



General Terms and Conditions of the University Hospital

Cologne (AÖR) for the procurement of goods and the purchase of services

1. Scope – parts of the contract

- 1.1. These General Terms and Conditions (GTC) define the conclusion, content and execution of contracts for the procurement of goods and the purchase of services. Even if it is not expressly agreed again on the GTC, they shall apply to all present and future business relationships with merchants in the definition of Sec. 310 (1) BGB [German Civil Code]. The legal regulations on awards of public contracts remain unaffected and take precedence over these GTC.
- 1.2. These GTC will be deemed accepted by the Contractor (contractual partner) upon the award of contract.
- 1.3. These GTC apply exclusively. Deviating, opposing or supplementing GTC will not become a part of the contract, even if they are known of, unless it is expressly agreed to their applicability.
- 1.4. All agreements made for the purpose of the performance of the contract shall be documented in writing in the contract and supplementing annexes. There are no verbal side agreements. In particular, employees of the Client are not authorised to make verbal agreements or give verbal assurances going beyond the contents of these GTC and the written agreements.
- 1.5. Besides these GTC, also the annexes to the notice of award (service specifications, drawings, sketches) are parts of the contract, in particular the annex of inventory listings and the certificate of conformity to be enclosed pursuant to the MPG [Medicinal Devices Act].
- 1.6. Furthermore, the regulations of the (MPG), the Pharmaceuticals Act (AMG), the Medicinal Devices Operator Ordinance (MPBetreibV), the Radiation Protection Ordinance (StrSchVO), the Calibration Law and the X-Ray Ordinance (RöV) are considered to be part of this contract within their scopes.
- 1.7. The likewise applicable "Official contracting terms for awards of service performance contracts" (VOL Part B) can be viewed during the regular business hours in the Client's office building.

2. Delivery and Shipment Regulations

The enclosed Delivery and Shipment Regulations in the respectively valid version are part of these General Terms and Conditions, whereby they are also a subject of the contract.

3. Conclusion of the contract

- 3.1. The Contractor shall draft a tender free of charge according to the Client's requirements. If the Contractor differs from the requirements, it is obligated to expressly refer to the deviation.
- 3.2. The Contractor shall receive a written purchase order from the Client (award of contract). Purchase orders, contracts for work and services, and their changes shall be binding only if they have been issued or confirmed in writing. The contract shall be deemed concluded when an order confirmation according to the purchase order is received by the Client. The Client shall be bound by the order confirmation only if it does not contain any deviations from the purchase order.
- 3.3. If no order confirmation is requested, the contract will be deemed concluded five working days from receipt of the purchase order or contract for work and services, provided that no objection has been raised during this period.
- 3.4. The requirement of the written form pursuant to Sec. 3.2 shall not apply if the order is issued using electronic channels. In this case, purchase orders and order confirmations shall be deemed received at the time when they could have been retrieved under normal circumstances. The provision of Sec. 3.3 shall remain applicable accordingly.

4. Remuneration – scope of the service

- 4.1. The agreed prices are fixed prices. The remuneration will cover all services, which are needed for the correct performance of the contract.
- 4.2. The agreed price shall therefore settle the expenses. Also covered are all license fees and all public charges including the value added tax and, furthermore, the drafting of three copies of the complete operating and user manuals, as well as instructions, and the required technical information in the German language (in specific cases, documents will also be accepted in English), spare parts lists with references to wear parts and internal circuit diagrams. Further requirements that are necessary due to the relevant provisions named in Section 1.6 shall likewise be fulfilled without additional remuneration. Notwithstanding Section 4.5, the costs required for this purpose shall be covered by the price.
- 4.3. The delivery shall generally be made "free to the place of delivery" or "free to the place of use." The packaging, shipping, freight and transport costs, and the ancillary costs incurred for shipment such as fees for the issuance of bills of lading, weighing fees, counting fees, any local freight and local fees incurred at the place of manufacture or delivery (transit, railway station, storage, transfer and changeover fees) shall therefore be included in the agreed price. Likewise, all insurance costs and additional fees for registered letters and consignment of valuables, as well as the costs for the transport of tools and equipment to and from the site, as needed for assembly at the place of fulfillment (Sec. 6), shall be included. Additional costs for expedited transports shall be refunded only if such transports have been agreed.
- 4.4. Packaging materials shall transfer into the ownership of the Client without any claim for separate remuneration. The Client shall dispose of them or reuse them at its own cost. The Client shall observe the relevant waste disposal regulations, and safety and environmental regulations for this purpose. Exceptions from this shall be permissible only insofar as they are determined in the Packaging Ordinance or agreed separately. Reference is made to the obligation of the manufacturers or sellers of packaging, transport packaging, outer packaging, and sales packaging to accept the return of the packaging materials pursuant to the Packaging Ordinance. If packaging is to be returned, the Contractor shall bear the incurred costs including, if applicable, the costs for the disposal. If delivery is made in rented containers, the Contractor shall not have a claim to a separate payment for the rental fees.
- 4.5. Training measures and instruction are included in the price in the form and to the extent as agreed under the contract. If no corresponding agreements have been made, an initial instruction pursuant to the MPBetreibV [Medicinal Devices Operators Ordinance] is also included in the Price.



- 4.6. If the Contractor lowers its prices and improves the conditions prior to the delivery, the lowered prices and conditions shall also apply to the pending order and the agreed prices shall reduce accordingly.
- 4.7. For Contractors from foreign countries, the agreed price shall cover all delivery obligations, in particular any customs duties.
- 4.8. The exchange rate applicable on the date of the Contractor's tender shall be considered.
- 4.9. Furthermore, Ordinance PR No. 30 /53 applies to prices for public contracts.
- 4.10. Exceptions from these rules apply only insofar as they have been determined in writing in the contract.

5. Terms of payment

5.1. The Contractor is obligated to issue all invoices in a verifiable form and in two copies, made out to the name of the University Hospital Cologne. Invoices shall be identified according to their purpose as prepayment, partial or final invoices. The order and article numbers indicated in the purchase order shall be stated accordingly on all invoices and the performance shall be broken down into individual values by unit and quantity, according to the wording and in the order of the information contained in the award notice. The value added tax shall be shown separately.

5.2. If information has been modified on the invoice, the original information must remain legible.

5.3. In addition, verifiable documents on the delivery or service performance shall be enclosed with the invoices in the form of delivery slips or worksheets signed by the office receiving them, as well as certificates of the type testing and approval, the CE mark and the maintenance requirements. Delivery slips must include the order number, date, reference number and, in case of any partial deliveries, the sequential number and information of the type and scope of the service.

5.4. The payment period shall begin only after the final fulfilment of the performance obligation and upon receipt of a verifiable invoice in the form described in Sections 5.1 to 5.3.

5.5. The Client is entitled to deduct 3% from the payment if it is made within 21 days. The regular payment period is 30 days.

5.6. Payments for partial deliveries shall be made only if this has been agreed in writing. In that case, delivered and remaining quantities of the partial delivery must be indicated clearly. The last partial invoice shall be marked as a partial and final invoice. Partial invoices shall be numbered sequentially.

5.7. The payment shall be made subject to correctly performed service and correctness in terms of price and calculation. Within the limits of the applicable law and in consideration of the legal exceptions, the Client shall be authorised to exercise of its rights of offsetting and withholding.

6. Place of fulfilment – transfer of risk

6.1. The Client shall determine the place of fulfilment.

6.2. Unless determined otherwise, the place of fulfilment is the place of the receiving office. It shall be obligated to receive the delivery or accept the service only from Mondays to Fridays in the time from 6:00 a.m. to 12:00 p.m.

6.3. The place of destination for shipments by rail is Cologne – Bonntor.

6.4. The risk shall transfer, regardless of the nature of the fault and the kind of transport or delivery, to the Client only at the place of fulfilment.

7. Delivery

7.1. The Contractor shall ship the items of delivery according to the information provided in the award notice.

7.2. Insofar as certificates of functions or materials testing, conformity certificates, and other certificates of the proper fulfilment of the performance are required or contractually agreed, they shall constitute an essential part of the service and therefore of the delivery, and they shall be included, together with the delivery documents, in the delivery or service.

7.3. The delivery period indicated on the purchase order is binding. The Contractor is obligated to inform the Client in writing if circumstances become known, which suggest that the agreed delivery period cannot be kept. Agreements on binding or non-binding delivery dates and deadlines require the written form.

8. Delay

8.1. If the Contractor is delayed with the order confirmation, the Client can withdraw the order after expiration of a grace period it has set.

8.2. The Contractor shall likewise be in delay without further requirements if it fails to meet the contractually determined calendar date for delivery (Sec. 7). Otherwise, it shall be deemed in delay by issuance of a warning from the Client.

8.3. The Client can set a grace period to the Contractor with the consequences determined by law.

8.4. If the Contractor is in default, it shall owe compensation in the flat amount of 1% of the remuneration per day of delay, whereas at most 5% of the total remuneration. This claim shall also survive if it is not explicitly asserted on receipt of delivery or on the acceptance of services. The Client's right to claim further damages remains unaffected. The payment of compensation shall not release the Contractor from its contractual obligations. The Contractor shall also be liable for the timely procurement of the object of delivery in events of force majeure, unless it proves that a replacement purchase is not possible. Impossibility of the replacement purchase shall be explained in writing.

8.5. If delivery and performance delays occur due to force majeure or due to events that do not merely temporarily complicate the delivery for the Contractor – even if they occur at sub-suppliers, they shall be considered to be outside of the Contractor's responsibility. This shall not apply if a replacement purchase is not possible and not reasonable for the Contractor. Labour disputes and orders by the authorities shall be incidents in the definition of clause 1 if thereby a procurement from elsewhere or another transport becomes impossible. The Contractor shall be entitled in this case to postpone the delivery for up to two weeks or to withdraw from the contract. It shall notify of the obstruction beforehand and explain the impossibility of making the replacement purchase in writing. If the obstruction still persists after the period of two weeks, the Client shall also have a right as of such time to withdraw from the contract after setting an appropriate grace period.

8.6. Other statutory rights remain unaffected.



9. Warranty – warranty period

9.1. The Contractor warrants that the services and deliveries will have the assured properties and condition as defined in the contract, including the service specification, on the transfer of risk (Sec. 6) and that they will be free from property defects and defects of title, and comply with the provisions of the device safety law, the accident prevention regulations resolved by the accident insurers in the Federal Republic of Germany, the other work safety regulations the VDE, the hygiene guidelines, and the generally accepted technical, safety and occupational medical regulations. The Contractor also warrants the observation of the relevant provisions of the regulations named in Section 1.6.

9.2. The properties of submitted samples and models apply as assured. Furthermore, the Contractor warrants that it holds appropriate product liability insurance. The Contractor gives the warranty that devices are labelled in German or by standardised pictograms.

9.3. The Contractor is furthermore liable for compliance with technical regulations and specialist requirements for the respective performance, in particular as concerns dimensions, execution standards, and quality designations pursuant to GMP, DIN, RAL.

9.4. The Contractor's warranty obligation shall be determined according to the legal regulations. If the Contractor has expressly given a warranty for the properties and condition, or the durability of the delivery or service, the Client can also assert warranty claims in addition, insofar as the damage has not been caused by the Client's improper handling.

9.5. If the Client brings compensation claims, the claim for performance shall expire only upon payment of the compensation.

9.6. In the case of breaches of contractual collateral duties by the Contractor, the Client can no longer be reasonably expected to accept the performance in the definition of

Sec. 282 BGB if the contractual relationship is disturbed deeply and permanently by the violation of morals, fundamental commercial practices, or the principle of consideration. In this case, compensation can be claimed in lieu of performance.

9.7. In case of a poor performance by the Contractor, its breach of duty shall be relevant in the definition of Sec. 323 (5) sent. 2 BGB [German Civil Code] if, according to a comprehensive weighing of the interests, the expense required for the rectification of the defect would verifiably impair the Client's justified interest in a performance that is oriented on use; or if the functional or aesthetic impairment caused by an irreparable defect outweighs this interest. In this case, the Client shall be entitled to withdraw from the contract.

9.8. The statutory warranty periods apply. Shortening the warranty periods is excluded.

9.9. The warranty period shall begin upon the acceptance of the performance without complaint or, if an acceptance is neither legally required nor agreed under the contract, upon the receipt of the delivery without complaint.

9.10. The Client shall give immediate written notice of obvious and visible defects, as soon as they are discovered under the conditions of the proper course of business, whereas at the latest 4 weeks after receipt of the delivery or performance of the service. In case defects are claimed, the costs for the inspection and replacement delivery can be charged to the Contractor. The period to notify of defects is 14 days from the discovery of any kind of defects. The Contractor waives the defence of belated notification regarding hidden defects during the warranty period.

9.11. In case a notice of defects is given, the warranty period shall prolong for the length of the period in between the notice of defect and the correction of the defect. If the object of delivery is entirely replaced, the warranty period shall begin anew; in case of a partial replacement, this shall apply only to the replaced parts.

9.12. Deviations from these warranty provisions shall be determined in writing in the contract.

10. Liability for further damages

10.1 The Contractor shall ensure all measures required to prevent personal injuries and property damages without deriving any claims for separate payment.

10.2. For services performed in the rooms and on properties of the Client, the Contractor shall require its staff to follow rules and instructions given by the competent employees. If the Contractor engages personnel who may come into contact with blood or bodily fluids in the context of their work or who work in particularly hazardous areas, it must be ensured specifically that the assigned personnel have been examined by the Contractor according to the relevant regulations and that the necessary protective measures are taken.

10.3. To the extent that the Contractor is responsible for product damage, it shall be obligated to indemnify the Client on first request from compensation claims of third parties, to the extent that the cause is found within its sphere of control and organisation, and insofar as it is liable in relation to external parties.

10.4. The Contractor shall accept the liability, within the limits of legal regulations, for damages having occurred on property other than the purchased item itself or on other assets of the Client in consequence of a defectiveness of the service.

11. Assignment, pledging, offsetting and bankruptcy of the Contractor

11.1. The claims in the Contractor's entitlement based on the order may be neither assigned nor pledged without prior agreement.

11.2. If a bankruptcy procedure is opened over the Contractor's assets or if claims of the Contractor against the Client are pledged, contrary to the agreement made in Sec. 11, the Client can withdraw from the contract without setting a period.

11.3. The Contractor has a right to offset only against uncontested claims or claims found valid by final and absolute judgement.

12. Industrial property rights

12.1. The Contractor assures by signing the contract that its delivery or service performance or their use do not infringe any patents, licenses or other industrial property rights of third parties.

12.2. The Contractor shall be liable for all consequences from an infringement on industrial property rights and indemnify the Client from all possible claims brought against it on grounds of an infringement on the rights of third parties.

13. Non-disclosure – data protection

13.1. The Contractor shall ensure with the warranted care that all persons, whom it entrusts with the processing or performance of this contract, observe the legal regulations on data protection and that the information obtained in the process is treated as confidential. This confidentiality shall already be protected prior to the conclusion of the contract and continue to apply after the termination of the contractual relationship. The statutory duties to provide information shall remain unaffected.

13.2. If the Contractor wants to mention this contractual relationship in advertising or publications, this requires the Client's written agreement.



13.3. The Contractor declares its irrevocable consent to the processing and handling of personal data it has provided in observation of legal regulations.

14. Place of jurisdiction

Place of jurisdiction is Cologne. Contrary agreements must be agreed under a contract and be defined in writing.

15. Final provisions

15.1. Exclusively German law applies to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

15.2. Commercially customary clauses shall be interpreted according to the respectively valid Incoterms.

15.3. The rights and duties of the Parties arising from the general statutory provisions shall remain unaffected, unless determined otherwise in these terms of contract.

15.4. If individual provisions of these GTC are invalid, the statutory provisions shall apply (Sec. 306 BGB). If contractual provisions outside of these GTC are fully or partly void, this shall not affect the remaining parts of the contract or the validity of the GTC. The void provision outside of the GTC shall be replaced by a legally permissible provision, which comes closest to the intended purpose and economic outcome.

Status 01/07/2008



Delivery and Shipment Regulations

**of the University Hospital Cologne (AÖR)
(hereinafter referred to as University Hospital Cologne)**

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1. Bindingness

These Delivery and Shipment Regulations apply exclusively to the University Hospital Cologne.

All purchase orders shall be placed with the explicit inclusion of the General Terms and Conditions (respectively the latest version) and in particular the following Delivery and Shipment Regulations (DSR). The following DSR are therefore part of the purchase orders issued by the University Hospital Cologne to its suppliers.

The University Hospital Cologne reserves the exclusive right to make changes to these DSR.

The following DSR, status of 1 January 2016, shall apply to all future orders. Earlier versions of the Delivery and Shipment Regulations shall no longer apply.

Where the following DSR deviate from the GTC or contradict the GTC, the provisions of the GTC shall take precedence over the provisions of the DSR.

Failure of suppliers to observe these DSR can result in additional costs for the University Hospital Cologne. These additional costs shall be borne by the supplier and be invoiced, if applicable, by the University Hospital Cologne to the supplier. Moreover, the University Hospital Cologne reserves the right to bring further claims of damages. It remains up to the supplier to prove that the damage has not been incurred or not in the claimed amount.

If the DSR are not observed, the University Hospital Cologne shall be entitled to refuse the acceptance of deliveries and goods, and invoice the arising costs to the supplier.

The supplier is obligated to ensure that the competent employees and the other representatives appointed by it, in particular including service providers and freight forwarders, receive and observe the DSR as a work instruction.



2. Delivery addresses

Unless agreed otherwise, the delivery addresses are:

University Hospital Cologne (AÖR)

Zentrale Warenannahme
[Central Incoming Goods]
Gleueler Str. 88
50931 Cologne

Opening hours: Mon. to Fri. 6:30 a.m. to 4:00 p.m.

Delivery hours: Mon. to Fri. 6:30 a.m. to 12:00 p.m.

Telephone: +49 221 - 478 98516 / 87684

University Hospital Cologne (AÖR)

Apothekenlager
[Pharmacy warehouse]
Gleueler Str. 88
50931 Cologne

Opening hours:

Mon. to Wed. + Fridays: 8:00 a.m. to 4:00 p.m.

Thursdays: 8:00 a.m. to 2:00 p.m.

Saturdays (emergency service): 9:00 a.m. to 12:00 p.m.

Telephone: +49 221 - 478 88452

In the case of direct deliveries to our clinics or institutions, the respective opening hours and hours for the acceptance of goods must be enquired prior to delivery.



3. Accompanying papers

3.1. Invoices

By no means may invoices be enclosed with the delivered goods. Invoices shall be sent by separate mail exclusively to the following address:

University Hospital Cologne (AÖR)
Zentrale Rechnungsstelle
[Central Accounting]
Kerpener Straße 62
50937 Cologne

3.2. Delivery slips

Delivery slips must contain the following information and be appended on the outside of the package in an easily visible place:

- Name and address of the supplier
- Name, address and exact designation of the requisitioning office and delivery address (clinic, institute, drop-off location, etc.)
- **Order number** (as barcode and digits) of the University Hospital Cologne
- If applicable, indication of partial deliveries (note on order items)
- Article number and article designation of the University Hospital Cologne
- Article no. and designation of the supplier
- Quantity in piece numbers, shipment units and packaging units
- Remaining lifetime, minimum durability for products requiring labelling
- Hazardous goods information, labelling
- Labelling of **refrigerated goods** including indication of temperature interval



4. Shipment methods

The basic delivery conditions for all deliveries to the University Hospital Cologne are “free to the place of delivery” and “free to the place of use” (also see the GTC). Transport costs, in consequence of a failure to observe these DSR and “freight collect” shipment, can only be accepted if such has been expressly agreed between the University Hospital Cologne and the supplier.

- All shipments shall be handed over without initial costs to the University Hospital Cologne; this applies in particular also to direct deliveries to the clinics, institutes and operational departments of the University Hospital Cologne.
- No cost shares for insurance and packaging, warehousing and acceptance costs, and initial freight costs, if applicable, will be accepted.
- Deliveries of one shipment day for one place of delivery shall be combined in one shipment according to Section 2. Exceptions from this are direct or express deliveries.
- Shipments intended for several places of delivery can be delivered in bundles to the delivery addresses named in Section 2, provided that the individual packages have a definitive labelling for the individual places of delivery. Bundled deliveries shall be marked on the outside of the package with the label “bundled delivery.” Exceptions from this are direct or express deliveries.
- The maximum pallet height including timber must not exceed 190 cm.



5. Delivery

5.1. Partial deliveries

Partial deliveries should be avoided. If, as exceptions, a partial delivery should be made nonetheless, this must be explicitly noted on the delivery documents/shipping papers. Additional transport costs arising from the partial delivery will not be accepted.

5.2. Early or belated deliveries

All delivery dates are fixed dates in principle, unless other written agreements have been made between the University Hospital Cologne and the supplier. Extra costs incurred by the University Hospital Cologne for early and/or belated delivery shall be invoiced to the supplier according to the General Terms and Conditions.

5.3. Packaging material

Packaging materials must be approved in Germany and meet the general regulations.

5.4. Labelling

The following labelling must be provided:

- Fragile goods
- Scheduled goods
- Express shipments
- Refrigerated goods with indication of the temperature interval, refrigeration chain

5.5. Hazardous goods

For the shipment of hazardous goods and narcotics, the applicable legal regulations of the AMG [German Pharmaceuticals Act, BtmG [Law on the Trafficking of Narcotics], GGVS [Ordinance on road transport of hazardous materials] and the GGVE [Ordinance on rail transport of hazardous materials] must be observed. In case of a failure to observe these regulations, the University Hospital Cologne generally reserves the refusal of the acceptance and, if applicable, invoicing any incurred costs and/or fines to the supplier of the goods.



6. Closing remark

In case of queries relating to these Delivery and Shipment Regulations, please contact our logistics department prior to shipping the goods.

Central logistics warehouse

Contact: Phone: 0221 – 478 - 98516 / 87684
 Email: zentrale-warenannahme@meduniserv.de

Central pharmacy warehouse

Contact: Phone: 0221 – 478 - 88452
 Email: apotheke@uk-koeln.de

Cologne, 1 January 2016

[signature]

Günter Zwilling, Dipl.- Kaufm. (BBA)
Commercial Director