

# ADDITIONAL TERMS AND CONDITIONS (ZUSÄTZLICHE VERTRAGSBEDINGUNGEN)

## – Max-Planck-Gesellschaft zur Förderung der Wissenschaften e.V. – Version 03.07.2020

### 1. Scope; Form

1.1. These 'Additional Terms and Conditions' (Zusätzliche Vertragsbedingungen, hereafter '**ZVB**') apply to any agreements that institutions of Max-Planck-Gesellschaft zur Förderung der Wissenschaften e.V. (hereafter '**MPG**') enter into as purchaser/customers – especially service contracts, purchase contracts, contracts to produce a work and contracts on supplying goods to be manufactured or produced. These ZVB do not apply to construction services as described in § 1 of the German Construction Tendering and Contract Regulations, Part A (VOB/A), or architects' and engineers' agreements in the construction sector.

1.2. These ZVB only apply if the seller/contractor (hereafter '**trade partner**') is a company, a business person, a corporate body under public law, or a special fund under public law.

MPG is a non-profit organization under civil law in the form of a registered association (eingetragener Verein). MPG conducts basic research into the natural sciences, life sciences, humanities, and social sciences, in the service of the general public. As MPG is not a business person (Kaufmann) in the sense of § 1 of the German Commercial Code (HGB), the HGB's regulations do not apply to MPG.

1.3. Unless mandatory statutory law says otherwise, basis for the execution of the agreement are the following provisions, and in this order:

- The contract concluded between the parties or the wording of an order (letter of order or acceptance), including any tender documents, supplementary contractual conditions, and annexes;
- These ZVB ;
- The General Contractual Terms for Performing Services (Allgemeine Vertragsbedingungen für die Ausführung von Leistungen; VOL/B) in the version valid when the agreement is concluded;
- statutory provisions.

1.4. These ZVB are exclusive. Any general terms and conditions of the trade partner that deviate from, contradict, or augment these terms, are excluded.

1.5. Any explanations or announcements issued by MPG or the trade partner in relation to the agreement (such as deadlines, notifications of defects, withdrawals, reductions of price), must be made in writing, which means hand-written or text-form (e.g. letter, email, fax). This does not affect statutory formal requirements or any other proofs required, especially if there is doubt about the credentials of a person or entity making a declaration.

1.6. Deviations from the ZVB shall only be valid if expressly described as an amendment and confirmed in writing by MPG.

### 2. Conclusion of the Agreement

2.1. The trade partner's offer must be submitted free of charge and in writing. It is binding for six months from the date the offer was made, unless MPG has expressly stipulated some other binding period.

2.2. An order placed by MPG shall only be considered binding once it has been confirmed in writing or awarded.

2.3. Unless otherwise agreed, the trade partner must confirm an order in writing within seven days. If the order confirmation deviates from what is in the order, this must be explained, and it will be considered a new offer.

### 3. Delivery and Performance

3.1. The trade partner may not delegate its contractual obligations to third parties (such as a subcontractor) without prior written consent of MPG.

3.2. The trade partner bears the procurement risk for its products and services, unless otherwise agreed (e.g. restriction to own stock).

3.3. The place of fulfillment (Erfüllungsort) is the place at which the MPG institution placing the order is based, or, alternatively, a place of

fulfillment which the institution has stated in the order. Deviations from this principle have to be explicitly agreed upon. The defined destination is also the place of fulfillment for the delivery and any subsequent cure (Nacherfüllung).

3.4. Any risk of accidental loss or destruction shall pass over to MPG when it is handed over at the place of fulfillment. In case of purchase contracts, the delivery of goods and the transfer of risk is 'DAP' (delivered at place) at the location defined in the order, pursuant to Incoterms 2020, unless agreed otherwise. Customs duties, and the cost of customs clearance, shall be born by trade partner.

3.5. If an acceptance (Abnahme) is necessary or agreed on, the time of acceptance shall be decisive for the transfer of risk. Unless agreed otherwise for services delivered under a contract to produce a work, a protocol shall be drawn up of the acceptance of the contractual services and products and signed by both parties. The trade partner must expressly offer its services in the event that a particular calendar appointment has been agreed on at which MPG must act or collaborate (such as providing materials).

### 4. Delivery Times and Performance Deadlines; Delay

4.1. The delivery date or performance deadline agreed upon or stated in the order is binding. If the delivery date or performance deadline is not stated in the order, and not otherwise agreed on, it shall be two weeks from the conclusion of the agreement.

4.2. MPG must be notified immediately about unforeseen events that are likely to delay delivery or performance.

### 5. Amending Goods and Services

Amendments to the agreement must be agreed in writing by both parties. The trade partner must point out any additional or reduced costs, and any impact on other terms of the agreement – especially delivery dates or performance deadlines.

### 6. Prices and Terms of Payment

6.1. The price stated in the order is binding. All prices are net and do not include value added or other taxes.

Unless agreed otherwise, the price shall include all of the trade partner's goods, services, and auxiliary services (such as installation and assembly), and any additional expenses.

6.2. The agreed price is due for payment within 30 calendar days, starting on the date of complete delivery and performance (including acceptance if applicable), and from receipt of an invoice that fulfills the requirements of § 14 of the German Sales Tax Law (UStG). Invoices must be sent electronically to the MPG institution's invoicing e-mail address. A single e-mail may only contain one invoice, but may contain multiple invoice annexes.

6.3. In case of payment via bank transfer, the payment shall be deemed "made" when transfer order is received by the bank; MPG shall not be responsible for any delays caused by the banks involved in the payment process.

6.4. MPG is entitled to withhold due payments if it still has unfulfilled demands against the trade partner relating to incomplete or defective goods or services.

6.5. The trade partner only has the right to withhold or offset any payments to the extent that its counterclaims are undisputed or legally binding. The trade partner is not entitled to assign any claims against MPG arising from this agreement to third parties.

### 7. Withdrawal; Termination

MPG is entitled to withdraw immediately from or terminate the agreement without notice in case of a breach of its fundamental instructions, export regulations, or data protection regulations. Other than that, statutory law applies.

## 8. Defects

**8.1.** In the event of material defects or defects of title, or if the trade partner breaches its contractual duties in some other way, MPG's rights are applicable to statutory law.

This means especially that the trade partner must ensure that the contractual goods have the agreed quality when the risk is transferred. The product specification are deemed as the agreed quality and form part of the agreement. It does not matter whether the product specifications are from the trade partner, MPG, or the manufacturer.

**8.2.** In deviation from § 442 Par. 1 p. 2 of the German Civil Code (BGB), MPG has an unlimited right to claim for defects even if, when the agreement is concluded, it remains unaware of a defect through gross negligence (grobe Fahrlässigkeit).

**8.3.** The cure (Nacherfüllung) includes removing defective goods and reinstalling them once fixed, if the goods are the kind that are installed into something else. This does not affect MPG's statutory right to compensation for associated expenses. Expenses incurred by assessment and the cure must be reimbursed by the trade partner, even if it turns out that there was in fact no defect.

**8.4.** If the trade partner does not meet its obligation to cure within a reasonable time set out by MPG, then MPG can remove the defect itself (or have it removed) and ask the trade partner to refund the expenses, or to make an appropriate advance payment beforehand. If the trade partner's cure does not succeed, or is unreasonable for MPG (for reasons such as extreme urgency, a threat to operational safety, or the risk of disproportionate damage), then no grace period is needed; MPG shall inform the trade partner promptly if anything like that happens – and, if possible, at the time when the defect occurs.

## 9. Safety, Protecting Health, and Environmental Protection

### 9.1. Premises, buildings, technical facilities

The trade partner uses MPG's traffic routes, premises, and technical facilities at its own risk. It must comply with all of the traffic regulations, fire protection rules, and environmental requirements. MPG's technical facilities may only be used by prior arrangement and after clarification of any safety precautions.

### 9.2. Occupational health and safety

The trade partner must take appropriate steps to ensure that its contractual service is safe and health-compliant.

If the trade partner causes danger to life and limb, or a risk of major disorder, MPG is entitled stopping all work immediately and continuing to do so until safe working conditions can be ensured. The trade partner must cover any extra costs.

MPG does not supply working materials or protective equipment that is requiring testing.

If machinery or appliances are subject to the EU Product Safety Directive (EU-Richtlinien zur Produktsicherheit), declarations of conformity must be submitted and the equipment must carry CE markings. If a declaration of conformity cannot be produced, the trade partner must provide reasons and inform MPG immediately – and either way before the agreement is finalized.

### 9.3. Environmental protection

If the trade partner's service and goods produce sewage, emissions, solid waste, or liquid waste, then it must ensure that this does not harm MPG's premises, buildings, equipment, or facilities, or their surroundings. Waste water may only be discharged after prior consultation with MPG and once the trade partner has assessed whether it is permissible to do so. The trade partner must dispose of and recycle waste materials properly.

### 9.4. Packaging and transport safety

The packaging materials used must be marked with a company marking or a marking designating the recycling system.

Environmentally friendly, reusable packaging and recyclable packaging are preferred.

Current rules apply regarding taking back transport packaging.

Materials marked as hazardous must be handed over personally to an authorized person at MPG, and may not be stored or left around in generally accessible areas.

### 9.5. Other requirements

The trade partner undertakes to comply with the core labor standards of the International Labor Organization (ILO).

The trade partner shall ensure that the identity of its staff can be checked whenever justified and legally permitted.

## 10. Statute of Limitations

The trade partner's reciprocal claims shall lapse according to the provisions of the statutory law.

## 11. Liability

Unless specified otherwise by these ZVB, MPG shall be liable according to the statutory law in the event of a breach of its contractual or non-contractual duties.

**11.1.** MPG shall be liable for damages – for any legal reason – caused by wilful intent (Vorsatz) or gross negligence (grobe Fahrlässigkeit).

**11.2.** In the event of mere negligence (einfache Fahrlässigkeit), and provided the law does not stipulate a milder level of liability (such as diligence in own affairs (Sorgfalt in eigenen Angelegenheiten)), MPG shall only be liable for:

- a) damages to injury to life, body, or health;
- b) damages caused by the breach of fundamental contractual duties (wesentliche Vertragspflichten). Such duties are the basic duties, which form the essence of the agreement, which were decisive for the conclusion of the agreement and on the performance of which the other party may rely.

**11.3.** The foregoing limitations of liability apply to the same extent to MPG's constituent bodies, legal representatives, employees, and other agents.

## 12. Trade Partner's Liability for Violating Intellectual Property Rights

**12.1.** The trade partner guarantees that the contractual goods or services are free of third party intellectual property rights. Each party shall notify the other immediately in writing if claims are raised for infringement of such rights.

**12.2.** If the object of the agreement infringes a third party's intellectual property right, the trade partner shall, at its own expense, either alter or replace the contractual item so that third party rights are no longer violated, but the contractual item still fulfills the functions agreed upon or acquire rights of use for MPG by concluding a license agreement. If the trade partner does not succeed in doing either of these within a reasonable time, MPG is entitled to withdraw from the agreement or reduce the purchase price or remuneration accordingly.

If the object of the agreement infringes third party rights, the trade partner shall indemnify MPG against any such third party claims, including concomitant claims for compensation of the costs of prosecution arising from infringement.

**12.3.** If rights are infringed by products made by other manufacturers and supplied by the trade partner, the trade partner can choose to either assert its demands against the manufacturer and supplier for the account of MPG or relinquish those claims to MPG. Demands can only be asserted against the trade partner if the aforementioned demands against the manufacturer and supplier cannot be asserted in court, or if there is no prospect of doing so for reasons such as insolvency.

### 13. References and Using Brands/Logos

MPG may not be named as a reference for the trade partner's commercial purposes (such as on websites or on business correspondence, flyers, or advertisements). Only if the trade partner enters into a public tendering process, it is permitted to provide MPG as a reference, about which MPG must be informed in advance.

The trade partner may not use the MPG logo (Minerva) which is registered as a trademark.

### 14. Duty of Integrity

**14.1.** The trade partner is not entitled to be influenced by its own or third parties interests that are detrimental to the agreement. In particular, the trade partner may not represent the interests of its suppliers and/or other businesses contrary to the interests of MPG. Representing interests in this sense includes investing in supplier companies and appointed businesses (e.g. using corporate legal means). The trade partner may not offer or give MPG's employees or any other contractors involved in the agreement any benefits in the form of gifts, hospitality, or invitations.

**14.2.** The trade partner must oblige its employees, subcontractors, and agents not to give, offer, or accept any bribes, unauthorized donations, or other benefits to or from customers or other businesses or persons. The trade partner must inform MPG immediately of any conflicts of interest or similar issues, and disclose any information in this regard. If the trade partner neglects any of these duties, MPG shall be entitled to withdraw from the contract immediately and terminate without notice. The trade partner will then have to compensate MPG for any damages arising from this breach of duty.

### 15. Export Control

The trade partner must inform MPG about the export control restrictions as well as the corresponding product classification, including customs-related information at the latest at the time of delivery. This information may be shown on the respective commercial invoices and delivery notes. The contracting partner is especially responsible for the correct indication of the following data:

- CN code (combined nomenclature) in the version valid at the time of inquiry;
- Export control classification number (ECCN) in the version valid at the time of inquiry;
- Classification according to German export list (annex to German foreign trade regulations) in the version valid at the time of inquiry;
- List position according to the annex of the Kriegswaffenkontrollgesetz (War Weapons Control Act) in the version valid at the time of inquiry;
- Classification according to the Dual-Use Regulation applicable in the European Union and in the version valid at the time of inquiry;
- Restrictions according to the Chemical Weapons Convention and the applicable national legislative acts of transposition in the version valid at the time of inquiry;
- Restrictions according to the Rotterdam Convention (PIC Convention) in the version valid at the time of inquiry;
- Restrictions to be observed under embargo regulations.

### 16. Data Protection

The parties must adhere to data protection laws, in particular the General Data Protection Regulation (GDPR) and the Bundesdatenschutzgesetz (Federal Data Protection Act, BDSG).

If the trade partner processes personal data on behalf of MPG, the parties shall conclude a processing contract as described in Art. 28 GDPR. In the case of joint controllers, the parties shall conclude an additional agreement as described in Art. 26 GDPR.

### 17. Confidentiality

**17.1.** The trade partner must treat any information provided by MPG as confidential and must not hand any of it to others.

'Confidential information' means any financial, technical, economic, legal, tax-related information, and information relating to business and research activities, employees, or management; and any other information relating to MPG.

It also includes verbal information.

**17.2.** Confidential information includes also the very fact that confidential information has been given to the trade partner; the existence and content of this agreement and any other information relating to the finalization and performance of the project.

**17.3.** The confidentiality obligation must not apply to any information which was made known to the trade partner or the public, or was generally accessible before. The burden of proof is on the trade partner.

### 18. Final Provisions

**18.1.** The law of the Federal Republic of Germany shall apply, excluding any international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

**18.2.** The language of negotiations and contracts shall be German. If these ZVB are issued in languages other than German, then only the German version is binding.

**18.3.** If the agreement or these ZVB contain an unintended regulatory gaps, then the parties agree to fill the gap by a legally effective term which they would have agreed upon according to the economic aim of the agreement and the purpose of the ZVB, if they had they recognized the gap.