

Terms and conditions of business and delivery of the Federal Agency for Foreign Affairs Bids and Tenders Office (Foreign Agency general terms and conditions) for supplies and services (Rules of Procedure Governing Supply and Service Contracts Below the EU Thresholds - UVgO)

(As of 1 September 2022)

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

1.1. General conditions of contract

Pursuant to section 21 (2) of the Rules of Procedure Governing Supply and Service Contracts Below the EU Thresholds (UVgO), the Contract is based on the General Conditions of Contract for the Performance of Services (VOL/B) as in force on 5 August 2003. Any amendments or additions to the Contract must be made in writing. The Contract shall be concluded in 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 Central Bids and Tenders Office shall become an integral part of the Contract upon its conclusion pursuant to subsection 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.

4. 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 Client 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.

5. Performance of services

5.1. Contractual specifications

The contractually specified manner and scope of the services, including any relevant annexes (specimens), are binding.

5.2. 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.

5.3. Part deliveries

Part deliveries are not permitted unless they arise exceptionally from the order or have been expressly agreed.

5.4. Delivery notes

A delivery note (and a weight slip, if available) must be enclosed with each delivery, including part deliveries; 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, a description of the goods, the date of dispatch and any order number given in the written order. 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.

5.5. Right to information

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

5.6. Supplies

The Federal Agency for Foreign Affairs can be held liable for the quality of its supplies and for the services it has obtained under contract from others. If the Contractor omits to inform the Federal Agency for Foreign Affairs in writing of defects in the supplies or services obtained from others which would be apparent if due diligence were exercised, such liability shall pass to the Contractor.

5.7. Impediments to performance / Suspension of performance

5.7.1. 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.

5.7.2. 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. If the circumstances are not attributable to the Contractor and the impediment endures for more than three months after notice was given pursuant to paragraph 5.7.1. above, the Federal Agency for Foreign Affairs is entitled, in the 30 days following the expiry of this period, to terminate the contract with immediate effect or to repudiate it in full or in part by means of a written declaration.

5.7.3. 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).

If wood packaging materials or pallets are used, they must be made of treated wood that meets the IPPC standard.

5.8. 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.

6. Liability

The Contractor's liability is governed by the statutory provisions, in particular sections 7 and 14 of the VOL/B.

7. Contractual penalties

Individual agreements on contractual penalties are subject to the statutory provisions, in particular section 11 of the VOL/B.

8. Acceptance

8.1. Quality inspection

If the parties have agreed that a quality inspection is to be conducted, i.e. an inspection of the work by the Federal Agency for Foreign Affairs distinct from an acceptance inspection, in order to determine whether the contractually agreed technical requirements and related organisational demands have been met, the statutory provisions of section 12 of the VOL/B shall apply.

8.2. Assumption of risk

Until the risk passes to the Federal Agency for Foreign Affairs, the Contractor shall protect its work and the property it has been given for the performance of such work from loss or damage (section 10 of the VOL/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 its 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.

8.3. Use of goods

If the Federal Agency for Foreign Affairs has made use of the work, it is deemed to have been accepted upon initial use.

9. Warranty claims

9.1. Statutory warranty claims

Warranty claims shall be based on the statutory provisions, above all section 634 et seq. of the BGB and section 14 of the VOL/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.

9.2. Limitation of claims

Warranty claims are subject to the statutorily prescribed limitation periods set out in the German Civil Code (BGB). The standard such period is two years.

10. Invoices

10.1. 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). If part delivery was agreed, the Contractor should not submit a partial invoice; he should rather submit an invoice summarising all part deliveries once the final such part delivery has been made. Labour and material costs must be listed separately in invoices for repairs, maintenance work and services.

10.2. Invoicing dates

The invoice must be submitted to the billing address specified in the order immediately after the delivery of the goods. 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.

10.3. 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. Carbon copies of signed time sheets and similar evidentiary documents must be enclosed with invoices for repairs, maintenance work and services.

10.4. Billing address

The billing address for any given order can be found in the letter of award / written order. 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.

11. Agreement on hourly rates

If an individual agreement has been reached by the parties on services to be provided on the basis of hourly rates, the statutory provisions of section 16 of the VOL/B shall apply.

12. Payment

12.1. 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 17 of the VOL/B, the standard period for payment is 30 days from receipt of the 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.

12.2. 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 order price. Should ancillary costs of any kind has been specifically agreed by contract, these may not be charged and remunerated directly upon delivery but must be included in the invoice.

12.3. 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.

13. Provision of security, insurance

If it has been agreed that security must be provided, such security is governed by the provisions of section 18 of the VOL/B. No insurance in connection with the order may be concluded at the expense of the Federal Agency for Foreign Affairs.

14. 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).

15. Supplementary conditions for shipments abroad

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

15.1. 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 supplied via the Federal Agency for Foreign Affairs Courier Service or Freight Office, the Contractor shall receive a written confirmation of their export from the Federal Agency for Foreign Affairs Division that ordered them.

15.2. 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.

15.3. General information on international IT deliveries

Each delivery must include a **delivery note in triplicate** and an **addressed return envelope**, since a copy of the delivery note must be stamped and returned to certify the export. If no such certificate of exportation has been received for an outgoing delivery, a complaint should be made to the Federal Agency for Foreign Affairs within two months.

The Federal Agency for Foreign Affairs accepts no liability for any failure to meet Tax Office deadlines with respect to proof of exportation.

If the goods are exported using a forwarding agency, such agency is responsible, as the carrier, for issuing proof of export / proof of intra-Community delivery.

15.4. Invoicing for international deliveries

The invoice has to make 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.

16. Final Provision

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.
