General Purchase Conditions
- as at May 2021 -
of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

1. - Applicability, Components of the Contract

1.1 Applicability of the General Purchase Conditions

Subject to section 1.2, these General Purchase Conditions apply to all goods and services supplied by the Contractor to the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH as the contracting party.

The Contractor must prepare its offer based on these General Purchase Conditions. A contract is established between the parties, subject exclusively to GIZ's General Purchase Conditions, once an order is issued by GIZ, after which any amendments to the contract require the approval of GIZ in text form. Any general terms and conditions of business and/or payment specified by the Contractor and attached to the latter's order confirmation or made available in any other way do not apply unless GIZ has expressly agreed to them in advance in text form. GIZ's General Purchase Conditions apply even if GIZ accepts the goods and/or services in full knowledge of, and without objecting to, any conflicting or differing conditions of the Contractor.

1.2 Components of the contract

The contract is made up exclusively of the following components:

1) either GIZ's written order with all annexes thereto or GIZ's contract for work and materials with all annexes thereto; 2) the technical offer submitted by the Contractor, excluding any general terms and conditions of business and/or payment specified by the Contractor; 3) these General Purchase Conditions; 4) the shipping instructions (as a unilateral determination of contract terms on the part of GIZ); and 5) the German contracting rules for award of public service contracts entitled 'Vergabe- und Vertragsordnung für Leistungen' (VOL) Part B in the version applicable at the time the contract is concluded.

In the event of discrepancies between individual components of the contract, the documents listed above apply in the given order.

2. - Procedures governing Supply, Performance and Transport

2.1 Pre-shipment inspections and customary quality inspections

If quality inspections are customary or if it is agreed between the parties that inspections must be carried out by the manufacturer or the Contractor, these must be conducted at the Contractor's expense. The inspection report (one original and one copy) must be sent to GIZ without delay as soon as the inspection has been performed, regardless of whether or not GIZ has taken part in the inspection. The Contractor is liable both for the truth and accuracy of its own inspection reports and for the truth and accuracy of inspection reports prepared by manufacturers or subcontractors.

In addition, GIZ itself, or a third party acting on its behalf, is entitled to conduct an inspection, to be arranged in each case with the Contractor, in order to check the quality of all items before they are packed or shipped. The Contractor must inform GIZ at least two weeks in advance of the date from which the inspection may be conducted. The Contractor must provide without charge the necessary personnel to carry out the inspection and the necessary measuring equipment, consumables, fuel and power. The inspection conducted by GIZ, or a third party acting on its behalf, does not replace any customary trade-specific inspections or other inspections which have been agreed. For all inspections, any defects identified must be remedied by the Contractor without delay at its own expense. Inspections do not in any way prejudice GIZ's entitlement to assert defect or warranty claims and do not replace any required acceptance procedure.

2.2 Packing and marking

All items must be packed and where appropriate marked in accordance with the specific requirements for the goods, the type of shipment, the form of transport and the legal and climatic conditions in the destination country and in transit countries. Subject to these packing specifications, the Contractor must, wherever possible, use eco-friendly and easily recyclable packaging (e.g. paper and cardboard packaging to be made predominantly of recycled fibre with no unnecessary composite materials that make recycling difficult; plastics, plastic film and metal/plastic coatings to be avoided; shipping pallets to be reusable and made of wood wherever possible). Items should be packaged using only the minimum amount of material required.

GIZ is entitled unilaterally to specify further marking requirements in the shipping instructions, and the Contractor must comply with any such further instructions. Unless otherwise specified in the shipping instructions, packages must be marked without any reference to content or company. Each package must be marked at least on two opposite sides, in accordance with GIZ's shipping instructions, with the gross and net weights, external dimensions and, where appropriate, with symbols for fragile goods, hook attachment points, indications of centre of gravity and potential dangers.

The Contractor is liable for correct packing and marking and for any damage attributable to inadequate or defective packing or marking. Any third parties engaged by the Contractor to carry out packing/marking are deemed to be

vicarious agents of the Contractor. GIZ or the forwarding agent contracted by GIZ is entitled but not obliged to refuse packages which do not comply with the above conditions or to demand subsequent performance by the Contractor (remedy or replacement) or, if the Contractor fails to provide subsequent performance within the stipulated period, to remedy the deficiencies itself or arrange for the deficiencies to be remedied or procure a replacement, in all cases at the expense of the Contractor.

2.3 Delivery terms

‘Delivery terms’ means the Incoterms agreed in the contract, any amended or supplemented Incoterms in their amended or supplemented form, or, where no Incoterms have been agreed, any other individually agreed delivery terms.

2.4 Delivery documents

The term ‘delivery documents’ means the documents listed under this section 2.4. and in the shipping instructions, as well as all other accompanying documents that are required in order to deliver the goods to the location of use without any trouble or interruption in accordance with the respective export and import conditions.

Unless otherwise specified in the shipping instructions, the delivery documents must be prepared in accordance with the ‘K&M’ (Konsulats- und Mustervorschriften) consular and import/export reference manual published by Hamburg Chamber of Commerce. The Contractor must make the delivery documents available, in the quantity and the language specified in the shipping instructions, at the required point in time and in all cases in good time before the items are shipped.

In addition to quoting GIZ's order number, the packing list must state the precise content, the gross and net weights and the complete markings of each package. An additional copy of the list must be included in each package.

A ‘special invoice’ (proforma invoice for customs purposes in the recipient country) must be provided by the Contractor for customs clearance in the destination country. It must be drawn up by the Contractor as an invoice for a standard commercial export transaction and, if so required in the destination country, must also be certified and/or legalised. If a pre-shipment inspection is required (in accordance with ‘K&M’), GIZ will arrange and pay for this to be conducted by the relevant inspection firm. The Contractor is liable for all internal costs incurred in relation to the inspection.

2.5 Additional documents

The technical inspection certificates or official approval or registration certificates or certificates of origin or similar certificates specified in detail in GIZ's written order or contract for work and materials must be delivered to GIZ at the latest together with the delivery documents.

Two copies each of the operating instructions and any necessary assembly instructions, both in German and in the language commonly used in the country of destination, must be delivered together with the goods. If additional foundation layout plans and circuit diagrams are required in order to prepare for installations, such documents are to be submitted to GIZ in duplicate, quoting GIZ's order number, as soon as the written order or the contract for work and materials has been received.

2.6 Export procedures

The Contractor must comply with the applicable regulations on foreign trade, payments and customs clearance.

In the case of shipments involving delivery from an EU country to a third country, the Contractor is obliged to register the export in the Automated Export System (AES) with its inland customs office as GIZ’s direct representative. In all cases, GIZ must be named as the exporter and either GIZ, the Contractor or a third party engaged by the Contractor as the registering party/representative.

The Contractor is liable to GIZ for damage arising as a result of any failure to comply with the requirements under this section.

2.7 Transport

If the Contractor is responsible for transport, any assistance with the transport of consignments which is provided by GIZ or the recipient of the goods or services in the country of destination does not release the Contractor from its obligation to ensure the proper transport of these to the place of delivery.

2.8 Special conditions for transport by a forwarding agent of GIZ

The following provisions apply if the main transport is arranged by a forwarding agent contracted by GIZ.

The Contractor must notify the forwarding agent named in the shipping instructions of the delivery of the goods in reasonable time before the agreed delivery date. If no suitable means of transport is available on the agreed date, the Contractor is obliged to store the goods ready for shipping at its own expense and risk until they can be transported, for a maximum of one month.

The forwarding agent contracted by GIZ will manage all the transport arrangements, including monitoring deadlines and issuing any reminder notices, acting in the name and with the full authority of GIZ. The Contractor must comply in good time with the forwarding agent’s instructions. The Contractor is liable for any additional costs that may arise due to non-compliance with the shipping instructions or the forwarding agent's instructions.

The Contractor must send the delivery documents to the forwarding agent contracted by GIZ and must also send an electronic copy of each delivery document to GIZ.

2.9 Partial deliveries

Partial deliveries require GIZ’s prior consent in text form. They must be identified as such in all shipping and delivery documents and in the marking on the packages and must be consecutively numbered.

2.10 Delivery dates

Goods and/or services may be delivered before the agreed date only with the prior consent of GIZ, or of the forwarding agent contracted by GIZ, in text form.

3. Payment Terms and Prices

3.1 Prices

The agreed prices are fixed prices and exclude any subsequent claims by the Contractor for additional payment and any price increases of any kind. The prices include all packing costs, ancillary costs, costs for drawing up or obtaining the delivery documents specified in section 2.4 and the additional documents specified in section 2.5, transport costs, assembly, installation, all customary accessories and any accessories required in order to prepare the items for use or operation.

The Contractor undertakes to make use of any possible exemption from value-added tax. If and insofar as goods and services are subject to value-added tax, the Contractor must show the tax separately in the invoice.

The Federal Republic of Germany stipulates that Regulation PR 30/53 on Prices for Public Contracts dated 21 November 1953 – Bundesanzeiger (federal gazette) entry no. 244 dated 18 December 1953 – with the Guiding Principles for Pricing on the Basis of Prime Costs must be applied in all the commissions it awards to GIZ, including those where goods and/or services are provided indirectly. As such, orders placed by GIZ with subcontractors are also subject to possible price inspections by the responsible pricing authority.

3.2 Payment terms and assignment

3.2.1 Due date

The purchase price is payable by the contractually agreed payment date following receipt by GIZ of a proper itemised commercial invoice (section 3.2.2), the delivery documents specified in section 2.4, the additional documents specified in section 2.5 and evidence of shipment as defined in section 3.2.2. If advance payments or partial payments are agreed, payment must be made within the agreed periods and upon presentation of the agreed documents and collateral. In the case of a contract for work and materials, the final invoice is not payable, unless otherwise agreed, until a formal acceptance inspection has been carried out.

If partial deliveries are made without the prior consent required under section 2.9, the total purchase price is not due until the payment conditions are met for the goods and services as a whole, including the final partial delivery or final partial service.

Discount periods do not commence until payment falls due. To comply with a discount period, it is sufficient for the payment to have been made by GIZ (as opposed to payment being received by the Contractor) within the period.

3.2.2 Commercial invoice and evidence of shipment

The commercial invoice must be made out to GIZ and must quote GIZ's full order number. A separate commercial invoice must be made out for each shipment. In the case of contractors from the EU, this must be done with due regard for EU directive 2014/55/EU. If advance payments are agreed, they must be invoiced in the commercial invoice against which an advance payment is offset, and deducted once more from the overall amount.

Depending on the agreed delivery terms (as specified in section 2.3), the following documents will be recognised as evidence of shipment: acknowledgements of receipt issued by the forwarding agent contracted by GIZ; ocean bills of lading; duplicate railway bills of lading; post office receipts and FIATA combined transport bills of lading; air waybills or road haulage bills of lading made out by the respective carrier.

3.2.3 Assignment

Claims against GIZ may be assigned only with the prior consent of GIZ in text form.

3.2.4 Offsetting claims and rights of retention

The Contractor may offset only such claims as are undisputed or established as having legal force. GIZ is entitled to exercise the offsetting rights and rights of retention available to it under law.

3.2.5 Warranty retention amount

Unless a more extensive warranty retention amount has been agreed, GIZ is entitled to retain 15 per cent of the invoice amount until the end of the statutory period (or the contractually agreed period, if this is longer) to cover potential warranty claims, if, at the time payment becomes due, court settlement, insolvency or liquidation proceedings have been initiated against the Contractor or an application for such proceedings has been filed.

4 Transfer of Risk and of Ownership

Price and performance risks are transferred in accordance with the delivery terms (as defined in 2.3 above) but no later than the point at which ownership of the goods is transferred from the Contractor to GIZ.

Unless otherwise agreed, ownership of the goods is transferred from the Contractor to GIZ at whichever of the times listed below occurs first: the transfer of risk or full payment of the purchase price (with the exception of any agreed share for assembly/installation of work and any agreed warranty retention amount). If, at that time, the goods have not yet been delivered, the Contractor must hold the goods in safekeeping for GIZ free of charge and/or hereby assigns to GIZ any present and future claims against third parties to the surrender of the goods.

Retention of title to the goods must be agreed in text form in a separate document signed by both parties.

Parts or tools made available by GIZ or by the recipient named in the contract remain the property of either GIZ or the recipient. Any processing or alterations by the Contractor are carried out on behalf of GIZ or the named recipient.

5 Breaches of Contract, Warranty, Default and Liability

5.1 Default

If the Contractor is in default, GIZ is entitled to all statutory claims without limitation. If the Contractor is in default, GIZ is entitled to impose a contractual penalty amounting to 0.2 per cent of the agreed purchase price per calendar day, up to a maximum of 5 per cent of the agreed purchase price (including packing and freight costs, plus value-added tax where applicable). GIZ is entitled to claim a contractual penalty up to the time at which final payment is made, even if this right was not reserved upon acceptance of the goods. The contractual penalty will be deducted from more extensive claims for damages.

5.2 Warranty and assurances

The goods and services to be provided must comply with the generally acknowledged rules of technology. They must be of excellent quality. The Contractor warrants that all goods and services are free from defects and that they fulfil the characteristics as agreed in the contract. Unless otherwise specified by GIZ in text form, all goods must be new.

In the case of a contract for work and materials, the Contractor warrants that the materials used (with the exception of materials provided by GIZ) and the manufacture, construction and planning (with the exception of manufacture, construction and planning activities performed by GIZ) are free of defects and fulfil the agreed characteristics.

The Contractor also warrants that the goods and services are suitable for use at the location of use with due regard for the local climatic, technical and legal conditions and that they meet all the relevant technical standards (e.g. EN, ISO, DIN, and VDE). The location of use of the goods is specified in GIZ's written order or in the contract for work and materials or, if the location of use is not explicitly stated, it is the capital city of the destination country.

The Contractor warrants that the goods and services have no defects of title and do not breach any copyrights, industrial or intellectual property rights or any other rights of third parties.

5.3 Claims for defects

In case of defects, GIZ is entitled as a minimum to assert all its statutory rights.

In the event of disagreement over whether goods and services are defective, the Contractor bears the burden of proof for demonstrating that the said goods or services are free of defects.

GIZ is also entitled to assert claims for damage incurred by the user of the goods and services that arise due to defects or to failure on the part of the Contractor to comply with other contractual obligations.

The defects liability period for asserting warranty or other compensation claims in respect of goods which have been repaired or replaced commences once again if the Contractor was obliged to render subsequent performance. The defects liability period is suspended for the period during which goods or services are unavailable on account of defects.

5.4 Examination of goods and lodging of complaints

To comply with the statutory obligation to examine goods and lodge complaints in respect of defects in due course, it is sufficient if GIZ examines the goods at the location of use. It is sufficient if the inspection is carried out with the resources available at the location of use. In the event of partial deliveries, the goods need not be examined until the final partial delivery has arrived at the location of use. If it is agreed that the goods are to be installed, assembled or placed into operation, GIZ is not required to inspect the goods until these steps have been carried out. If several goods of the same type are delivered, it is sufficient to inspect a random sample of the goods. If random checks reveal defects, GIZ may assert claims for defects in relation to all of the goods and services.

Complaints in respect of defects must be lodged with the Contractor without undue delay as soon as such defects are discovered. In cases where goods and services are intended for a foreign country, notice of defects is given in good time if lodged within 30 calendar days of whichever of the following occurs latest: 1) arrival at the location of use; 2) completed installation, assembly or commencement of operation. In the case of hidden defects, notice of defect is given in good time in all cases if lodged within 15 calendar days of such defects being discovered.

If the Contractor fraudulently conceals a defect, it is not entitled to plead that GIZ breached its obligation to examine the goods and to lodge a complaint in respect of defects. The same applies if the Contractor was unaware of the defect at the time of delivery due to gross negligence.

5.5 Liability

The Contractor is liable for all its own faults and those of its vicarious agents and of manufacturers. The Contractor is also liable for any culpable damage resulting from its actions or those of its vicarious agents even if such damage is merely incidental to the fulfilment of the order.

6 – Local Conditions, Integrity and Sustainability

6.1 Compliance with legislation

When fulfilling a contract, the Contractor must comply with all the relevant legal provisions, regulations and official specifications, including tax legislation, and must have due regard for local conditions and commercial practice in the country in question.

6.2 Prevention of the financing of terrorism and compliance with embargoes

The Contractor must not use any remuneration obtained from GIZ in order to provide funds or other economic resources directly or indirectly to third parties that are included on a sanctions list issued by the United Nations and/or the EU.

When implementing the contract, the Contractor may enter into and/or maintain business relations only with third parties that are reliable and to whom no statutory ban on entering into contractual or business relations applies. When implementing the contract, the Contractor must also comply with embargoes and other trade restrictions imposed by the United Nations, the EU or the Federal Republic of Germany.

The Contractor must notify GIZ without delay and on its own initiative if the Contractor, a member of its official managing body and/or other administrative bodies, its shareholders and/or staff is included on a sanctions list issued by the United Nations or the EU. This provision also applies if the Contractor becomes aware of an event that leads to such a listing.

The Contractor must notify GIZ without delay and on its own initiative of any violation of the provisions stipulated in this section 6.2. This does not affect GIZ's rights under sections 6 and 7 of these General Purchase Conditions.

6.3 Integrity

6.3.1 Conflicts of interest

The Contractor must not enter into a conflict of interest in relation to the contract. Conflicts of interest can arise in particular as a result of commercial interests, political allegiances or national ties, relationships with family members or friends and other ties and interests. The Contractor undertakes in particular not to accept any additional remuneration from third parties in relation to the contract.

The Contractor undertakes to report to GIZ without delay any circumstances that present a conflict of interest or that could lead to a conflict of interest. It must then consult GIZ on what action is to be taken. If the parties cannot reach agreement, GIZ is entitled to withdraw from or terminate the contract without prior notice.

6.3.2 Integrity policy

The Contractor must not, either directly or via a third party, offer or grant any gifts or advantages, or accept or request such gifts or advantages for itself or a third party, in connection with the award and/or implementation of the contract; this also includes facilitating payments. The Contractor must not agree any restraints on competition with one or more other companies.

Corruption in any form is prohibited. The Contractor must establish appropriate and reasonable measures to prevent and tackle corruption. The Contractor must also report to GIZ's whistleblowing system without delay any confirmed cases and strong suspicions of corruption and/or property offences such as fraud, embezzlement and breach of trust in connection with the implementation of the contract. Reports can be submitted using the whistleblower portal on GIZ's website (www.giz.de/en • About GIZ • Compliance), through GIZ's Integrity Advisor (integrity-mailbox@giz.de) or through the external ombudsperson (www.giz.de/en • About GIZ • Compliance).

The term 'third party' includes employees, family members or other closely connected persons.

6.4 Environmental and social standards, human rights

When fulfilling its contractual obligations to supply goods and services, the Contractor must comply with all applicable national and international environmental laws, minimise its greenhouse gas emissions and avoid all actions that could increase the vulnerability of the population and/or ecosystems.

When fulfilling its contractual obligations to supply goods and services, the Contractor must also ensure that human rights are respected and that measures are in place to protect children, prevent violence, abuse or exploitation of any kind, prevent discrimination (in particular with regard to origin, ethnicity, religion, age, gender identity, sexual orientation or disability) and promote equality of opportunity for all genders with due regard for international standards and multilateral agreements, in particular international agreements on human rights.

The Contractor must implement appropriate measures to prevent sexual harassment at the workplace and must refrain from any incitement to violence or hate and from any objectively unjustified discrimination against individuals or groups.

6.5 Labour standards and minimum wages

When implementing the contract, the Contractor must comply with the Fundamental Principles and Rights at Work in accordance with the Declaration of the International Labour Organization (ILO) of 18 June 1998 (freedom of association, the right to collective bargaining, the elimination of all forms of forced and compulsory labour, the abolition of child labour and the elimination of discrimination in employment and occupation).

When implementing the contract, the Contractor is obliged in particular to comply with the regulations through which the respective core labour standards of the ILO (conventions No. 29, No. 87, No. 98, No. 100, No. 105, No. 111, No. 138 and No. 182) have been transposed into the law of the country of assignment. If the country of assignment has not ratified one or more core labour standards or not enacted them in national legislation, the Contractor is

obliged to comply with such regulations in the country of assignment which pursue the same goal as the core labour standards.
When fulfilling its contractual obligations in Germany, the Contractor is obliged to comply with the provisions of Germany's Act Regulating a General Minimum Wage (Mindestlohngesetz, MiLoG) and to pay its workers any applicable collectively bargained wages.

6.6 Legal consequences

If the Contractor breaches any of the obligations set out in section 6 of these General Purchase Conditions, GIZ is entitled to withdraw from or terminate the contract without prior notice.
In each of the cases mentioned under section 6.3, GIZ is entitled to exclude the Contractor from future competitive award procedures for a limited period and to the extent appropriate.
If the Contractor breaches an obligation under sections 6.3, 6.4 or 6.5, the Contractor is obliged to pay a contractual penalty of EUR 25,000 for each breach. If a pecuniary advantage granted by the Contractor is greater than EUR 25,000, the Contractor must pay a contractual penalty equal to this sum. This is without prejudice to any further claims for damages by GIZ. However, the contractual penalty will be deducted from any such further claims.

7 - General Provisions, Rights of Termination and Withdrawal

7.1 Retention of documents, right of inspection and duty of disclosure

The Contractor must keep contract-related records for ten years after the goods and/or services have been formally accepted and must provide all such records for inspection by GIZ on request.
GIZ is entitled to inspect at any time the progress made and results achieved during the implementation of the contract. The Contractor must ensure that the documents required for this purpose are available at all times and must provide the required information. At the request of GIZ, the Contractor must provide information to other institutions or to persons and organisations commissioned by GIZ and must facilitate any inspections; the Contractor undertakes to cooperate with any reasonable requests during such inspections.

7.2 Confidentiality and publications

All data related to the contract and any other information of which the Contractor becomes aware in connection with this contract must be treated confidentially, both during and beyond the end of the contract. The Contractor is not permitted to use this data and information for its own purposes. This provision applies even if such documents or information have not been explicitly classified as secret or confidential.
Written consent must be obtained from GIZ in text form before publishing any documents related to the subject-matter of the contract. Consent is not required if the Contractor simply wishes to give a brief description of the contract and the work involved for public relations purposes. For the purposes of this provision, a statement noting the subject-matter of the contract and the key results constitutes a brief description. The Contractor must always express in an appropriate way that its activities are being carried out on behalf of GIZ and must also name the ultimate commissioning party and any other financing providers.
For its part, GIZ is entitled to publish documentation together with name details; this applies even if the contractual relationship ends prematurely.

7.3 Use of subcontractors

The Contractor remains liable to GIZ for all its obligations under the contract even when using subcontractors. The Contractor must oblige all its subcontractors to comply with those provisions of the contract that are relevant to them.

7.4 Rights of termination and withdrawal

GIZ is entitled to all statutory rights of termination and withdrawal without limitation. Furthermore, GIZ is entitled to withdraw from the contract if the Contractor becomes insolvent, if an application to initiate settlement, insolvency or liquidation proceedings is filed, a liquidation settlement is reached, a decision on a restructuring plan is taken or a comparable measure is being carried out under a different legal system.

7.5 Applicable law

The contract and all rights and obligations under or in connection with the contract are subject to the law of the Federal Republic of Germany, excluding the applicability of the United Nations Convention on Contracts for the International Sale of Goods, dated 11 April 1980, and other regulations within the meaning of Article 3, No. 2 of the Introductory Act of the German Civil Code.

7.6 Place of jurisdiction

The sole places of jurisdiction are Bonn and Frankfurt am Main. GIZ may also bring legal action against the Contractor before the competent court at the location of the Contractor's registered office.

7.7 Text form

Text form is required for the contract and for any contract amendments, supplements and material communications (including orders placed by GIZ) unless the parties have agreed alternative provisions and unless a stricter format is stipulated in law. The requirement for text form is met where a legible declaration naming the person making the declaration is supplied on a durable medium (e.g. GIZ's contract award platform, email, fax).

7.8 Partial invalidity

Should individual provisions of this contract be or become invalid or unenforceable, the validity of all other provisions in the contract will remain unaffected. The invalid or unenforceable provision is to be replaced by a valid and enforceable provision the effects of which most closely replicate the economic objective which was pursued by the contractual parties with the invalid or unenforceable provision. This applies accordingly if it emerges that the contract has gaps or omissions.