

# Additional Contractual Conditions of the MDC

## 1 Applicability

- 1.1 These additional contractual conditions (hereinafter ACCs) shall apply for all contracts concerning goods and/or services entered into by the Max Delbrück Center for Molecular Medicine in the Helmholtz Association (hereinafter CLIENT). In supplementation, the General Conditions for the Provision of Services (Vertragsbedingungen für die Ausführung von Leistungen (VOL/B)) valid at the time the contract is entered into shall also apply.
- 1.2 The contractor's (hereinafter CONTRACTOR's) terms of delivery and payment, as well as business conditions – even as stated in the CONTRACTOR's quotations or advertising material – shall only apply if and to the extent that they have been expressly agreed in the manner, i.e. form, cited under number 2. This shall also apply if the CLIENT with knowledge of CONTRACTOR's conflicting or deviating conditions accepts CONTRACTOR's performance without reservation.

## 2 Formal requirements

- 2.1 Subject to internal authority policies, in order to be valid, contractual agreements shall require written form, text form with approved advanced electronic signature in accordance with the Signature Law, electronic form (§ 126a of the German Civil Code (Bürgerliches Gesetzbuch (BGB)) or text form (§ 126b BGB).
- 2.2 Electronic signatures that are supported by eVergabe of the German federal government (in this regard see <http://www.evergabe-online.info/signaturen>) are approved.
- 2.3 Oral agreements that affect the contract shall require a confirmation in the form specified through number 2.1, in order to be effective.
- 2.4 Mandatory statutory formal regulations and the right to demand a written certification shall remain hereby unaffected.

## 3 Correspondence

- 3.1 In all correspondence (e.g. order confirmations, invoices, delivery notes), including documents transmitted electronically or in text form, the purchase order number as well as reference and date of the CLIENT's correspondence must be specified.
- 3.2 Order confirmations or invoices without purchase order number or job number shall be considered as not delivered or not received and cannot be processed. Payment dates or payment terms included in invoices or order confirmations shall in these cases only be effective after receipt of a newly created or supplemented invoice or order confirmation with appropriate specifications in this regard. The CONTRACTOR shall be responsible for all consequences arising from failure to comply with the obligation to specify the purchase order number, as well as reference and date of the purchase order document, unless the CONTRACTOR can verify that he is not responsible for such failure to comply with said obligation.

## 4 Prices

The agreed prices are fixed prices as stipulated in ordinance PR no. 30/53 concerning public procurement prices of 21 November 1953 (Federal Gazette (BAnz.) 1953 no. 244) as amended. If nothing to the contrary is agreed the price of the delivery shall be "free house" including packaging. If otherwise agreed, the packaging and transport costs shall be paid by the CONTRACTOR and shown separately in the invoice.

## 5 Delivery and performance

- 5.1 The CONTRACTOR shall deliver at the agreed time to the following delivery point of the CLIENT, unless a different delivery point is agreed upon in the form cited under number 2: Max-Delbrück-Centrum Berlin, Purchasing Department, Central Goods Receiving, Robert-Rössle-Str. 10, 13125 Berlin-Buch. The Central Goods Receiving is open from Monday to Friday between 7 AM and 2 PM.
- 5.2 The delivery of animals shall occur exclusively at the animal facility specifically designated in writing by the CLIENT in the job or the purchase order, at the receiving times also specified in the job or purchase order.

In this regard, the specifically designated animal facilities shall apply as delivery point.

- 5.3 Direct deliveries to work groups or other departments of the CLIENT shall not apply as fulfillment. Work groups and other departments are not authorized to accept goods, to receive or collect other performances and to make declarations concerning the condition of such goods or services with effect for and against the CLIENT.
- 5.4 The CONTRACTOR shall bear the risk of accidental destruction and accidental deterioration (§ 446 para. 1 BGB) relative to the purchase contract until delivery and transfer at the delivery point specified in number 5.1. If installation is agreed, the CONTRACTOR shall bear said risk until the installation performance is concluded.
- 5.5 For execution of services at the CLIENT's site the CONTRACTOR shall comply with the requirements specified in the CLIENT's External Company Guideline as amended at the time of the execution of services. The External Company Guideline can be called up at the Internet address <http://www.mdc-berlin.de/einkaufsinfo>.

## 6 Execution, delivery and performance periods

- 6.1 Agreed scheduled dates shall be binding. After expiration of the delivery date the CONTRACTOR shall be in default without the necessity of a reminder. In all other aspects the statutory regulations shall apply. If delays must be anticipated due to unforeseeable circumstances, then the CONTRACTOR shall be obligated to report this situation without delay and to specify the reasons and the estimated duration in written form, and at the same time recommend suitable measures to counter the consequences.
- 6.2 In the event of default the CONTRACTOR shall be obligated to pay the CLIENT a contractual penalty in the amount of 0.5% of the entire order price per completed week, however not to exceed a maximum of 5% of the order price. The CLIENT shall reserve the right to prove a greater loss.

## 7 Acceptance

- 7.1 If trial operation is intended, then the acceptance shall be declared after trial operation in which functionality has been determined, in every case through a joint acceptance protocol.
- 7.2 All documents required for acceptance, operation, maintenance, and repair (test protocols, factory test certificates, drawings, plans, operating instructions, and similar documents) shall be provided by the CONTRACTOR with the delivery, free of charge.

## 8 Examination for defects

- 8.1 The CLIENT shall be entitled to the statutory warranty claims, in full; the CLIENT shall be entitled to demand that the CONTRACTOR provides defect rectification or delivery of a new item, at the CLIENT's discretion. The right to damages, and particularly damages in lieu of the performance shall remain expressly reserved.
- 8.2 The CLIENT shall be entitled, at the expense of the CONTRACTOR, to undertake rectification the defect on his own, if the CONTRACTOR is in default with subsequent performance.

## 9 Property rights

- 9.1 The CONTRACTOR warrants that no third-party rights have been violated in conjunction with the CONTRACTOR's delivery.
- 9.2 If claims are lodged against the CLIENT in this regard then the CONTRACTOR shall be obligated to indemnify the CLIENT on CLIENT's first written request; written form can be replaced by one of the forms cited in number 2. In the event of claims for damages on the part of third parties the CONTRACTOR shall have the opportunity to verify that he is not responsible for the violation of the rights of the third party.

## 10 Ownership structure

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10.1 Retention of title on the part of the CONTRACTOR shall not prevent the CLIENT from combining, processing, to inseparably mix or consume delivered items as intended, if CLIENT has communicated this intended use to the CONTRACTOR when the order was placed or when the contract was entered into. In these cases property retention of title shall not extend to uniform items or new items manufactured through processing or combination or to products of a blending or mixing. Likewise, in these cases retention of title shall not extend to surrogates, which the CLIENT obtains instead of manufactured uniform or new items, or instead of products of a blending or mixing.

10.2 Provisions of material of any type shall remain the property of the CLIENT. Such provisions of material shall be marked as such by the CONTRACTOR and stored, designated, and managed separately. If material provisions are processed, transformed, combined or mixed with other objects, then the CLIENT shall acquire sole ownership of the new item. The CONTRACTOR shall keep such material provisions safe for the CLIENT at no charge. Ownership and rights of use/copyrights to the CLIENT's documents that the CLIENT has transferred to the CONTRACTOR shall remain with the CLIENT. The documents shall be handed over to the CLIENT on CLIENT's request with all copies or duplications without delay; in the absence of professional law obligations to the contrary, electronic copies shall be deleted. The CLIENT's documents shall only be used for the purposes stipulated in the contract. Actions to the contrary shall render the CONTRACTOR liable for all damages (including the unauthorized use of the CLIENT's rights). In the case of a joint invention, the rights of the CLIENT shall be secured in a suitable manner through agreement.

### 11 Required documents, the CLIENT's right to information

11.1 The CONTRACTOR shall be obligated to request required documents in good time in accordance with § 3 no. 1 VOL/B.

11.2 The CLIENT shall be entitled to a right information as stipulated in § 4 no. 2 para. 1 VOL/B. This right requires that the CLIENT or the CLIENT's commissioned agents shall be authorized to perform tests at the CLIENTS expense. When awarding subcontracts, the CONTRACTOR shall be obligated to ensure that the subcontractor contractually grants to the CLIENT the right to information and right to undertake tests at the subcontractor's facilities in the scope cited above. The tests do not release the CONTRACTOR from the CONTRACTORS liability for defects and other liability.

### 12 Invoice and payment

12.1 The invoice address is: Max-Delbrück-Centrum Berlin, FINANCE Department, Robert-Rössle-Str. 10, 13125 Berlin-Buch. Invoices must be sent electronically in PDF/A format to the invoice receiving address [rechnungseingang@mdc-berlin.de](mailto:rechnungseingang@mdc-berlin.de); each email shall only contain one invoice; with regard to the content of the invoice, the stipulations in number 3 must be complied with.

12.2 The CLIENT shall provide cashless payments after complete receipt of the goods or after complete provision of services, including any required acceptance procedure associated with said goods and services on the part of the CLIENT, and after receipt of the invoice within 14 days with deduction of a 2% discount, or within 30 days net, at the CLIENT's discretion. If due to statutory regulations (e.g. in the case of books subject to price maintenance) the granting of discount is excluded, then a discount shall not be granted. The discount policy shall apply for all payments (including payments according to payment schedule, advance payments, payments on account, final payments, and partial final payments).

### 13 Customs

13.1 In the case of performance from a foreign customs territory, the CONTRACTOR shall be obligated to contact the CLIENT in good time with regard to customs clearance and import clearance.

13.2 The CONTRACTOR shall be obligated, on CLIENT's request, to communicate all necessary information, concerning Intra-Community trade statistics, e.g. goods numbers, weight, size, transport routes.

13.3 Contract fulfillment shall be subject to the reservation that fulfillment is not hindered due to national or international regulations, particularly export control regulations, as well as embargoes or other restrictions. The contracting parties shall be obligated to provide information and documents that are required for the export/transfer/import. Delays due to export inspections or approval procedures must be taken into account by the CONTRACTOR. If ultimately required approvals are not granted, then the CLIENT shall be entitled to a right of termination with regard to the partial performance in question. Claims for remuneration, indemnification, or compensation for damages on the part of CONTRACTOR shall be excluded.

### 14 Assignment of receivables; right of retention

14.1 The CONTRACTOR shall be entitled to assign receivables from the CLIENT only with the CLIENT's consent. If such receivables are subject to prior assignments or so-called global assignments, for example to banks, then the CONTRACTOR must report this to the CLIENT when the contract is entered into. If the CONTRACTOR fails to provide this notification, then the CLIENT shall be authorized to withdraw from the contract.

14.2 The CONTRACTOR shall be entitled to a right of retention only due to counterclaims that are undisputed or that have been legally enforced.

### 15 Packaging

15.1 For safe transport the CONTRACTOR shall be obligated to use suitable packaging with due consideration of the requirements for the type and weight of the goods, as well as the means of transport used.

15.2 The CONTRACTOR shall be obligated, or the commissioned freight carrier shall be obligated by the CONTRACTOR, to take back packaging (as stipulated in the Packaging Ordinance as amended) at delivery, free of charge. In this case a transfer of ownership of the packaging shall not take place. The receiver of the performance however can demand at delivery that the ownership of the packaging shall be transferred to him, if such disposition is allowed.

15.3 The Packaging Ordinance of 21 August 1998, including the change ordinances decreed in this regard shall apply, as amended, at the time the contract was entered into. The CLIENT shall be entitled to bill the CONTRACTOR for the costs required for disposal of packaging for the deliveries made to the CLIENT.

### 16 Extraordinary right to withdraw from and to terminate contracts

16.1 The CLIENT shall be entitled to withdraw from contracts and to terminate contracts at any time without notice, if

a) with regard to the awarding of a contract the CONTRACTOR or the CONTRACTOR's employees have made an agreement constituting an illegal limitation of competition,

b) the CONTRACTOR or the CONTRACTOR's authorized agent or other authorized agents offer, promise or grant gifts or other advantages to persons or parties related to these persons, who, on behalf of the client, are involved with the placing of orders, or with the awarding, preparation of, conclusion of, or execution of contracts or other legal transactions,

c) at the time the contract was entered into a compelling reason was present for exclusion in accordance with § 123 para. 1 to 4 of the Act Against Restraint of Competition (Gesetz gegen Wettbewerbsbeschränkung (GWB)), or

d) if for fulfillment of orders or contracts or for provision of services there are verifiable violations of statutory regulations, for example violation of the legislation concerning a general minimum wage, the law concerning the posting of workers, or the law concerning the fight against undeclared work and illegal employment, or statutory regulations for the protection of intellectual property, i.e. violations of fair trade regulations.

16.2 In the cases cited in number 16.1 the right to withdraw from the contract or to terminate the contract at any time without notice refers to all orders, contracts, and services arising from the relationship between the CLIENT and the CONTRACTOR. For tenders and procurement procedures, in the cases cited in number 16.1 the CLIENT shall be entitled to exclude the CONTRACTOR from participating in the tender or procurement procedure, with immediate effect.

16.3 In addition to withdrawal and or termination as stipulated in number 16.1 the right of the CLIENT to demand compensation for damages from the CONTRACTOR that occur for the CLIENT through the withdrawal or termination, shall remain hereby unaffected.

### 17 Data protection

The CONTRACTOR is advised that the CLIENT processes and saves data arising from the contractual relationship, i.e. from the business relationship in accordance with § 28 of the German Federal Data Protection Act (Bundesdatenschutzgesetz (BDSG)) via a data processing system as defined in § 3 of the BDSG. The CLIENT reserves the right to also transfer such data to third parties, if this is necessary for processing of the contract. The CONTRACTOR declares his consent that the CLIENT shall use data arising from the business relation exclusively for the CLIENT's own business purposes.

### 18 Advertising materials

The CONTRACTOR shall be obligated to only refer to business connections with the CLIENT in advertising materials with the express consent of the CLIENT.

## **Additional Contractual Conditions of the MDC**

### **19 Legal venue and applicable law**

Legal venue shall be the city of Berlin. German law shall apply for all contracts, orders, deliveries, and other performances that the CLIENT enters into, orders or provides.

### **20 Severability clause**

If individual provisions of these ACCs shall be invalid in whole or in part, or if these ACCs shall contain loopholes, the validity of the other provisions of these ACCs shall remain hereby unaffected. In these cases the contracting parties shall be obligated to agree on legally effective provisions in lieu of the invalid or missing provisions, which most nearly approach the economic objectives and the purpose of these ACCs.