1. General terms

1.1 These Purchasing Terms are applicable to purchasing contracts, contracts for work and services and to hybrid forms of the same signed between Fraunhofer-Gesellschaft zur Foerderung der angewandten Forschung e.V. of Munich (hereinafter: "FhG") and the Contractor (hereinafter: "Contractor"). They apply in relation to companies, legal entities of public law and separate estate under public law (sec. 310 (1) of the (German) Civil Code (BGB)).

1.2 The contract signing is governed exclusively by the regulations cited in item 4.2. The Contractor's standard business terms do not become a component part of the contract. Anything else will only apply if FhG has expressly given its written consent. The tacit acceptance of the Contractor's deliveries and services as well as any payment by the Buyer do not signify any acceptance of Contractor terms to the contrary.

2. Bids

Bids must meet the specifications of the enquiry or invitation to bid. The expense of generating bids and transmitting supplemental documents or Information will not be compensated.

3. Prices

Prices are set prices without value-added tax. Delivery within Germany and other EU countries is DDP to the *named place of destination or to the named place at the place of destination* under Incoterms 2020, including unloading. From non-EU countries, delivery is DAP to the *place of receipt* under Incoterms 2020, including unloading. Unless otherwise agreed, Contractor must take out shipping insurance and bear the costs for this as well as the costs for customs and packing.

4. Order and order confirmation

4.1 The order/contract must be in writing. This also applies to changes. FhG may revoke the order if the Contractor fails to confirm it in writing within two weeks of receipt (order confirmation).

4.2 The following apply in the following sequence to fulfilment of FhG orders for supplies and services:

- The order document with the special contractual terms contained in it,
- The contract documents (specifications and any eventual supplemental contract terms),
- For contracts subject to VOL/A, UVgO or VgV: standard contract terms for execution of services (VOL/B) in the version applicable when the order is placed,
- These SPT,
- Relevant statutory and regulatory regulations and conditions including standardisation and accident prevention regulations such as CE, VDE or the Electrical and Electronic Equipment Act (ElektroG) etc., each in the version applicable on the date of delivery.

5. Farming out orders to third parties

Farming out orders to third parties and farming out parts of the order to subcontractors is not allowed without FhG's written consent. Any breach of this will entitle FhG to withdraw from the contract, either in full or in part.

6. Delivery deadline

The delivery deadlines specified by FhG are binding (relative firm deal). If missing the deadline is expected, the Contractor must immediately notify FhG of this in writing, giving the reasons for it and specifying the duration of the delay. Any eventual consequences of lateness will not be affected by such notification.

7. Ensuring deadlines

7.1 In case of lateness FhG is entitled, after prior warning, to claim late delivery compensation in the amount of 0.5% for every week of delay commenced of that part of the order that cannot be used, but only up to a total of 5% of the value of the order.

7.2 The right is reserved to assert damage compensation claims going beyond this.

8. Shipping, customs and export control

Delivery shall be made in accordance with the conditions specified in Article 3 and must be enclosed with a delivery ticket. For delivery from foreign customs jurisdictions the Contractor must contact the indicated point of use well enough in advance regarding customs clearance and import formalities. The Contractor must report the following to FhG in writing well enough in advance: the HS Code, the country of origin and, if requested to do so by FhG: supplier's declarations of preferential origin (for European contractors) or movement certificates (for contractors from non-European countries). Where applicable, the Contractor shall inform FhG, likewise well enough in advance and in writing, of: the registration of the goods to be delivered by an item of Annex I of the EC Dual-Use Regulation or of the German export list, the registration in the U.S. Commerce Control List (concrete ECCN or as "EAR99") or the USML (USML Classification No.). This information must be indicated in all relevant documents (in particular the bid, delivery ticket and invoice). The Contractor shall bear all expenses and damages that result to FhG owing to the lack or incorrectness of this information.

9. Acceptance

If acceptance is provided for, the corresponding proof will be incumbent upon the Contractor. If a trial run is provided for then acceptance will only be declared after a flawless trial run by means of a jointly signed record of acceptance.

10. Invoicing

10.1 All invoices must be addressed, with indication of the FhG order number, to the delivery or performance address indicated in the order document or to the invoice address indicated. As long as the FhG order number is missing the Contractor's claim to payment will not be due.

10.2 For every order a separate invoice must be issued. The invoices must be broken down in accordance with the order document. Partial and final invoices must be designated as such.

10.3 Our value-added tax identification number (UIN) is DE 129 515 865. The invoice issued must contain the UIN stated in the order.

11. Payments

11.1 Payment and early payment discount deadlines start to run at the earliest with receipt of the invoice and the goods; where acceptance is provided for, when the delivery or service is declared accepted.

11.2 FhG may only be declared late in paying by being given a warning. Sec. 286 (3) BGB (German Civil Code) does not apply.

12. Passing of risk

Risk passes to FhG upon receipt of the goods and, where acceptance is provided for, when acceptance of delivery or service is declared.

13. Liability for flaws

13.1 The specifications and functions as stipulated shall be deemed to be contractually guaranteed. The Contractor shall guarantee fulfillment thereof with the consequence that in case of any non-fulfillment thereof he shall be liable not only for damage to the object of the contract itself but also for damage incurred to other legal assets (Sec. 14 No. 2 b) bb) VOL/B). This shall not apply if the Contractor is not liable for the breach of obligation that is causal for the damages.

13.2 The costs of remedying flaws to be borne by the Contractor comprise in any case expenditures for carrying out remedy of flaws as well as for packing, shipping and insurance costs.

13.3 Liability for flaws also relates to replacement deliveries and services including subsequent improvement work. The statute of limitations for the flaw claims is suspended upon receipt of the written reporting of the flaw until the Contractor has successfully remedied the flaw or rejected the claims to (additional) subsequent improvement. The statute of limitations for flaw liabilities starts to run again after remedy of the flaw.

14. Compliance with norms and standards

14.1 The Contractor must ensure that appropriate measures have been taken to prevent corruption and to prevent acceleration payments abroad and favours to elected representatives.

14.2 The Contractor must comply with the relevant laws of its country of registration as well as those of the countries where it operates in connection with its contracts with FhG. Should the regulations of the relevant countries contradict each other, then legislative norms shall take precedence over sub-legislative norms. If law is contradictory at the same level there shall be no breach of contract for compliance with one of the norms and the resulting breach of the other one. The Contractor shall be obliged, by prudent selection of its subcontractors and suppliers and reasonable monitoring of them, to work towards ensuring that they also do not commit breaches of law in connection with their contracts with FhG.

14.3 The Contractor shall furthermore be obliged to comply with the minimum standards set forth in the ILO core labour standards (www.ilo.org). In particular, no forced labour or compulsory labour may be used and no persons under the age of 14 may be employed, and no person under the age of 18 may be employed in dangerous work.

15. Termination of the contract for cause

15.1 Serious breaches of item 14 shall entitle FhG to cancel the contract for cause.

15.2 FhG shall furthermore be entitled to cancel the contract for cause if

- the Contractor is in the process of liquidation;
- the Contract must be considered to be unreliable due to any demonstrable serious misconduct, such as bribery, sec. 334 of the German Penal Code (StGB), subsidy fraud, sec. 264 StGB or similar actions outside of proper business customs;
- the Contractor in tendering procedures has deliberately made inaccurate statements in regard to its reliability as well as its qualifications and performance capacity;
- the Contractor's bid is based on collusion to restrict competition within the meaning of sec. 298 StGB.

15.3 If FhG terminates the contract according to the provisions of item 15.1 then it will be entitled to return any performance already rendered. It must compensate the Contractor pro rata in the framework of the contract price for the value of performance not returned or already availed of. For returned deliveries the Contractor must reimburse FhG for the compensation already paid.

15.4 The Contractor must compensate FhG for all damages directly or indirectly caused by termination of the Contract. The Contractor will not be entitled to any other rights due to termination of the contract than claims to compensation for deliveries or services already availed of. Of statutory regulations only secs. 347 through 351 and sec. 354 BGB will remain unaffected. Sec. 7 (3) VOL/B will otherwise apply.

15.5 If there is cause according to item 15.1 or 15.2 and if the Contractor is liable for the same then the Contractor must pay FhG a contractual penalty in the amount of 5% of the value of the order. Damage compensation claims in accordance with item 15.5 will remain unaffected.

16. Obligation to retake and dispose of items under the Electrical and Electronic Equipment Act (ElektroG) and the Packing Ordinance (VerpackV)

The Contractor is responsible for obligations to retake and dispose of items contained in sec. 19 (1) ElektroG and in secs. 4 and 5 VerpackV and must bear any eventual costs incurred in connection therewith. No agreement differing from the provisions in sec. 19 (1) (4) ElektroG has been reached.

17. Provision of spare parts

The Contractor must put itself under an obligation to provide in connection with the item delivered complete spare parts documents to FhG and to maintain stocks of the spare parts indicated therein for a period of five years, reckoned from receipt of the goods and, where acceptance is provided for, from the date of acceptance of the delivery or service. Upon request, the spare parts are to be supplied at any time for a corresponding invoice. In case of spare parts requisitions the price of the part may not be higher than is indicated in the spare parts documents provided but for increased costs caused by rises in prices or salaries and for which the Contractor is not responsible an appropriate cost increment may be charged.

18. Intellectual property rights

The Contractor must hold FhG harmless against any third-party claims for direct or indirect breaches of intellectual property rights for which the Contractor is responsible.

19. Assignment of claims and setoff

19.1 Assignment of any of the Contractor's claims on FhG, including within the Contractor's consolidated corporate group, will require the prior written consent of FhG.

19.2 The Contractor will only be entitled to a right of setoff or retention for counterclaims that have been definitively adjudicated or are undisputed.

20. Applicable law, venue of performance and legal action

20.1 The law of the Federal Republic of Germany is applicable with the provisions of the UN Convention on the International Sale of Goods expressly barred.

20.2 The venue of performance for deliveries and services will be the address indicated in the order document. The venue of performance for payments is Munich.

21. Miscellaneous

Should one or more provisions be or become fully or partially without legal effect this will not impair the legal validity of the remaining provisions. The same will apply in case of a gap in provisions.