

General terms and conditions of purchase for awarding service contracts and contracts for work as well as for the purchase of goods



Preamble

These general terms and conditions of purchase for awarding service contracts and contracts for work as well as for the purchase of goods shall be taken as the basis for all future individual contracts concluded between Display International (hereinafter DI) and the contracting party – with simultaneous exclusion of general terms and conditions provided to the contrary.

The general terms and conditions of purchase shall apply to all business relations with contracting parties and suppliers of DI, if the contracting party or supplier is an entrepreneur (§ 14 BGB) (German Civil Code), a legal entity of public law or a special assets fund under public law.

A) Awarding contracts for work

I. Integral parts of the contract

Integral parts of contracts for work are:

- the contract with its specifications;
- a building permission granted for the building project or the exhibition stand referred to in the contract entered into with the contracting party;
- all mandatory regulations of public law including the relevant accident prevention regulations applicable at the place of performance, technical building regulations as well as regulations of the Building Trades Association and industrial safety, as far as they apply to the building project or the exhibition stand;
- the respective exhibition terms at the place of fulfillment;
- plans and sketches handed over by DI to the contracting party for the execution of its performance;
- the brands and materials as well as material specimens and material samples agreed upon as part of the contracting party's performance;
- the time schedule for the contracting party's contract performance;
- these general contractual terms and conditions;
- the generally accepted rules of engineering;
- the VOB/C including its provisions on general ancillary services applicable to the contracting party's contract performance;
- the German law.

II. Regulations on the conclusion of contracts/alterations of the contract performance

Purchase orders of DI shall only take place in compliance with the provisions mentioned in the purchase order and in the order confirmation of DI as well as in accordance with the contents of these general contractual terms and conditions.

Purchase orders and corresponding agreements on alterations of agreements shall only be binding in written form.

III. Regulations on contract performances

(1) The contracting party may only take such documents as the basis for execution of the contract that have been identified and released by DI as description of the contract performance at the time the order was placed or processed.

Other specifications, e.g. details on dimensions and weights, quantities, prices, other descriptions and other data, as they are contained in catalogues, circulation letters, advertisements or price lists, are only approximations and shall not be contractually binding as long as they have not expressly become an integral part of the contract.

If, from the technical point of view, the contracting party has any reservations against the contents of the documents identified and released by DI, it shall be obliged, to inform DI in writing without delay on these reservations by providing full explanation of the reasons.

In the event of a contradiction in the contents of plans and drawings, which DI hands over to the contracting party when placing the order or during the order processing period for description of the performance, the contracting party shall be obliged, to point out to DI the evident contradictions between the specifications and the contents of a plans.

(2) Brands and materials agreed upon as well as material specimens and quality samples shall be considered as legally binding and may not be replaced by similar brands and materials without DI's consent.

(3) The contracting party shall submit certificates and material specimens to the fire brigade free of charge, as far as required by the fire brigade or DI for the reason of fire tests.

(4) DI shall be authorized to give order for alterations of the contract performance to the contracting party, as far as its company is able to carry out corresponding alteration work.

If the calculation basis of the contract price agreed upon is changed by this order, the contracting party and DI shall be entitled to price changes. This claim shall be asserted without delay towards the other party.

If no agreement is achieved on the new price, the contracting party shall nevertheless be obliged to carry out the ordered alteration work. Because of a missing price agreement it shall not be entitled to any objections or pleas towards DI regarding the execution of alteration work. The new price shall be reimbursed subsequently according to the price basis of the contract prices, or if the price basis of the contract prices cannot be used, on the basis of the price customary in the place of the alteration work. If ordered performance alterations lead to a longer execution time of the contract performance, the contracting party shall notify DI of this fact without delay, after receipt of the order for alterations of DI, by submitting a new time schedule for the execution.

DI shall be entitled to withdraw the order for alteration work after corresponding notification of the contracting party, without the contracting party being entitled to remuneration claims against DI.

If the alteration order is maintained, the contractual agreement on the alteration of the performance has been concluded.

Possible claims for additional remuneration of the contracting party resulting from the extension of the time of performance shall also be remunerated – if applicable according to (4) para. 3 – by reference to the price basis of the contract prices or, if the price basis of the contract prices cannot be used, on the basis of locally customary prices. The contractor shall be obliged to execution within the scope of the extended execution period. It shall not be entitled to objections or pleas towards DI because of missing price agreements.

(5) All agreed delivery and execution deadlines, also interim deadlines and deadlines for alteration work, shall be fixed and binding. They must be strictly observed by the contracting party. DI shall be entitled, to demand from a contracting party owing the execution of a performance an intensification of the contract performance, in order to secure the timely completion of the contract performance. If the contracting party is not responsible for the reasons of the performance intensification, legal consequences in case of a performance intensification order shall apply, unless not expressly otherwise agreed upon in the contract.

(6) Part of the contract performance of the contracting party and the agreed contract prices – also without being expressly mentioned in the specifications – shall be all costs for manufacture and transport, assembly and dismantling as well as travel/labour expenses, travel expenses, subsistence and accommodation costs, all allowances, all hotel and other additional assembly costs and all overtime premiums possibly required for the fulfilment of the contract. For price formation at the purchasing of goods article B shall apply. The same applies to prices agreed between DI and the contracting party for additional or alteration work.

(7) At payments to sub-contractors of the contracting party DI does not enter into legal relationships with the sub-contractors of the contracting party, unless expressly otherwise agreed.

(8) The contracting party shall keep storage and work places provided by DI as well as access ways to them in proper condition and at completion of the contract performance it shall put them back into the condition they were provided at the beginning of the performance. During the entire time of performance the contracting party shall be obliged to transport, assembly, stock-keeping and dismantling of the construction site facilities.

For guaranteeing safety on the construction site the contracting party shall constantly keep the site clean or clean it on request of the construction management of DI.

Furthermore the contracting party shall be responsible for proper safekeeping of working equipment, working clothes, etc., also if these objects are owned or jointly owned by DI.

The contracting party shall be liable for all damages caused at the property of DI or at property of third parties or at other objects, for which a legal assignment exists, as far as the contracting party is responsible for these damages. For damages caused at the property of third parties during the execution of supplementary performances of the contracting party, the legal provisions of the warranty law shall be applicable.

(9) If planning performances are part of the ordered performance content of the contracting party, the contracting party shall be obliged, to render these performances in accordance with all contract documents handed over to it by DI and in accordance with a possibly existing building permission subject to public law as well as requirements under public law and all other appropriate exhibition regulations applicable at the place of the building project or exhibition stand.

IV. Invoicing/on site measurement/acceptance

(1) The on-site measurement data in connection with the contracting party's performance shall be made available to DI for verification.

Partial performances no longer visible or accessible until acceptance shall be jointly inspected after their completion, of which DI must be notified in writing.

Inspections and reports shall not be considered as partial acceptances or acceptances.

After proper completion of the total performance, acceptance of the contracting party's work performance shall take place together with DI's official representative.

Partial acceptances shall be carried out, as far as requested from the contracting party by DI. Correction of faults shall also be carried out by DI.

(2) At the acceptance or partial acceptance the as-built or revision documents of all constructional and technical equipments shall be handed over to DI, which according to the contractual agreement are to be constructed and delivered by the contracting party. These in particular include

- all final plans and assembly plans
- all test certificates, acceptance certificates, etc. of state or other especially determined authorities including acceptance certificates of the TÜV (MOT) or institutions with equivalent authority that require such a certification;
- all proofs on properties of the building materials as well as other materials and components;
- the reports of official final acceptance inspections;
- all operating, maintenance, care instructions and manuals for all technical equipments that are subject to the contracting party's contract performance.

(3) The invoice shall be sent in triplicate, by specifying the place of performance, time of performance and the VAT applicable at the time of performance, to the invoice address indicated in the purchase order. Payments in advance / instalment payments made shall be separately indicated in the invoice. The tax number shall be indicated as well.

The time limit for submitting the final invoice and the verifiable final site measurement documents of the contracting party to DI shall be 3 weeks after completion of the contracting party's total performance.

(4) Discount deductions agreed upon shall apply to each individual instalment payment and to the final payment, even if the discount period had not been adhered to at previous instalment payments.

(5) If the contracting party does not submit a valid certificate of exemption at the time of invoice settlement, a tax deduction in accordance with the act on illegal activities in the building industry will be made at the amount of 15 % of the invoice amount (VAT included) which is payable to the tax office.

(6) The contracting party – irrespective of the regulation pursuant to § 354 a HGB (German Commercial Code) – shall not be entitled, to assign its claims against DI without written consent of DI to third parties or to have them collected by a third party.

V. Warranty

(1) Concerning the legal relationship of the parties, § 377 HGB (German Commercial Code) shall apply subject to the following condition:

DI's obligation to inspect shall be restricted to defects becoming evident at the incoming goods inspection of DI (e.g. transport damages, wrong delivery and short delivery) through external examination, including delivery notes as well as at random sampling quality control of DI. As far as an acceptance procedure is agreed upon or if the execution of work is subject of the contract concluded with the contracting party, DI shall not be obliged to carry out an inspection.

(2) The warranty period for the work performance of the contracting party shall be 4 years, calculated from the final acceptance of its work performance. For supplementary performance the 4-year warranty period shall commence with acceptance of the supplementary performance.

(3) On request of DI the contracting party shall be obliged regarding its contract performance, to assign to DI its own warranty rights against its sub-contractors and against its other contracting parties participating in the building project.

(4) All replacement deliveries or supplementary performances or repairs shall also be subject to the warranty regulation of the general terms and conditions of purchase for awarding contracts for work and for the purchase of goods.

VI. Final regulations

(1) The contractor undertakes not to pass on documents handed over to him by DI for fulfillment of the contract performance to third parties without the consent of DI. The privacy policy handed over to him by DI as well as the declaration on compliance with the safety provisions must be signed and returned to DI.

The contracting party shall be obliged, to transfer its obligations from the two preceding paragraphs to its sub-contractors and to demand a corresponding written confirmation of its sub-contractor.

(2) Place of performance for the performances of the contracting party shall be the place at which it is required to fulfil its contract performance in the form of assembly and dismantling work.

(3) This contract shall be governed by German law.

(4) Place of jurisdiction for all disputes resulting in connection with this contract and its execution is Aachen, if the contracting party is a registered trader.

B). Additional purchasing conditions for the purchase of goods

For the purchase of goods the general terms and conditions of purchase shall be applicable pursuant to A) the preamble and the terms and conditions under figure II, III (1) (2) (4) (5) (7) and (8) last paragraph, figure IV (3), (4) and (6) as well as figure V (1) and (4) and figure VI.

For the purchase of goods the following additional general terms and conditions of purchase of DI shall apply additionally:

I. Purchase price

The price indicated in the purchase order of DI shall be binding and is based on the condition "delivered/duty paid". The agreed purchase price includes delivery "free domicile" packing included as well as the responsibility for transport insurance and legal VAT.

II. Delivery and transfer of risk

(1) Delivery shall take place "free domicile" to the place indicated in the purchase order of DI. If the place of destination is not indicated and nothing to the contrary has been agreed upon, delivery shall take place to the registered office of DI in Würselen.

The respective place of destination shall also be the place of fulfilment (debt to be discharged at creditor's domicile)

(2) At the purchase of goods the risk of accidental destruction and deterioration of the matter by DI shall not be transferred to DI until handing over at the place of fulfilment.

III. Right of set-off and retention

The contracting party of DI shall only be entitled to the right of set-off and retention, if counterclaims are legally effective and undisputed.