



**Universitätsklinikum
Regensburg**

**Terms and conditions of
purchase and order of the
University Hospital
Regensburg
(TOC)**

§ 1 Scope, General

(1) These General Terms and Conditions of Purchase shall apply to all contracts for the purchase and/or delivery of movable goods between the Regensburg University Hospital (hereinafter referred to as Buyer) and its business partners and suppliers (hereinafter referred to as Seller), regardless of whether Seller manufactures the goods itself or purchases them from suppliers. The contractual relationship between the Buyer and the Seller shall be governed exclusively in the following order:

- a) the purchase contract and its annexes
- b) these terms and conditions of purchase
- c) the General Conditions for the Execution of Services - Part B of the Contracting Rules VOL.

(2) For the purchase and maintenance of IT equipment and devices as well as software and for the procurement of IT services, the Buyer reserves the right to apply the Supplementary Terms and Conditions for the Procurement of IT Services (EVB-IT), which shall then be applied and complied with by the contractual partners.

(3) These Terms and Conditions of Purchase are accepted by Seller by accepting Buyer's order. Any offer and delivery of the Seller shall be accepted by the Buyer only on the condition that these Terms and Conditions of Purchase shall apply.

(4) These Terms and Conditions of Purchase shall apply exclusively. Any terms and conditions of the Seller that conflict with or deviate from these Terms and Conditions shall only apply if and to the extent that they have been expressly accepted by the Buyer in writing. This shall also apply if the Seller refers to its General Terms and Conditions in its offer or in its order confirmation. A counter-confirmation of the seller with reference to his terms and conditions is hereby contradicted.

(5) Agreements made orally or by telephone shall only become effective upon written confirmation by the Purchaser pursuant to Section 127 (2) of the German Civil Code (BGB).

(6) These Terms and Conditions of Purchase shall apply in the current version (to be found at <https://www.ukr.de/ueber-uns/administration/verwaltungsabteilungen/einkauf-logistik-und-dienstleistungen-k-ii>) also to all future transactions with the Seller.

§ 2 Offer and order confirmation

The seller is obliged to accept each order of the buyer immediately and to confirm it bindingly with price and delivery time; otherwise the buyer is no longer bound to his order. The date of receipt by the Buyer shall be decisive. A delayed or incomplete acceptance/confirmation of the order shall be deemed a new application. Deviations from the order must be expressly listed and require the written approval of the Buyer. The order shall also be deemed to have been accepted on the terms and conditions set if the purchaser does not receive a rejection statement within eight days of delivery of the order letter, but no later than the specified delivery date.

§ 3 Information requirements

The Seller is obliged to inform the Buyer about changes in manufacturing processes (including a planned discontinuation of production at a certain point in time), changes in materials or supplier parts for goods in good time by written notification. The Buyer shall be entitled to verify whether the changes could have an adverse effect on the Goods or on the intended use. Upon request, the Seller shall provide the necessary documents for this purpose.

§ 4 Spare parts deliveries

(1) The Seller warrants the availability of all spare and wear parts required for the subject matter of the contract within a reasonable period of time for a period of 10 years from delivery.

(2) If after this period the Seller decides to discontinue the production of spare parts or if due to extraordinary circumstances the production of spare parts is endangered, the Seller is obliged to inform the Buyer in due time in order to give the Buyer the opportunity to obtain the necessary spare parts at the prices applicable so far for the future.

§ 5 Prices

(1) The price shown in the order is binding.

(2) If no price is specified in the purchase contract itself, the price valid on the date of execution of the purchase contract shall be deemed to be the fixed price and shall be stated bindingly in the order confirmation.

(3) The customer reserves the right to object or withdraw from the contract, in particular if price increases should occur up to the time of delivery.

(4) The Contractor undertakes not to increase the remuneration for services or supplies delivered or provided within twelve months of the award of the contract, either in the event of cost or wage increases in the Contractor's area or in the event of an increase in value added tax or any other reason. Exceptions must be agreed upon conclusion of the contract and require the written consent of the customer.

(5) Unless otherwise agreed, the price includes delivery "free domicile" to the address specified in the order (including the place of installation or use specified therein) including installation and commissioning as well as instruction and training (training and advanced training measures) of the operating personnel.

§ 6 Delivery time, delay in delivery

(1) The delivery time specified or agreed in the order is binding for the seller and must be adhered to without fail. Delivery on a public holiday applicable in Regensburg is not possible. The seller has to inform himself about the holiday regulations. Any additional costs due to a further delivery attempt shall be borne by the Seller.

(2) The order date is decisive for the start of the delivery periods.

(3) The Seller is not entitled to make partial deliveries without the Buyer's consent.

(4) If a delay in delivery occurs or becomes apparent, the Buyer shall be notified thereof without undue delay, stating the reasons, and a decision shall be obtained as to whether the order is to be maintained. Notification shall not exclude the occurrence of the delay.

(5) If the delivery time is exceeded, the purchaser shall be entitled, after fruitless expiry of a reasonable grace period, to withdraw from his order in whole or from the part of the contract not yet fulfilled without compensation; the right to claim damages for non-performance or compensation for futile expenses shall not be excluded by the withdrawal. Further legal claims are reserved.

(6) If the day on which the delivery must be made at the latest can be determined on the basis of the contract, the Seller shall be in default upon expiry of this day, without this requiring a reminder from the Buyer. In all other respects, § 286 para. 2 BGB shall apply.

(7) If the Seller is in default, the Buyer may - in addition to further statutory claims - demand lump-sum compensation for its default damages in the amount of 0.5% of the net price per completed calendar week, but in total not more than 5% of the net price of the goods delivered late. The Buyer reserves the right to prove that a higher damage has occurred. The Seller reserves the right to prove that no damage at all or only a significantly lower damage has been incurred.

§ 7 Compliance with regulations

(1) The Seller undertakes to comply with the relevant statutory and official regulations in the performance of the contract. The delivery must comply with the relevant technical safety regulations. Furthermore, this concerns in particular anti-corruption and money laundering laws as well as antitrust, labor, environmental and data protection regulations.

(2) The Seller shall ensure that the products delivered by him comply with all relevant requirements for placing on the market in the European Union and the European Economic Area. He shall prove conformity to the Buyer upon request by submitting suitable documents. In particular, the CE certification must be available.

(3) Insofar as devices are subject to the Medical Devices Act or any successor regulations, they must comply with the requirements therein; enclosed device master data recording sheets must be completed in full and signed and returned to the purchaser together with the invoice.

(4) The Seller shall deliver the protective devices required by such regulations. If it turns out that the delivery does not comply with the above-mentioned regulations, he shall deliver the missing devices, and the defective ones shall be brought into the prescribed condition.

(5) The Seller is obliged to employ only personnel at the Buyer's premises who comply with the requirements of the Measles Protection Act of 10.02.2020, BGBl. p.148 ff. The Seller shall indemnify the Buyer against any consequences of a violation of this.

§ 8 Delivery/Retention of Title

(1) On the day of dispatch of the goods, the Buyer shall be sent a dispatch note or invoice in accordance with § 12 para. 1 of these Terms and Conditions; partial consignments shall be designated as such. Delivery bills in duplicate shall be attached to the outside of each delivery.

(2) The Buyer shall reject the assumption of costs for the Seller's packaging, freight and cartage - unless the Buyer has agreed in writing to the assumption of a specific amount for this purpose. At the Buyer's request, the Seller shall take back the packaging at the Buyer's expense.

(3) For ready-to-operate devices, plants or plant components, the operating and maintenance instructions shall be supplied in triplicate, at the latest four weeks before commissioning, unless otherwise specified. As a rule, they should also contain a parts list, individual operating and maintenance instructions with a record of the possible faults and how to rectify them, source of supply, works test reports, test records, a description of the mode of operation of the overall system and design and assembly drawings.

(4) The Seller shall bear additional costs for any accelerated transport necessary to meet the delivery date.

(5) In the event of delivery to an address within the Regensburg University Hospital other than the one stated in the order, the purchaser shall charge a logistics flat rate of currently € 25 per incorrect delivery for the expenses incurred as a result.

(6) For larger deliveries, the delivery date must be notified at least three working days in advance.

(7) The risk of accidental loss of the goods shall be borne by the seller until receipt at the place of use of the delivery address.

(8) Unless otherwise agreed in the individual case, the risk shall pass to the Customer as soon as the goods have arrived at the Customer's premises and have been accepted.

(9) Plants and equipment shall be deemed to have been accepted if they have been properly handed over to the customer including all agreed documents (e.g. operating instructions, service documents, etc.) and the instruction of the operating and maintenance personnel has been carried out in a proper and professional manner. Other deliveries shall be deemed to have been accepted if acceptance is not refused within five working days (excluding Saturdays, Sundays and public holidays) after delivery to the goods receiving department, stating the reason. Under no circumstances shall deliveries to the Customer's receiving department be deemed to constitute handover or acceptance. The goods receiving department shall only check the external integrity of the shipping packaging.

(10) The costs of insuring the goods shall only be borne by the purchaser insofar as he has requested them. If insurance appears necessary for particularly sensitive goods, the buyer's consent must be obtained in advance. Transport damages shall be borne by the seller.

(11) Retentions of title by Seller shall apply only to the extent that they relate to Buyer's obligation to pay for the respective Products to which Seller retains title. In particular, extended or prolonged reservations of title are not permitted.

§ 9 Subcontractor (Subcontractor)

If, with the prior consent of the Contracting Authority, or in cases where the prior consent of the Contracting Authority is not required, the performance of the service or parts thereof has been assigned to others, the subcontractors shall be informed that it is a public contract when a tender is requested.

(a) Furthermore, the Contractor shall proceed according to competitive aspects when transferring services (subcontracting) and shall

(b) to name the client to the subcontractor upon request.

The Contractor may not impose less favorable conditions on the subcontractor as a whole, in particular with regard to the method of payment and securities, than those agreed between the Contractor and the Client. The Contractor shall be obliged to involve small and medium-sized enterprises appropriately when soliciting subcontractors. In the case of joint ventures, payments shall be made with discharging effect for the Client to the representative of the joint venture authorized to execute the contract (lead member) or in accordance with the latter's written instructions. This shall also apply after the dissolution of the consortium.

§ 10 Ensuring decent working conditions along the supply chain

(1) The Contractor is obligated to comply with all laws and regulations with regard to humane and healthy working conditions, which are stipulated in particular by the Supply Chain Sourcing Obligations Act (LkSG), when providing the deliveries and/or services under this contract. He assures the Customer that he will fulfill the human rights and environmental obligations resulting from these regulations in his own company and that he will in turn oblige his direct suppliers to comply with these standards and to address this legal requirement appropriately along the further supply chain.

(2) In order to comply with and enforce these contractual obligations, the Contractor shall train and further educate its employees. The Contractor shall grant the Customer a right of inspection in its company to enable it to verify compliance with these supply chain obligations and thus to fulfill its statutory inspection obligations.

§ 11 Customs clearance

The Union Customs Code (EWG_VO_952_2013) and the Union Customs Code Implementing Regulation (EWG_VO_2015_2447) issued in connection therewith shall apply, including any exemptions from import duty stipulated therein; in all other respects, the Seller shall contact the Buyer in good time regarding the necessary formalities.

§ 12 Invoices, payments and assignment

(1) Invoices are to be sent by the seller to the University Hospital Regensburg, Finance Department; they may not be enclosed with the delivery. Invoices must be sent electronically to Regensburg University Hospital in PDF format. (The associated e-mail address is: Rechnung-ukr@ukr.de).

(2) Invoices must bear the Buyer's name and address, as well as the purchase order number and shipping address. Invoices that do not comply with this condition will be returned to the seller for completion.

(3) Payment and discount periods shall run at the earliest from the date of receipt of the invoice after delivery or performance has been completed in full.

(4) Unless otherwise agreed in writing, payment of the purchase price shall be made within 30 days of delivery and receipt of the invoice with a 3% discount, but not before acceptance of the goods. The date of payment shall be the date of surrender or dispatch of the order to the financial institution.

(5) Payments prior to receipt of the consideration shall only be made after the provision of security in accordance with § 18 VOL/B.

(6) Payments shall be made subject to review under pricing law. This reservation is expressly acknowledged by the Contractor and he undertakes to refund any overpayments.

(7) Claims of the Contractor against the Client may be assigned with the written consent of the Client. The invoice amount may be offset against any existing counterclaims of the Free State of Bavaria up to the full amount.

§ 13 Claims for defects

(1) The statutory provisions shall apply to the rights of the Buyer in the event of material defects and defects of title of the goods (including wrong delivery and short delivery as well as improper assembly, defective assembly, operating or instruction manual) and in the event of other breaches of duty by the Seller, unless otherwise stipulated below.

(2) In accordance with the statutory provisions, the Seller shall be liable in particular for ensuring that the goods have the agreed quality when the risk passes to the Buyer. In any case, those product descriptions which - in particular by designation or reference in the order - are the subject matter of the respective contract or have been included in the contract in the same way as these Terms and Conditions of Purchase and Order shall be deemed to be an agreement on the quality. It makes no difference whether the product description originates from the buyer, the seller or the manufacturer.

(3) The Seller warrants that the Goods do not infringe any third party rights. The Seller shall be fully liable for all claims arising from the infringement of industrial property rights, applications for industrial property rights and copyrights of third parties (hereinafter collectively referred to as "Property Rights") in the contractual use of the Goods. If a third party asserts claims for infringement of Property Rights due to contractual use of the Goods by the Buyer, the Seller shall, at the Buyer's option, within a reasonable period of time and at the Buyer's expense, either obtain a right for the Buyer to use the Goods in accordance with the contract or modify the Goods in a manner reasonable for the Buyer so that the Property Right is no longer infringed. If both should fail, be unreasonable for the Buyer, be rejected by the Seller, not be implemented by the Seller within a reasonable period of time or if the setting of a reasonable period of time is dispensable, the Buyer shall be entitled to withdraw from the contract or to reduce the purchase price. Further claims, in particular for damages or reimbursement of expenses, shall remain unaffected. The Seller shall be obliged to inform the Buyer without delay of any alleged cases of infringement or risk of infringement of which it becomes aware. In addition, the Seller shall indemnify the Buyer in full against all third party property right claims arising from the contractual use of the goods and reimburse the Buyer for all consequential claims caused by the third party property right claims, such as loss of production and use or loss of profit, unless the Seller is not responsible for the property right infringement. The limitation period for these claims is ten years, starting from the transfer of risk.

(4) Notwithstanding Section 442 (1) sentence 2 of the German Civil Code (BGB), the purchaser shall also be entitled to make claims for defects without limitation if the purchaser was unaware of the defect at the time of conclusion of the contract due to gross negligence.

(5) The Buyer shall also have the right to return the goods free of charge if an incorrect delivery in terms of type or quantity was caused by him in error.

(6) The statutory provisions (§§ 377, 381 HGB) shall apply to the commercial duty to inspect and give notice of defects, with the following proviso: The Buyer's duty to inspect shall be limited to defects which become apparent during its incoming goods inspection under external appraisal including the delivery papers as well as during our quality control in the random sampling procedure (e.g. transport damage, wrong and short delivery). Insofar as acceptance has been agreed, there shall be no obligation to inspect. Otherwise, it depends on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. The Buyer's obligation to give notice of defects discovered later shall remain unaffected. In all cases, the Buyer's complaint (notice of defect) shall be deemed to have been made without undue delay and in good time if it is received by the Seller within 8 working days.

(7) The costs incurred by the Seller for the purpose of inspection and rectification shall be borne by the Seller even if it turns out that there was actually no defect.

(8) If the Seller fails to meet its obligation to provide subsequent performance - at the Buyer's option by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery) - within a reasonable period set by the Buyer, the Buyer may remedy the defect itself and demand reimbursement from the Seller of the expenses required for this purpose or a corresponding advance payment. If subsequent performance by the Seller has failed (after the second attempt) or is unreasonable for the Buyer (e.g. due to particular urgency, risk to operational safety or imminent occurrence of disproportionate damage), no deadline need be set; the Seller shall be informed immediately, if possible in advance.

(9) Otherwise, in the event of a material defect or defect of title, the purchaser shall be entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions. In addition, he shall be entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

§ 14 Limitation of claims for defects

(1) Unless otherwise agreed or stipulated in these Terms and Conditions of Purchase, claims for defects shall become statute-barred after 2 years in accordance with Section 437 Nos.1 and 3 of the German Civil Code (BGB). The limitation period shall commence with the passing of risk; in the case of machines, apparatus and apparatus parts and software, only with the commencement of continuous use. In the event of fraudulent concealment of the defect, the claims shall become time-barred within the regular limitation period.

(2) The limitation period shall be extended accordingly if rectification work or the delivery of replacement items is carried out during the limitation period on the basis of claims for defects.

§ 15 Liability, notification of accidents

Guarding and safekeeping of the working equipment, working clothes, etc. of the contractor or his vicarious agents - also during the work rest - is the responsibility of the contractor; the client is not responsible for this, even if these objects are located on his properties. The Contractor shall be liable for all damage caused by the Contractor to its own or third parties' services or persons until acceptance of its services, even if such damage is caused by third parties acting on its behalf. The Contractor shall immediately notify the Client of any accidents on the premises or in the buildings of the Clinic in which personal injury or damage to property has occurred; it shall confirm any verbal notification in writing within two business days

§ 16 Secrecy

(1) The Seller is obliged to keep the terms and conditions of the order as well as all information and documents made available to him for this purpose (with the exception of publicly available information) secret for a period of 10 years after the conclusion of the contract and to use them only for the execution of the order. He shall return them to the Buyer immediately upon request after completion of inquiries or after processing of orders.

(2) The Seller may not refer to the business relationship in advertising material, brochures, etc. without the Buyer's prior written consent.

(3) The Seller shall oblige its subcontractors in accordance with this § 9.

§ 17 Choice of Law, Place of Performance and Jurisdiction

(1) The law of the Federal Republic of Germany shall apply to these Terms and Conditions of Purchase and Order and the contractual relations between the Seller and the Buyer, to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) In business transactions with fully qualified merchants or legal entities under public law, the place of performance shall be the delivery address stated in the order; otherwise, § 269 BGB (German Civil Code) shall apply.

(3) The place of jurisdiction for all disputes arising directly or indirectly from business transactions with registered traders or legal entities under public law shall be Regensburg. The same shall apply if the Seller is an entrepreneur within the meaning of § 14 BGB. However, the Buyer shall be entitled to bring an action at the Seller's general place of jurisdiction. Overriding statutory provisions, in particular on exclusive jurisdiction, remain.

§ 18 Final provisions

(1) If the object of purchase is a device that can be serviced remotely, a commissioned processing agreement pursuant to Art. 28 DSGVO must be concluded using the Buyer's current model agreement for commissioned processing.

(2) Urgent safety notices and recalls should be sent exclusively to the following e-mail address: mps@ukr.de

(3) If individual provisions of these Terms and Conditions of Purchase are invalid, this shall not affect the validity of the remaining provisions. Insofar as the designation "Klinikum" or "grounds or properties of the Klinikum" is used, this shall also include the hospitals cooperating with the Klinikum if services are to be provided there for the Klinikum.

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