

General terms and conditions of purchasing and ordering at the Hochschule Merseburg (University of Applied Sciences of Merseburg)

§ 1. General Remarks and Scope of Application

- 1.1. Hochschule Merseburg (University of Applied Sciences of Merseburg) is a corporation under public law headquartered in Merseburg, Germany (ZIP code: 06217).
- 1.2. These General Terms and Conditions of Purchasing and Ordering (GCP) shall apply to all supplies and services agreed between Hochschule Merseburg (hereinafter referred to as: **HoMe**) and its contractors (hereinafter referred to as: **Contractors**) and commissioned by HoMe.
- 1.3. The HoMe chancellor and the HoMe's staff duly authorised by her are the only persons who are authorised to represent HoMe and to sign on behalf of HoMe.
- 1.4. These GCP shall apply exclusively. Any terms and conditions issued by the Contractors which conflict with or differ from these GCP shall not be recognised by HoMe, unless HoMe has explicitly approved their applicability in writing. These GCP shall also apply if HoMe knows any of such conflicting or deviating GCP of the Contractors and accepts deliveries from them without reservation.
- 1.5. When submitting an offer and/or participating in contract awarding procedures, the Contractor already accepts these GCP.

§ 2 Contract Components

Integral parts of the contract are the following documents in their versions valid at the time of conclusion of the contract:

- 1.1. service description, schedule of services, offer, order confirmation incl. all annexes
- 1.2. the present GCP
- 1.3. contracting rules for award of public works (VOL/B)
- 1.4. Public Procurement Act of Saxony-Anhalt (Landesvergabegesetz)
- 1.5. German Civil Code (BGB).

§ 3 Offer and Acceptance / Prices

- 1.1. The Contractor shall submit a binding offer in accordance with the respective inquiry or tender documents. The offer price shall include all freight and transport costs, costs of loading and unloading, packaging, and other costs up to the place of use (§ 5), unless agreed otherwise. We hereby refer to the Regulation PR no. 30/53 on pricing for public contracts.
- 1.2. In the Contractor's quotation, the Contractor's legal form shall be recognisable.
- 1.3. The quotation shall contain a reference to the respective tender. The tender or award number must be stated in the quotation.
- 1.4. The quoted prices shall contain net prices and the respective VATs stated separately.
- 1.5. The contract shall be concluded by the written acceptance of the offer or awarding the funding. The Contractor shall immediately acknowledge its accepting the order by sending HoMe an order confirmation - at the latest, within 10 working days after receipt of the order.
- 1.6. If HoMe has to take participatory actions for the timely service performance, and the Contractor knows or should know about them, the Contractor

shall call the HoMe's attention to such actions - at the latest upon the acceptance of the order.

§ 4 Place of Performance

- 1.1. The place of performance is the headquarters of HoMe.
- 1.2. The service shall be performed from Monday to Friday from 9 am to 3 pm.
- 1.3. Deliveries shall be made to the mail room of HoMe: HoMe mail room, the main part of the building Hg/G.
- 1.4. Items 1.1.-1.3 shall not apply, if something else is agreed upon.

§ 5 Minimum Wage

The Contractor is obligated to comply with the law regulating a general minimum wage (MiLoG). The Contractor shall also be liable toward HoMe for commissioned subcontractors in accordance with § 13 of the Minimum Wage Act (MiLoG) in conjunction with § 14 of the Employee Sending Act (AEntG).

§ 6: Due dates, deadlines, and delays

- 1.1. Delivery times and deadlines, as well as time schedules are considered binding.
- 1.2. If any circumstances occur or become evident from which it is apparent that agreed contractual deadlines cannot be met, the Contractor is obligated to immediately notify HoMe of such circumstances in writing.
- 1.3. In the case of delay, the Contractor shall immediately notify HoMe of the reason and duration of the delay in writing. If HoMe has to take any participatory actions, the Contractor shall immediately notify HoMe of the type and scope of such actions, as well as of the duration of the caused delay in writing.

§ 7 Acceptance, Transfer of Risk, and Delivery Note

- 1.1. The service shall be performed "free domicile" (see § 4).
- 1.2. The Contractor shall bear the risk of loss or deterioration of the item until the item is hand-over at the place of performance. This shall also apply, if the delivery date is exceeded.
- 1.3. The delivery shall be made against delivery note. The Contractor is obligated to state the order number assigned by HoMe to the order on the delivery note. If the Contractor fails to do so, HoMe will not be liable for resulting delays.

§ 8 Warranty

- 1.1. HoMe is entitled to raise the statutory warranty claims for defects. Furthermore, HoMe is entitled to choose between rectification of a defect and delivery replacement. If the item needs to be repaired and the first attempt of the defect rectification was unsuccessful, the rectification shall be deemed as failed. HoMe explicitly reserves the right to compensation of damages, in particular, to compensation of damages in lieu of delivery.
- 1.2. HoMe is entitled to remedy the defects itself at the expense of the Contractor, if the contractor is behind schedule with its rectification of defects.
- 1.3. The limitation period for claims based on defects pursuant to § 438 I item 3 of the German Civil Code (BGB) is 24 months. The limitation period commences at the time when the non-rejected

service or delivery is accepted or at the time of the risk transfer (if no acceptance is agreed).

- 1.4. The Contractor shall bear all expenses required for remedying the defect.

§ 9 Contract Fines and lump-sum Compensation

- 1.1. In case of culpable breach of contractual obligations, the Contractor is entitled to enforce a contractual penalty from HoMe.
- 1.2. In particular, the breach of contractual obligations means the following cases:
 - a. the Contractor is behind the time schedule (see § 6);
 - b. the Contractor does not perform the agreed service (non-performance) or
 - c. the Contractor violates provisions of §§ 12 and 13 of the present GCP.
- 1.3. In the case of exceeding of a contractually agreed deadline, a contractual penalty shall apply which amounts to 0.2% of the gross value of the service not performed in time. In total, the contractual penalty shall not exceed 5% of the total gross value of the order.
- 1.4. For the rest, the contractual penalty amounts to 5% of the gross order sum in accordance with the Public Procurement Act of the state of Saxony-Anhalt.
- 1.5. The Contractor is free to prove that no damage or only less damage has occurred.
- 1.6. The right to assert other compensation claims shall remain unaffected.

§ 10 Controlling Rights of HoMe

- 1.1. Upon HoMe's request, the Contractor shall submit the payrolls and documents relating to the transfer of taxes and social security contributions in accordance with §15 of the Public Procurement Act, as well as the contracts concluded between the Contractor and its subcontractors. The Contractor shall instruct its subcontractors to hand over the above-mentioned document to HoMe.
- 1.2. The Contractor's employees and its subcontractors must be able to prove their identities to HoMe at any time and to identify themselves as employees or subcontractors.

§11 Invoicing and Terms of Payment

- 1.1. Invoices shall be posted to HoMe upon performance of the ordered service or partial service. The provisions of § 14 and 14a of the Value Added Tax Act (UStG) shall be observed.
- 1.2. The invoices will be paid in accordance with the contractual agreements, but not later than 30 days after the due date of the invoice. The invoice becomes due only upon performance of the service agreed in the contract.
- 1.3. The day of payment is deemed to be the day of submitting or sending the payment order to the bank.
- 1.4. For the rest, § 17 of the contracting rules for award of public works (VOL/B) shall apply.
- 1.5. The Contractor is authorised to assign claims against HoMe to third parties only upon a written consent of HoMe.
- 1.6. The Contractors are obligated to state the order number assigned by HoMe to its order on their invoices and to send the invoices to the address given in the HoMe's order. If the Contractor fails to do so, HoMe will not be liable for resulting delays.

- 1.7. The billing address is always the same as the address given by HoMe in its order

§ 12 Discounts

If discounts are agreed or offered by the Contractor in its invoice, the discount period commences at the day of the invoice receipt and of the Contractor's duly fulfilment of its contractual obligations. If HoMe raise legitimate objections or exceptions, the cash discount period will be prolonged for the period of clarifying the objection. The cash discount period should not be less than 14 days.

§ 13 Confidentiality

- 1.1. The Contracting Parties undertake to disclose the contents of the contract to third parties only if and to the extent required for fulfilment of the contract or within the scope of statutory obligations to provide information (reporting duties, tax obligations, or the like).
- 1.2. If the Contractor, its employees, or vicarious agents get to know HoMe's operating and business secrets during their fulfilling the contract obligations, they have to maintain secrecy in these matters.
- 1.3. HoMe reserves the ownership and copyright to illustrations, drawings, calculations and other documents. The documents shall be used exclusively for production on the basis of the order. As soon as the order is processed, the user shall return the documents to HoMe even without being solicited to do that. Passing the documents on to third parties is only permitted upon an explicit written consent.

§ 14 Privacy

The Contractor undertakes to comply with the provisions of the GDPR, of the German Federal Data Protection Act (new) and the Data Protection Act of the state of Saxony-Anhalt.

- 1.1. If the Contractor takes over HoMe's tasks which are subject to public law in the context of administrative assistance or if the Contractor gets to know any protected data in any other manner during its service performance, the Contractor will be obligated to comply with these regulations.
- 1.2. It is allowed to use the protected data only for performing the agreed service for HoMe. Disclosure to third parties is prohibited.
- 1.3. In the case of violation of the data protection provisions, HoMe shall be informed immediately.
- 1.4. IT services, software products, applications or the like must generally meet the applicable data protection standards.
- 1.5. The Client shall prove compliance with the laws stated in Item 1.1 upon HoMe's request.
- 1.6. After completion of the order, the Contractor shall delete all documents and data in its possession. Data carriers shall be destroyed. Having deleted and destroyed documents and data carriers shall be proved toward HoMe.

§ 15 Place of Jurisdiction

If the Contractor a merchant within the sense of the German Commercial Code, the place of jurisdiction will be HoMe's headquarters (Municipal Court of Merseburg and Regional Court of Halle, Germany).

§ 16 Final Provisions

- 1.1. If individual provisions contained in these GCP are legally invalid or unenforceable, this shall not affect the validity of the remaining provisions.
- 1.2. The contracting parties undertake to replace the ineffective or invalid provisions by new provisions, which would reflect the economic content of the ineffective or invalid provisions in a legally permissible way. In all other respects, § 2 shall apply.
- 1.3. The contract shall be exclusively governed by the laws of the Federal Republic of Germany.
Amendments and supplements to the contract are effective only in writing. If there is no written confirmation, in the case of doubt, the burden of proof shall be borne by the party who invokes the respective informal clause.

Chancellor