

**Terms and conditions of business and delivery of the Federal Agency for Foreign Affairs Bids and Tenders Office (Federal Agency general terms and conditions) for the performance of construction work (Contracting Regulations for Construction Works – Verdingungsordnung für Bauleistungen – VOB)**

(As of 09 May 2023)

**1. Applicability of the terms and conditions of business and delivery**

**1.1. General conditions of contract**

Pursuant to section 8a (1), first sentence, of the General Provisions on the Procurement of Construction Works (VOB Part A, 2019), the Contract is based on the General Conditions of Contract for the Performance of Construction Works (VOB/B) as in force on 19 January 2016, in the version published in the Federal Gazette (BAnz. AT 19.01.2016), and the General Technical Conditions of Contract for Construction Works (VOB/C) of September 2019. The Contractor must also respect the remaining statutory provisions and administrative regulations regarding public construction works, in particular the Federal Budget Code (BHO) and its ancillary administrative regulations (VV-BHO), the Federal Construction Guidelines (RBBau). Any amendments or additions to the Contract must be agreed individually. The sole language for the execution of the Contract shall be German.

**1.2. Additional General Conditions of Contract**

Unless otherwise negotiated and agreed individually in the written order, the following terms and conditions of business and delivery of the Federal Agency for Foreign Affairs Bids and Tenders Office shall become an integral part of the Contract upon its conclusion pursuant to sub-section 305 (2) of the German Civil Code (BGB).

**1.3. Contractor's Conditions of Contract**

Any of the Contractor's conditions which conflict with or deviate from these conditions shall not be accepted.

**2. Jurisdiction**

The place of jurisdiction shall be Potsdam, Germany.

**3. Pricing Policy**

The agreed prices are fixed prices unless otherwise explicitly agreed. No additional payment may be claimed for corrective work necessitated by deficiencies in performance, where such work is effected under an unaltered order with no more than negligible changes to the specific requirements stipulated by the Federal Agency for Foreign Affairs. The Contractor shall not receive any additional payment for providing information regarding its own performance for the purpose of auditing of accounts. No subsequent demands for payment may be made once the (partial) final invoice has been issued, unless the Federal Agency for Foreign Affairs is not entitled under the specific circumstances to assume that the (partial) final invoice represents the Contractor's final valuation of his services.

**4. General obligations on the part of the Contractor**

The performance standards required of the Contractor will not be relaxed on account of the technical and professional expertise of the Federal Agency for Foreign Affairs. As an agent of the Federal Agency for Foreign Affairs, the Contractor may not represent the interests of any businesses or suppliers. In accordance with his professional code of conduct, he must undertake the fiduciary obligations assigned to him under this Contract solely for the benefit of the Client. Neither the Contractor, his relatives nor anybody connected to him economically may act on behalf of an applicant or bidder in any tendering procedure administered by him pursuant to the Contract, unless no conflict of interest is thereby created for the Contractor or such actions have no influence on the decisions taken in the course of the tendering procedure. The Contractor shall perform the services contracted out to him using his own offices. He may only subcontract work to subcontractors with the prior written permission of the Federal Agency for Foreign Affairs. The Federal Agency for Foreign Affairs is entitled to demand that the Contractor substitute a member of his staff if that person's work does not inspire the confidence of the Federal Agency for Foreign Affairs. The Federal Agency for Foreign Affairs may furthermore demand that suitable specialists be added to the staff if the employees working on the project cannot adequately guarantee the timely planning and smooth execution of the construction work. Should the performance of the subcontractor fail to meet the requirement, even though a complaint was made by the Client, the Federal Agency for Foreign Affairs may revoke its permission for the work to be subcontracted with the effect that the Contractor must perform the work himself or, with the permission of the Federal Agency for Foreign Affairs, subcontract it to another subcontractor.

**5. Cooperation between the Federal Agency for Foreign Affairs, the Contractor and other professional service providers**

Only the Federal Agency for Foreign Affairs Division in charge of the Contract may issue instructions to the Contractor.

The Federal Agency for Foreign Affairs and the Contractor shall cooperate in a spirit of trust with the professional service providers and contracted firms in order to implement the project in line with the agreed targets. The Federal Agency for Foreign Affairs shall inform the Contractor of the services to be provided by the professionals it has engaged; it shall also inform him of the deadlines agreed with them on the basis of the overall schedule. The Contractor must keep the Federal Agency for Foreign Affairs fully informed of all planning stages and of planning alternatives for the realisation of the agreed targets; he must also provide information on the envisaged construction schedule, confer with the Federal Agency for Foreign Affairs and be guided by the directions and instructions issued by it. If differences of opinion arise between the Contractor and other professional service providers during the performance of the work, the Contractor shall immediately write to the Federal Agency for Foreign Affairs for a decision. The Contractor shall inform the Federal Agency for Foreign Affairs immediately of all circumstances that could give rise to claims against the firms charged with execution or against the professional service providers or against himself. The Contractor shall assist the Federal Agency for Foreign Affairs in the pursuit of its claims; the Federal Agency for Foreign Affairs shall act on its own behalf. The Contractor shall provide the Federal Agency for Foreign Affairs with written information about his work immediately and at no additional cost upon request until such time as the auditing procedure for the construction project has been declared closed. The Contractor is not entitled to refuse performance on the basis of differences of opinion or outstanding performance by other parties.

**6. Contractor as agent of the Federal Agency for Foreign Affairs**

As part of his site management obligations, the Contractor has the right and duty to demand that the executing firms fulfil their contractual obligations and to give the requisite orders to ensure that they do so. Where orders that could form the basis for additional claims for payment on the part of the executing firm have to be given, he must inform the Federal Agency for Foreign Affairs in advance and without delay; his power to give orders to ensure construction continues properly shall remain unaffected. The Contractor has no further powers to enter into financial commitments on behalf of the Federal Agency for Foreign Affairs.

## **7. Confirmation of order and performance documents**

A written confirmation of each individual order must be sent immediately to the Federal Agency for Foreign Affairs. The Contractor is obliged to provide the Client, the other professional service providers and the project manager, if one has been appointed, with the necessary information and documents in sufficient time to enable them to perform their work properly. The Federal Agency for Foreign Affairs must provide the Contractor with the documents needed for performance free of charge and in good time. The performance documents provided by the parties for each other must be returned upon request.

## **8. Performance of the construction work**

### **8.1. Specifications and scope of the work**

The contractually specified manner and scope of the services and work, including any relevant annexes, are binding. If the Contractor has undertaken to provide design and construction work and make deliveries, he shall be liable to provide all the services required to construct the premises specified in the Contract fully, free of defects, ensuring that they are fully operational and ready for the use envisaged by the Contract, even if not all of the necessary services are specified in the Contract. Should planning services which are essential to construction become necessary after the Contract has been concluded because of material defects or defects in title, these shall be deemed to fall within the scope of the services to be provided by the Contractor.

### **8.2. Nature of the work and services**

The work and services must be provided in line with accepted sound engineering practice and the principle of economic viability, also with respect to the economically viable operation of the completed structure/facilities, and in accordance with the provisions of public law.

### **8.3. Place of performance and delivery address**

The place of performance is the agreed place of delivery; as a general rule this is the construction site.

### **8.4. Permits**

Unless otherwise expressly specified, the Contractor is obliged to obtain all permits, certificates and individual licences required to complete the construction project. Any necessary subsequent coordination with public authorities and utilities shall be undertaken by the Contractor. Should the Contractor require any powers of attorney from the Federal Agency for Foreign Affairs, he shall request these without delay.

### **8.5. Building control**

The Contractor is obliged to provide expert technical oversight commensurate with the type and scale of the construction project for the entire duration of his activities on-site.

### **8.6. Right to information**

If a right to information has been agreed in detail in any specific case, the statutory provisions contained in section 4 (1) number 2 of the VOB/B shall apply.

### **8.7. Orders**

Whilst preserving the management role assigned to the Contractor, the Federal Agency for Foreign Affairs is entitled to issue the orders required for the work to be performed as contractually agreed.

### **8.8. Evolution of sound engineering practice**

The Contractor is obliged to keep track of engineering developments and bring them to the attention of the Client. Should changes to sound engineering practice become widely accepted during the performance of the Contract, the Contractor is obliged to complete the remaining work in line with the new practice. Work performed before such a time shall only be redone if and to the extent that this is technically possible at no disproportionate expense and it would be reasonable to require the Contractor to do so.

Should the Contractor assert a claim for additional remuneration for the additional costs so caused, he must submit a written breakdown of the additional costs to the Federal Agency for Foreign Affairs beforehand commencing such work. The Federal Agency for Foreign Affairs is entitled to reject any changes in the work or services provided, unless doing so would be contrary to public law construction regulations. Should the Federal Agency for Foreign Affairs reject a change in the work or services, the Contractor shall only be liable to provide that which had previously been contractually agreed.

### **8.9. Impediments to performance / Suspension of performance**

The Federal Agency for Foreign Affairs is entitled to demand that the Contractor perform the services in accordance with the Contract and to issue orders should the Contractor fail to start or continue his work in a timely manner.

#### **8.9.1. Duty to provide information**

If the contractually agreed deadlines cannot be met, the Federal Agency for Foreign Affairs must be informed immediately of this fact in writing – and if possible by telephone in advance. Should performance by a professional service provider or a decision by the Contractor be delayed, the Federal Agency for Foreign Affairs may order reasonable measures to expedite progress.

#### **8.9.2. Repudiation**

If the impediment to or suspension of performance is attributable to the Contractor, the Federal Agency for Foreign Affairs is entitled to repudiate the Contract, without prejudice to any other contractual or statutory rights, once a reasonable period has elapsed without effect. The deadlines for execution shall be extended should one of the circumstances set out in section 6 (2) number 1 of the VOB/B be given. The extension shall be calculated in accordance with section 6 (4) of the VOB/B. Should the Contractor fail to report such impediments in accordance with section 6 (2) number 1 of the VOB/B, even though he could have done so under the circumstances, he shall only be entitled to have them taken into account if the Federal Agency for Foreign Affairs was aware of or ought to have known of the relevant facts and their impedimentary effect. The Federal Agency for Foreign Affairs shall consult the Contractor before ordering measures to expedite progress or setting new deadlines and shall take his ability to perform into account.

#### **8.9.3. Termination**

Should performance be suspended for more than three months, either Party may terminate the Contract in writing upon expiry of that period. In all other respects, termination by the Federal Agency for Foreign Affairs shall be governed by section 8 of the VOB/B and termination by the Contractor by section 9 thereof.

### **8.10. Change orders**

The Federal Agency for Foreign Affairs is entitled to order the other contracting party to effect reasonable changes to its work or services, taking into account the interests of the user. The consequences of such an order shall be governed by section 2 (5) of the VOB/B.

### **8.11. Cleanliness, construction waste**

Work and storage areas are to be kept clean and tidy at all times. Construction waste is to be removed immediately. Should public roads or the property of others become dirtied, they must be cleaned without delay at the Contractor's expense. The Contractor is obliged to clear the construction site immediately upon conclusion of the work, even if prematurely concluded. Building components or adjoining properties which have suffered as a result of the work must be restored to their original condition. If the Contractor does not meet these obligations, the Federal Agency for Foreign

Affairs may, once a reasonable period has elapsed in which the former could have taken the required steps, charge another company with the necessary work at the Contractor's expense.

## 9. **Liability**

The Contractor's liability is governed by the statutory provisions, in particular sections 10 and 13 of the VOB/B.

## 10. **Liquidated damages (contractual penalties)**

Individual agreements on liquidated damages are subject to the statutory provisions, in particular section 11 of the VOB/B.

## 11. **Acceptance**

### 11.1. **Conditions of acceptance**

The Federal Agency for Foreign Affairs shall accept the Contractor's work once the final parts of the work commissioned have been completed. This presupposes that the work has been completed in an acceptable manner with no serious patent defects. The parties must meet for a formal acceptance inspection. The outcome of the acceptance inspection shall be recorded in a joint protocol, in which any existing defects must be noted and contractual rights to performance reserved.

### 11.2. **Assumption of risk**

Until the time of acceptance, the Contractor shall protect its work and the property it has been given for the performance of such work from loss or damage and from theft (section 4 (5), first sentence, of the VOB/B). Risk shall pass from one party to the other pursuant to the general rules set out in the German Civil Code (BGB). The moment at which the risk passes depends on the type of contract concluded by the parties; it depends specifically on whether the contract in question is a contract of sale, a contract for work and services or a contract for work and materials. Sections 644 and 645 of the BGB govern the passing of risk under contracts for work and services. Pursuant to the first sentence of section 644 (1), the risk passes to the customer, the Federal Agency for Foreign Affairs, upon acceptance. The risk passes upon the completion of the work, pursuant to section 646, in the case of intangible work. In accordance with the third sentence of section 644 (1), the Contractor is not liable for the accidental destruction or deterioration of his work or of the materials supplied by the Federal Agency for Foreign Affairs. If the work is not accepted on site, but is shipped, section 644 (2) stipulates that the risk passes to the customer as soon as the Contractor has handed the thing over to the forwarder, carrier or other person or body specified to carry out the shipment, in accordance with section 447 (1) of the BGB. Under contracts of sale, the risk passes to the purchaser upon delivery of the thing sold (section 446 (1) of the BGB). If the seller, at the request of the Federal Agency for Foreign Affairs, ships the thing sold to a place other than the place of performance, the risk passes to the Federal Agency for Foreign Affairs as soon as the seller has handed the thing over to the forwarder, carrier or other person or body specified to carry out the shipment (section 447 (1)). Pursuant to section 651 (1), second sentence, the provisions relating to the passing of risk which apply to contracts of sale also apply to contracts for work and materials, provided the things to be produced are fungibles as defined in section 91 of the BGB. If the things are not fungibles, the provisions on contracts for work and services are applicable in accordance with section 651 (1), second sentence.

### 11.3. **Use of goods**

Once the Federal Agency for Foreign Affairs has made use of the work, the provisions of section 12 (5) number 2 of the VOB/B apply.

## 12. **Warranty claims**

### 12.1. **Statutory warranty claims**

Warranty claims shall be based on the 13 of the VOB/B. The Contractor shall assume warranty for customary properties and/or functions above and beyond the properties and/or functions expressly stipulated in the contractual specifications.

### 12.2. **Limitation of claims**

Warranty claims are subject to the prescribed limitation periods, in particular those found in section 13 (4) of the VOB/B.

If the Contractor replaces defective separable parts of his work or repairs them under warranty, the limitation period for the replacement or repaired part shall commence anew on the date on which the contractual standard was achieved.

## 13. **Invoices**

### 13.1. **Invoicing requirements**

A separate invoice must be submitted for each order. Each invoice must include the reference given in the written order, the order number, the Contractor's business address, his registered headquarters, telephone and fax numbers, e-mail address (if available) and bank details (account number and sort code). Changes and additions to the contract must be clearly marked as such in the final invoice, and are to be invoiced separately if the Client so requests. If part performance was agreed, the Contractor should not submit a partial invoice; he should rather submit an invoice summarising all part performances once the final such part performance has been completed. Labour and material costs must be listed separately in invoices for repairs, maintenance work and services.

### 13.2. **Invoicing dates**

The invoice must be submitted immediately upon performance to the billing address specified in the order. If the Contractor fails to submit an auditable final invoice, although he has been given a reasonable extension to do so by the Federal Agency for Foreign Affairs, the latter may prepare a final invoice itself, at the Contractor's expense, provided it has informed the Contractor of its intention to do so in advance.

### 13.3. **Accounting records**

The Contractor must set out the final invoice clearly, adhering to the order of items as stipulated in the annex to the Contract on specifications and payments (fees, ancillary costs, value-added tax) and must use the terms contained in the various parts of the Contract.

The documents required to prove the nature and scope of the work performed pursuant to the Contract are to be enclosed with the invoice. Carbon copies of signed time sheets and similar evidentiary documents must be enclosed with invoices for repairs, maintenance work and services.

### 13.4. **Billing address**

The billing address for any given order can be found in the letter of award. As a rule, invoices are to be sent to the Division specified therein, for the attention of the member of staff dealing with the order.

## 14. **Work paid for on an hourly basis**

The Contractor is entitled to payment for work charged on an hourly basis provided this was agreed on in the Contract and the Federal Agency for Foreign Affairs has expressly ordered such work.

## 15. **Payment**

**15.1. Payment deadline**

The period allowed for payment and the discount period shall commence on the date of receipt of the auditable invoice. An invoice is deemed received on the date it is stamped by the receiving officer at the place of performance. Pursuant to section 16 (3) number 1 of the VOB/B, payment is due within 30 days of receipt of the final invoice. The amount due shall be transferred into the account designated by the Contractor. Progress payments, part payments and advance payments shall only be made if this has been agreed in writing.

**15.2. Incorrect payments**

If it is discovered after final payment has been accepted that the amount paid differed from that agreed by Contract or was based on inaccurately calculated chargeable costs, a corrected invoice must be issued. Where fees are to be calculated on the basis of the actual costs, a corrected invoice must be issued if its revision results in changes to the relevant chargeable costs. The Federal Agency for Foreign Affairs and the Contractor are obliged to refund any sums identified as a result of such corrections. They may not rely on section 818 (3) of the BGB should they no longer be enriched. Spending by the Federal Agency for Foreign Affairs is subject to audit by the Bundesrechnungshof (German Supreme Audit Institution). This audit might not be conducted until several years have elapsed. The statutory period of limitation (section 195 BGB) for claims for unjust enrichment based on identified unjustly made payments or overpayments shall commence on the date the Federal Agency for Foreign Affairs obtains knowledge of the outcome of the audit. The Contractor should be aware that he may be required to refund unjustly paid sums at any time prior to the expiry of this limitation period. Where an overpayment has been made, the Contractor shall be required to refund the excess amount. If he does not pay within 14 calendar days after receiving the demand for repayment, and upon receipt of a reminder from the Federal Agency for Foreign Affairs, he shall be deemed in default of payment and liable to pay interest for default at a rate of 8 per cent above the basic rate of interest specified in section 247 of the BGB.

**15.3. Packaging costs and ancillary costs**

Packaging costs shall be remunerated under the invoice for the Contractor's prime costs, provided they have been agreed by contract and not included in the contract price. Should ancillary costs of any kind have been specifically agreed by contract, these may not be charged and remunerated directly upon delivery but must be included in the invoice.

**16. Provision of security, insurance**

If it has been agreed that security must be provided, such security is governed by the provisions of section 17 of the VOB/B. No insurance in connection with the order may be concluded at the expense of the Federal Agency for Foreign Affairs. The Contractor must maintain and furnish proof of professional liability insurance coverage for the entire duration of the Contract. He must guarantee that he has insurance to cover any claims arising from the Contract up to the limits of indemnity specified in the Contract. The Contractor has no claim to performance by the Federal Agency for Foreign Affairs until he has furnished proof of insurance coverage. The Contractor is obliged to inform the Federal Agency for Foreign Affairs in writing without delay if the agreed coverage is no longer in place. In such an event he is obliged to take out a new insurance policy without delay in order to reinstate, guarantee and furnish evidence of coverage to the agreed amount for the entire duration of the contract.

**17. Prohibited acts**

The Federal Agency for Foreign Affairs is entitled to repudiate the Contract with immediate effect if the Contractor promises, offers or bestows on Federal Agency for Foreign Affairs staff gifts or other benefits within the meaning of section 331 et seq. of the Criminal Code (StGB).

**18. Supplementary conditions for delivery-only services under the VOB****18.1. Invoicing dates**

If goods are delivered using the Federal Agency for Foreign Affairs Courier Service, the Contractor will receive a written confirmation of their export from the Federal Agency for Foreign Affairs Division that ordered them.

**18.2. Accounting records**

The consignment note, bill of lading or air waybill, and if applicable a copy of the Certificate of German Federal Government Ownership (BEB) with customs stamp, as well as all other documents supporting the invoice must be enclosed with it.

**18.3. Performance of services****18.3.1. Place of performance and delivery address**

The place of performance is the agreed point of delivery. Deliveries are to be made free place of use to the delivery address specified in the written order.

**18.3.2. Delivery notes**

A delivery note (and a weight slip, if available) must be enclosed with each delivery, including part deliveries if expressly agreed; this must indicate the serial and product numbers of the items supplied. The delivery note must in all events contain the reference number specified in the written order and any order number found therein. If the supplier does not specify the reference number and any such order number in the delivery note, the Federal Agency for Foreign Affairs reserves the right to refuse the delivery. The resulting costs must be borne by the Contractor.

**18.3.3. Packaging**

Deliveries must be packed in a manner which is in line with commercial practice and suitable for the contractually agreed mode of transport. The Contractor must ensure that the packaging materials are disposed of free of charge. The packaging materials must be taken back in accordance with the Packaging Ordinance (VerpackV).

**18.3.4. Hazardous materials**

Materials that could be dangerous to the public when transported due to their physical or chemical properties must be marked in accordance with the applicable legal provisions.

**18.4. Payment for freight shipments**

In the event that an invoice is submitted for a freight shipment only, the invoice shall be paid in EUROS (€) for transport from the German border or port to the port/place of entry or container terminal.

**18.5. Supplementary conditions for shipments abroad**

The order will be issued to the Contractor in the name and on the account of the foreign client by means of a written order. The Federal Agency for Foreign Affairs will merely provide inter-agency assistance and organise the dispatch from Germany. The following information, in particular, must be noted.

**18.5.1. Deliveries to non-EU countries**

Pursuant to section 4 number 1 of the Turnover Tax Act of 21 February 2005 (UStG 2005), exports to non-EU countries are not subject to turnover tax (section 6 (1) of the UStG). When deliveries are made directly to a German mission abroad, the mission shall issue the Contractor upon request with the appropriate certificate of export. If goods are delivered using the Federal Agency for Foreign Affairs Courier Service, the Contractor will receive a written confirmation of their export from the Federal Office for Foreign Affairs Division that ordered them.

**18.5.2. Deliveries to EU member states**

Pursuant to section 4 number 7 c of the UStG, the diplomatic missions and career consular posts and their members are exempt from taxation on intra-Community transactions. When deliveries are made directly to a German mission abroad (the Client), the mission shall issue the Contractor upon request with the appropriate certificate.

**18.5.3 Invoicing for international deliveries**

The invoice must be made out to the above-mentioned foreign Client (the German mission abroad); no VAT should be included. The invoice is to be sent to the following address:

**Federal Agency for Foreign Affairs – Bonn**  
**Division xxx (insert applicable name/number)**  
**Postfach 1148**  
**53001 Bonn**  
**Germany**

**or to the billing address specified in the order.**

**19. Final Provisions**

These terms and conditions and the entire legal relationship between the Federal Agency for Foreign Affairs and the Contractor shall be governed by the law of the Federal Republic of Germany. In the event that a provision contained in these terms and conditions or a provision under any other agreement should be or become invalid, the validity of the remaining contractual provisions or agreements shall remain unaffected pursuant to section 306 (1) of the BGB.

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