

# ADDITIONAL TERMS AND CONDITIONS (ZUSÄTZLICHE VERTRAGSBEDINGUNGEN)

of the Gesellschaft für wissenschaftliche Datenverarbeitung mbH Göttingen (GWDG)

(Status: 07/2024)

## 1. Scope of application, form

- 1.1. The following "Additional Terms and Conditions of Contract" (In German "Zusätzliche Vertragsbedingungen", hereinafter referred to as "ZVB") apply to all contracts for services to be concluded by the Gesellschaft für wissenschaftliche Datenverarbeitung mbH Göttingen (hereinafter referred to as "GWDG") as purchaser/customers, in particular for service, purchase and work contracts as well as for contracts for the delivery of movable goods to be manufactured or produced. Excluded from this are construction services within the meaning of § 1 VOB/A as well as architectural and engineering contracts in the construction sector.
- 1.2. The ZVB shall only apply if the seller/contractor (hereinafter referred to as "contractual partner") is an entrepreneur, a legal entity under public law or a special fund under public law.  
  
The GWDG is a non-profit organization under private law.
- 1.3. Insofar as this does not conflict with mandatory statutory law, the following order of precedence shall apply as the basis for the execution of the contract:
  - the contract concluded between the contracting parties or the wording of the assignment (contract or award letter) including any award documents, supplementary contractual conditions and annexes;
  - the following ZVB of the GWDG;
  - the "General Terms and Conditions of Contract for the Execution of Services" (in German: Allgemeine Vertragsbedingungen für die Ausführung von Leistungen (VOL/B)) in the version valid at the time of conclusion of the contract;
  - the legal regulations.
- 1.4. These ZVB apply exclusively. Any deviating, conflicting or supplementary general terms and conditions of the contractual partner are hereby excluded.
- 1.5. Declarations and notifications by the contracting parties in relation to the contract (e.g. setting of deadlines, notification of defects, cancellation or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the declaring party, remain unaffected.
- 1.6. Deviations from the ZVB are only effective if they have been expressly designated as deviations and confirmed in writing by the GWDG.

## 2. Contract conclusion

- 2.1. The offer of the contractual partner shall be submitted free of charge and in writing. It shall be binding for a period of 6 months from the date of the offer, unless the GWDG has expressly stipulated a different binding period in individual cases.
- 2.2. The order by the GWDG shall be deemed binding at the earliest upon written placement of the order or award of the contract.
- 2.3. Unless otherwise agreed in individual cases, the contractual partner must confirm the order in writing within a period of 7 days. If the order confirmation deviates from the content of the order, this must be justified and shall be considered a new offer.

## 3. Delivery and Performance

- 3.1. The contractual partner is not authorised to have the service owed by him/her performed by third parties (e.g. subcontractors) without the prior written consent of the GWDG.
- 3.2. The contractual partner shall bear the procurement risk for its services, unless otherwise agreed in individual cases (e.g. limitation to stock).
- 3.3. The place of fulfilment shall be the registered office of the respective commissioning institution of the GWDG or a place of performance specified by the latter in the order. Deviations from this require express agreement. The respective destination is also the place of fulfilment for the delivery and any subsequent fulfilment (obligation to deliver).

- 3.4. The risk of accidental loss and accidental deterioration of the goods shall pass to the GWDG upon handover at the place of fulfillment. In the case of purchase contracts, deliveries and the transfer of risk shall be made "Delivered at Place of Destination" (DAP) to the respective place of destination according to the order in accordance with Incoterms 2020, unless otherwise agreed in individual cases. The customs duties incurred and the costs for customs clearance shall be invoiced to the supplier.
- 3.5. If acceptance is required or agreed, this shall be decisive for the transfer of risk. Unless otherwise agreed in the case of services under a contract for work and labour, an acceptance report to be signed by both contracting parties shall be drawn up upon acceptance of the contractual services. The contractual partner must expressly offer its service if a specific or determinable calendar time has been agreed for an action or co-operation of the GWDG (e.g. provision of material).

## 4. Delivery times and execution periods, delay

- 4.1. The contractually agreed delivery time or performance period specified in the order is binding. If the delivery time or execution period is not specified in the order and has not been agreed otherwise, it shall be two weeks from the conclusion of the contract.
- 4.2. The GWDG must be informed immediately of any unforeseen events that lead to a probable delay in delivery or performance.

## 5. Change in delivery and performance

A change to the contractual service can only be made by written agreement between the contracting parties. The contractual partner is obliged to point out any additional or reduced costs as well as effects on other contractual conditions, in particular on execution deadlines.

## 6. Prices and terms of payment

- 6.1. The price stated in the order is binding. All prices are net prices excluding statutory sales tax. Unless otherwise agreed in individual cases, the price includes all services and ancillary services of the contractual partner (e.g. assembly, installation) as well as all ancillary costs.
- 6.2. The agreed price is due for payment within 30 calendar days of complete delivery and performance (including any acceptance) and receipt of an invoice that meets the requirements of § 14 UStG. In principle, invoices must be sent electronically to the GWDG's invoice e-mail address [buchhaltung@gwdg.de](mailto:buchhaltung@gwdg.de). Each e-mail may only contain one invoice, but several invoice attachments.
- 6.3. In the case of bank transfers, payment is deemed to have been made on time if the transfer order is received by the bank before expiry of the payment deadline; the GWDG is not responsible for delays caused by the banks involved in the payment process.
- 6.4. In particular, the GWDG shall be entitled to withhold due payments as long as it is still entitled to claims against the contractual partner arising from incomplete or defective services.
- 6.5. The contractual partner shall only have a right of set-off or retention on the basis of legally established or undisputed counterclaims. The contractual partner is not entitled to assign claims against the GWDG arising from this contract to third parties.

## 7. Withdrawal, cancellation

The GWDG is entitled to withdraw from the contract immediately or to terminate it without notice, in particular if essential instructions of the GWDG, export regulations or data protection provisions are violated. In all other respects, the statutory provisions shall apply.

## 8. Insufficient delivery and performance

- 8.1. The rights of the GWDG in the event of material defects and defects of title and in the event of other breaches of duty by the contractual partner are governed by the statutory provisions.

Accordingly, the contractual partner shall be liable in particular for ensuring that the goods have the agreed quality upon transfer of risk. The respective product descriptions that have become part of the contract shall be deemed to be an agreement on the quality. It makes no difference whether the product description originates from the contractual partner, from the GWDG or from the manufacturer.

- 8.2. Notwithstanding § 442 para. 1 sentence 2 BGB, the GWDG shall be entitled to claims for defects without restriction even if it was unaware of the defect at the time the contract was concluded due to gross negligence.
- 8.3. Subsequent fulfilment shall also include the removal of the defective goods and reinstallation, provided that the goods have been installed in another item or attached to another item in accordance with their nature and intended use. The statutory claim to reimbursement of corresponding expenses remains unaffected. The contractual

partner shall bear the expenses necessary for the purpose of inspection and subsequent fulfilment even if it turns out that there was actually no defect.

- 8.4. If the Contractual Partner fails to fulfil its obligation of subsequent performance within a reasonable period set by the GWDG, the GWDG may remedy the defect itself or have it remedied and demand reimbursement of the necessary expenses or a corresponding advance payment from the contractual partner. If the subsequent fulfilment by the contractual partner has failed or is unreasonable for the GWDG (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline need be set; the GWDG shall inform the contractual partner of such circumstances without delay, if possible as soon as the defect occurs.

## 9. Safety, health protection and environmental protection

### 9.1. Company premises, buildings, technical facilities

The contractual partner may use traffic routes, operating areas and technical facilities of GWDG at his/her own risk. In doing so, he/she must comply with all traffic safety, fire protection and environmental protection requirements. The use of technical equipment of the GWDG is only permitted after prior consultation and determination of any necessary safety measures.

### 9.2. Occupational safety and health protection

The contractual partner must take appropriate measures to ensure that the contractual services are performed safely and in a manner that is appropriate to health.

In the event of a risk to life or limb caused by the contractual partner or a risk of massive disruption, the GWDG is entitled to have the activities stopped immediately until safe working conditions are guaranteed. The contractual partner shall bear any resulting additional costs.

The GWDG does not provide work equipment or protective equipment subject to mandatory testing.

For devices and machines that are subject to the EU directives on product safety, declarations of conformity must be submitted and CE labels must be affixed to the device or machine.

If no declaration of conformity can be presented, the contractual partner must inform the GWDG immediately, stating the reasons, and in any case before the contract is concluded.

### 9.3. Environmental protection

If wastewater, emissions, solid or liquid waste are produced as a result of the contractual partner's services, the contractual partner must ensure that there is no impairment of the company premises, buildings, facilities and equipment of the GWDG and the surrounding area. The discharge of wastewater is only permitted after prior consultation with the GWDG and responsible verification of admissibility by the contractual partner. The contractual partner must recycle and dispose of waste properly.

### 9.4. Packaging and transport safety

Packaging materials used must be labelled with a company name or the disposal system.

Environmentally friendly, recyclable packaging or reusable packaging should preferably be used.

The current take-back obligations for transport packaging apply.

Materials labelled as dangerous goods must be handed over personally to an authorised person of the GWDG and may not be stored or deposited in generally accessible areas.

### 9.5. Other requirements

The contractual partner undertakes to observe the core labour standards of the International Labor Organization (ILO).

The contractual partner guarantees that the identity of its employees can be verified in justified, legally permissible cases.

## 10. Statute of limitation

The reciprocal claims of the contracting parties shall become time-barred in accordance with the statutory provisions.

## 11. Liability

Unless otherwise stated in these ZVB, including the following provisions, the GWDG shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

- 11.1. The GWDG shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability in the event of willful intent and gross negligence.
- 11.2. In the event of simple negligence, the GWDG shall only be liable, subject to a milder standard of liability in accordance with statutory provisions (e.g. for care in its own affairs), for
  - a) for damages resulting from injury to life, limb or health;
  - b) for damages arising from the not insignificant breach of a material contractual obligation (obligation whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely).
- 11.3. The above exclusions and limitations of liability apply to the same extent in favour of the GWDG's executive bodies, legal representatives, employees and other vicarious agents.

## 12. Liability for violation of property rights

- 12.1. The contractual partner guarantees that the subject matter of the contract is free from industrial property rights or copyrights of third parties. Each contracting party shall immediately notify the other party in writing if claims are asserted against it due to the infringement of such rights.
- 12.2. In the event that the subject matter of the contract infringes an industrial property right or copyright of a third party, the contractual partner shall, at his/her discretion and at his/her expense, modify or replace the subject matter of the contract in such a way that no rights of third parties are infringed, but the subject matter of the contract continues to fulfil the contractually agreed functions, or procure the right of use for the GWDG by concluding a licence agreement. If the contractual partner fails to do so within a reasonable period of time, the GWDG shall be entitled to withdraw from the contract or to reduce the purchase price or remuneration appropriately.

Insofar as the subject matter of the contract infringes third-party rights, the contractual partner shall indemnify the GWDG in full against all third-party claims, including associated claims for compensation for legal costs, which are justified by the infringement.
- 12.3. In the event of infringements of rights by products of other manufacturers supplied by the contractual partner, the contractual partner shall, at his/her discretion, assert his/her claims against the manufacturers and upstream suppliers for the account of the company or assign them to the GWDG. Claims against the contractual partner shall only exist if the judicial enforcement of the aforementioned claims against the manufacturers and upstream suppliers was unsuccessful or is futile, for example due to insolvency.

## 13. References and brand/logo use

Mentioning the GWDG as a reference for commercial purposes of the contractual partner (e.g. digitally on websites or in print form on business correspondence, advertising flyers or advertisements of the contractual partner) is not permitted. By way of exception, naming the GWDG as a reference is permitted in the context of the contractual partner's participation in a public procurement procedure, of which the GWDG must be informed in advance.

The use of the GWDG logo (registered as a trade mark) by the contractual partner is not permitted.

## 14. Commitment to integrity

- 14.1. The contractual partner must not allow him/herself to be influenced by interests of his/her own or those of third parties that are detrimental to the order. In particular, the contractual partner must not represent the interests of its suppliers and/or third-party contractors that run counter to the interests of the GWDG. Representation of interests within the meaning of this provision also includes participation in suppliers or contracted companies (e.g. under company law). The contractual partner may not offer or grant any benefits in the form of gifts, hospitality or invitations to employees of the GWDG and its other contractors who are involved in the contract.
- 14.2. The contractual partner undertakes not to grant, offer or accept any bribes, unauthorised donations or other benefits to or from customers or other third parties from its employees, subcontractors and representatives. The contractual partner must immediately report any conflicts of interest or circumstances to the GWDG and disclose all related information. If the contractual partner breaches the obligations imposed on him/her, this shall entitle the GWDG to withdraw from the contract immediately or to terminate it without notice. The contractual partner must compensate the GWDG for any damages incurred as a result of the breach of duty.

## 15. Export control

The contractual partner shall inform the GWDG of the export control restrictions and corresponding product classification, including customs-relevant information, at the latest at the time of delivery. The information can be shown on the respective commercial invoices and delivery notes.

The contractual partner is responsible in particular for the correct provision of the following data:

- CN code (Combined Nomenclature) in the version valid at the time of the enquiry;
- Export Control Classification Number (ECCN) in the version valid at the time of the enquiry;
- Classification according to the German export list (Annex to the Foreign Trade and Payments Ordinance) in the version valid at the time of the enquiry;
- list item in accordance with the Annex to the War Weapons Control Act in the version valid at the time of the enquiry;
- classification in accordance with the Dual-Use Regulation valid in the European Union in the version applicable at the time of the enquiry;
- restrictions under the Chemical Weapons Convention and the applicable national implementing legislation in the version valid at the time of the enquiry;
- restrictions under the Rotterdam Convention (PIC Convention) in the version applicable at the time of the enquiry, and
- restrictions to be observed in accordance with embargo regulations.

## 16. Data protection

The contracting parties are obliged to comply with the provisions of data protection law, in particular the General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (BDSG).

If the contractual partner processes personal data on behalf of the GWDG, the contracting parties shall conclude a contract for commissioned processing in accordance with Art. 28 GDPR (so-called DPA). In the case of joint responsibility, the contracting parties shall conclude an additional agreement in accordance with Art. 26 GDPR.

## 17. Confidentiality

17.1. The contractual partner undertakes to treat the information disclosed by the GWDG confidentially and not to pass it or parts of it on to third parties.

17.2. "Confidential information" is all financial, technical, economic, legal, tax, business and research activity, employee or management-related or other information in connection with the GWDG.

This also includes verbal information.

Confidential information within the meaning of this clause also includes the fact that confidential information has been brought to the attention of the contractual partner, the existence and content of this agreement and all other information relating to the conclusion or implementation of the project.

17.3. The confidentiality obligations under this Agreement shall not apply to content that was known or generally accessible to the contracting party or the public prior to disclosure by the GWDG. The burden of proof lies with the contractual partner.

## 18. Closing provisions

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

18.2. The language of negotiation and contract is German. If versions of these ZVB are available in languages other than German, only the German version shall be binding.

18.3. Insofar as the contract or these ZVB contain loopholes, the legally effective provisions that the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these ZVB if they had been aware of the loophole shall be deemed to have been agreed to fill these loopholes.