

General Terms and Conditions of Umweltbundesamt GmbH (last amended: 25.1.2011)

1. Scope

1.1. The general terms and conditions set out below apply to all services and deliveries provided by Umweltbundesamt GmbH. In the event of any contradictions between the terms and conditions of the contractor and the principal, the general terms and conditions of Umweltbundesamt GmbH shall apply.

1.2. These conditions are binding upon the current and future business activities of Umweltbundesamt GmbH.

1.3. Any agreements, subsidiary agreements or concessions which deviate from the terms and conditions stipulated in this document shall be effective only if they are set out in writing.

1.4. In the event of any amendments to these terms and conditions, the amended version shall be passed on to the principal. Provided the principal does not contradict these amendments by sending a registered letter within 14 days, the amendments shall be deemed to have been approved.

2. Offers

Offers made by Umweltbundesamt GmbH are not binding, unless they are marked expressly as binding offers.

3. Conclusion of contract

The contract shall be considered concluded upon receipt of a written notice confirming the offer made by Umweltbundesamt GmbH. Any changes or amendments to the contract require the previous written confirmation by Umweltbundesamt GmbH in order to be effective.

4. Prices

4.1. All prices shall be quoted in Euros (excluding any mailing or packaging costs, if applicable), excluding VAT and shall only apply, without exception, to the respective contract.

4.2. In the event of any increases in wage and material costs, the Umweltbundesamt GmbH has the right to increase the prices accordingly. Such increases shall be deemed to be accepted by the principal unless they exceed 10% of the annual contract value.

5. Contribution from the principal

5.1. If any preparations are necessary, the principal shall perform such work according to professional standards, at its expense and on its responsibility, and provide all available documents in good time so as to ensure the timely performance of the contract.

5.2. In order to ensure the smooth progress of any work required on the premises of the principal, the principal shall provide the following:

- Safe access to the company premises
- Nomination of a contact person to coordinate the work between operations and the inspection team
- Provision of support staff to assist in the setting up and dismantling of measurement and testing devices if required
- Provision of any auxiliary materials required (e. g. electricity, water etc.)
- Weather protection at the measurement point if required
- Operation of installations for carrying out the measurements.

5.3. As soon as any circumstances become known which may jeopardise the agreed performance of the contract, the principal or the contractor shall inform each other in writing about these circumstances without delay and appropriate measures shall be agreed.

6. Acceptance of the delivery or service

6.1. In the event that no acceptance has been agreed, the delivery or service is deemed to be accepted by the principal unless the principal notifies the Umweltbundesamt GmbH via e-mail of a defect within 3 days after the delivery or rendering the service.

6.2. In the event of a delay in the acceptance of a delivery or service, through no fault of Umweltbundesamt GmbH, acceptance is considered to take place 1 week after the date of the Umweltbundesamt GmbH's readiness for acceptance.

6.3. The presence of insignificant defects cannot prevent acceptance.

7. Transfer of risks

The risk and utilisation shall pass to the principal as soon as the delivery leaves the works or the warehouse (ex works or ex stocks).

8. Terms of delivery and services

8.1. The Umweltbundesamt GmbH has the right to provide partial delivery or services.

8.2. Agreed delivery periods apply subject to unforeseen impediments beyond the Umweltbundesamt GmbH's, or any sub-contractors', reasonable control, especially in cases of Force Majeure. Should such events affect the timely performance of the contract, the delivery times shall be adjusted accordingly.

9. Terms of payment

9.1. Unless agreed otherwise in writing, the invoice amount including VAT shall be payable 30 days after receipt of the invoice without any discount.

9.2. If the contract provides for several partial deliveries or services, the Umweltbundesamt GmbH has the right to invoice for each partial delivery or service rendered. Failure to meet the due partial payment dates shall be deemed a failure to meet the payment target and payment of the whole outstanding amount shall become due immediately.

9.3. Setting off payment against counterclaims or withholding payment, even in the event of justified defects liability claims, shall be excluded.

9.4. Payments made by the principal shall, without exception, first be deducted from interest or costs or expenses owed and then from the oldest part of the outstanding amount.

9.5. In the event of a delay in payment, 10% default interest per year shall be charged on the outstanding amount.

9.6. The principal shall pay all pre-legal-action costs of Umweltbundesamt GmbH such as reminder and collection fees in the event of a delay in payment.

9.7. The Umweltbundesamt GmbH has the right to suspend delivery and performance, in full or in part, after setting an appropriate period of grace, until payment has been received from the principal.

10. defects liability

10.1. The defects liability period starts on the date of acceptance of the services rendered by the principal and ends 9 months thereafter.

10.2. The principal may rely on the defects liability only after having reported, and described in detail, any defects observed in writing without delay. Any defective parts of the delivery shall not be the cause for defects liability claims regarding the whole delivery.

10.3. In the event of a justified claim, Umweltbundesamt GmbH shall remedy the defect within a reasonable period of time either by repairing or replacing the defective parts.

10.4. The principal is obliged to thoroughly examine the functional capability of the products/services within 3 days. Any defects which are observed but not reported within this period shall be deemed to have been approved. The principal waives any claims of defects liability or compensation related to these defects. This does not apply to defects which cannot be detected within 3 days despite thorough examination.

10.5. Natural wear, improper or excessive use, negligence, maintenance and modifications without approval by Umweltbundesamt GmbH shall exclude defects liability.

10.6. For any work performed to satisfy a defects liability on the premises of the principal, the necessary support staff, auxiliary materials and tools shall be placed at the disposal of Umweltbundesamt GmbH by the principal free of charge. The principal shall take all other necessary measures in order to enable Umweltbundesamt GmbH to perform any work required to satisfy the defects liability.

10.7. Any work or delivery required by the defects liability obligation shall not lead to an extension of the defects liability obligation.

10.8. Reporting a defect does not release the principal from its obligation to pay.

11. Liability

11.1. The Umweltbundesamt GmbH shall be responsible to the principal only for damage caused by wilful action or gross negligence.

11.2. The Umweltbundesamt GmbH shall not be liable for damage exceeding the contract value, unless agreed otherwise.

11.3. Replacement of indirect damage and consequential damage as well as unrealised savings, loss of interest and damage incurred through claims from third parties against the principal shall be excluded.

11.4. Any contractual penalty that has been agreed shall constitute liquidated damages, satisfying any claims for compensation made by the principal.

11.5. Any claims for compensation must be asserted by legal action within 18 months after delivery or completion of the order.

12. Right to withdraw from the contract

12.1. The principal may withdraw from the contract in the event of a delay, on the part of the Umweltbundesamt GmbH, in the delivery or performance caused by gross negligence on the part of Umweltbundesamt GmbH, and after expiration of a reasonable period of grace.

12.2. Withdrawal from the contract shall be communicated by registered letter.

12.3. If one of the parties is adjudicated a bankrupt or proceedings of assignment for the benefit of creditors are opened, or the opening of bankruptcy proceedings is declined for lack of assets, the other party has the right to withdraw from the contract without setting a period of grace.

13. Force Majeure

13.1. Force Majeure includes war, act of government or other public administrations, natural disaster, fire, transport and operational disruptions, energy shortage, strike and other causes which cannot be prevented, with reasonable means, by either of the parties.

13.2. In the event of Force Majeure, the party affected shall be suspended from performing the contractual obligations for the duration of such Force Majeure cases and for a reasonable period of time to remove any impacts thereof. If performance is only partly impossible, the suspension from contractual obligations shall apply only to that part of the performance which has been rendered impossible by reason of Force Majeure.

14. Protection of intellectual property

14.1. The expert knowledge and know-how of Umweltbundesamt GmbH which is required for the performance of this contract is the intellectual property of Umweltbundesamt GmbH, serving exclusively intra-company purposes unless stipulated otherwise in the contract.

14.2. If the performance of the contract leads to a new invention by Umweltbundesamt GmbH that is patentable or eligible for licensing, the Umweltbundesamt GmbH shall inform the principal immediately thereof and, provided the principal agrees, apply for the patent.

15. Confidentiality

15.1. Both parties to the contract are obliged to keep strictly secret all data and information which they become acquainted with in connection with carrying out this contract.

15.2. All documents relating to the offer or the project, including plans, drawings, technical documents etc. shall not be disclosed to third parties without the consent of Umweltbundesamt GmbH.

16. Competent court and applicable law

The place of venue shall be Vienna. The contract shall be governed by Austrian law. The application of the UN law on the International Sale of Goods (CISG) shall be excluded.

17. Concluding clauses

If individual terms of this contract are or become ineffective or impracticable, for whatever reasons, this fact shall have no effect on the effectiveness of the other provisions. Both parties to the contract agree to arrange for an effective and practicable solution which serves the purpose of the respective term of this contract as closely as possible.