to have taken place upon receipt of the goods at the delivery point of the agreed place of performance.
- 10.2 If no further services have been agreed (assembly, installation services, etc.), the risk of accidental loss or accidental deterioration shall pass to IPP upon proper handover of the goods at the place of delivery. If additional services beyond the mere delivery have been agreed upon, the risk shall only be transferred after acceptance of the total service by the Client.
- 10.3 Advance or part payments of the purchase price shall not imply acceptance or that the performance is free of defects. Preliminary or interim acceptances are merely inspections with no relevance for the transfer of risk nor for the running of the time limits.
- 10.4 Acceptances shall be made on the basis of common protocol.

11. Ownership rights

- 11.1 In the event that the Contractor has reserved unrestricted ownership of the object of the delivery or service, the IPP shall acquire this ownership at the latest upon full payment of the purchase price, otherwise upon acceptance or handover; until this condition occurs, the Contractor shall have reserved ownership of the object. The same shall apply to the documents supplied by the Contractor (No. 4.3). By handing over the goods, the Contractor declares that it is fully entitled to dispose of the goods and that no rights of third parties exist.
- 11.2 Provided material of any kind shall remain the property of IPP. They shall be identified as such and stored, designated and managed separately. In the event that the ownership of material provided by IPP lapses due to combination, mixing or processing, it is agreed that the ownership of the uniform item created in this case shall pass to IPP in proportion to the value (invoice value). If Contractor's item is to be regarded as the main item in this case, it is agreed that the Contractor shall transfer co-ownership to IPP on a pro rata basis. The Contractor shall hold the sole ownership or co-ownership in safe custody for IPP free of charge.
- 11.3 The ownership and intangible rights to the IPP's documents that have been provided to the Contractor shall remain with IPP. The documents, together with all copies or duplicates, must be surrendered immediately upon request. The IPP's documents may only be used for the purposes specified in the contract. Furthermore, the Contractor is obliged to maintain secrecy with regard to all received illustrations, drawings, calculations and other documents and information. In case of infringement, the Contractor shall be liable for the entire damage.



12. Invoice and payment

- 12.1 Invoices are to be sent exclusively in one of the following file formats to the address invoice-plas@gv.mpg.de: PDF, PDF/A, ZUGFeRD 2.0 and XInvoice. The value added tax must be shown separately. Further information can be found at https://www.ipp.mpg.de/5313107/IPP_Merkblatt_Rechnungen_EN.pdf
- 12.2 Payment and discount periods shall begin on the date of receipt of the invoice, but not before proper delivery. Payment shall be deemed to have been made upon receipt of the transfer order by the IPP's executing financial institution. The payment does not confirm the fulfillment of the Contractor's contractual obligations.
- 12.3 Payment by IPP for the relevant service shall only be made if all items owned by IPP and lent to the Contractor by the IPP for the purpose of performing the contract have been returned to the IPP.
- 12.4 Advance payments shall only be made if agreed in writing and secured by a directly enforceable bank guarantee with advance waiver of the defense of failure to pursue remedies. The guarantee declaration must be made on the form supplied by the IPP.
- 12.5 The IPP shall not be automatically in default 30 days after the due date and receipt of the invoice. A reminder or a calendar determination of the occurrence of the default is required to give notice of default.
- 12.6 If the Contractor claims interest on arrears of more than 5 percentage points above the respective base interest rate of the European Central Bank after a reminder, the IPP shall only be obliged to pay this higher interest if the Contractor submits a certificate from a bank confirming the use of a loan in the amount claimed.
- 12.7 Work compensation claims shall only become due after acceptance.

13. Legal consequences in the event of breach of duty by the Contractor

- 13.1 The Contractor shall be liable for defects of title and quality in accordance with the statutory provisions. It warrants the careful and proper fulfillment of the contract, in particular the compliance with the stipulated specifications and other execution regulations according to the recognized state of the art, as well as the quality and expediency of the delivery with regard to material, construction and execution and the documents belonging to the delivery (drawings, plans, etc.).
- 13.2 The IPP shall promptly notify the Contractor in writing of any defects.
- 13.3 The costs to be borne by the Contractor when remedying defects shall include all necessary expenses, in particular transport, travel, labor and material costs. This also includes necessary expenses incurred by the IPP.
- 13.4 The period of limitation for defect claims shall commence upon acceptance or handover of the service.



13.5 The quality characteristics agreed upon for the original parts shall apply to delivered replacement parts and repair work. The IPP is entitled to the rights laid down in Section 437 of the German Civil Code (BGB) for these parts. The expiry of the limitation period for claims based on defects shall be suspended for the period during which the delivery/service is not in a contractually compliant condition, provided that written notification of the defect has been given in accordance with 13.2. The suspensive effect shall cease at the earliest after the IPP has determined that the defect has been remedied. In the event of subsequent delivery of a defect-free item, the period of limitation shall start anew from the time of delivery and shall end no later than five years after the initial delivery. In all other respects, Section 212 of the German Civil Code (BGB) shall apply.

13.6 Claims for rectification of defects may also be asserted after expiry of the deadline if the relevant defects were reported to the Contractor before expiry of the deadline.

14. Industrial property rights and usage use

14.1 The Contractor shall be liable for ensuring that the property rights of third parties are not infringed in the execution of the contract and in the delivery and use of the object of the delivery or service. It shall indemnify IPP against claims of third parties arising from any infringements of property rights.

14.2 The Contractor shall grant the IPP a free, non-exclusive, irrevocable and transferable license with the authority to grant sublicenses to all domestic and foreign intellectual property rights, provided that such intellectual property rights have arisen in the performance of this contract. The same shall apply to copyrighted representations of a scientific or technical nature to the exclusion of the reservations in Section 37 (1) of the Copyright Law (UrhG).

15. Promotional material, IPP/ MPG logo

The Contractor may only refer to business connections with the IPP in advertising material with the latter's express consent. The use of the IPP as well as the MPG logo shall always be subject to approval.

16. Termination, withdrawal and contractual penalty

16.1 The IPP will be entitled, without prejudice to any other rights of termination or rescission, to terminate the contract with immediate effect or to rescind the contract if there are acts on the part of the Contractor within the meaning of Section 333 of the Criminal Code (StGB) (granting of benefits) or Section 334 of the Criminal Code (StGB) (bribery). In addition, IPP may demand compensation from the Contractor for all damages.

16.2 If it is proven that the Contractor entered into an agreement that constitutes an illegal restriction on competition as a result of the award, they must pay the IPP 5 percent of the contract amount, unless they can demonstrate damages of a higher amount. This shall also apply if the contract is terminated or has already been fulfilled.

17. Safety and order regulations

17.1 In the case of supplies and services on the premises and in the rooms of the IPP, the safety and order



regulations of the IPP must be observed, which in this case are part of the contract.

- 17.2 Before starting work, the Contractor shall obtain information about possible hazards at its personnel's place of work and the safety measures that may be required. Subsequently, the Contractor shall instruct their employees to the required extent.

18. **General Equal Treatment Act (AGG)**

The Contractor and the Client undertake to comply with the General Equal Treatment Act (AGG) and to impose the same obligation on the persons designated for the order. If employees of the Contractor violate the provisions of the General Equal Treatment Act (AGG) to the detriment of employees of the Client, the Client reserves the right to take recourse against the Contractor.

19. **Place of performance, applicable law, place of jurisdiction**

- 19.1 The place of performance for the Contractor shall be the place of use at the respective operating site of the Max Planck Institute for Plasma Physics or another place of use designated by IPP.
- 19.2 The contract is subject to the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 19.3 The place of jurisdiction is Munich.