Standard Purchasing Terms (SPT) of Fraunhofer-Gesellschaft e. V.

Version dated: April 2026

1. Scope of Application

1.1 These Purchasing Terms are applicable to purchasing contracts, contracts for work and services, and to hybrid forms thereof as well as to *sui generis* contracts subject to the laws applicable to purchase agreements or contracts for work and services, entered by and between Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e. V., Munich, Germany (hereinafter referred to as "Fraunhofer") and the Contractor.

1.2 They apply in relation to entrepreneurs as defined by Section 14 German Civil Code (BGB), legal entities under public law, and to separate special funds under public law (Section 310 (1) BGB).

2. Contractual Basis

2.1 The contract shall be made in text form. This shall also apply to amendments to the contract and to a waiver of this text form requirement.

2.2 Conclusion of a contract shall be governed by the following provisions. Regarding the fulfillment of Fraunhofer's order for deliveries and services, the following order of priority shall apply:

- the letter of award or the order document containing the contractual terms and conditions,
- the tender documents in accordance with Section 29 of the German Procurement Ordinance (VgV), Section 21 of the German Ordinance on Sub-threshold Procurement (UVgO), or the applicable rules of procedure, including responses to questions from applicants and bidders,
- these present Standard Purchasing Terms (SPT),
- the Sustainability Standards for Suppliers (NHS) of Fraunhofer-Gesellschaft e. V., in the version applicable on the date when the order is placed,
- the General Terms and Conditions of Contract for the Execution of Works (VOL/B) in the version applicable on the date when the order is placed,
- the Contractor's awarded offer
- the relevant statutory and regulatory provisions and requirements, including standard specification 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.

2.3 No deviating contractual terms and conditions of the Contractor—in particular their General Terms and Conditions—shall become an integral part of the contract. The aforesaid shall also apply, if Contractor's contractual terms and conditions do not contradict the contractual terms and conditions of Fraunhofer. Exceptions to the above shall only apply, if Fraunhofer gives their express consent in text form. The tacit acceptance of services provided by the Contractor as well as payments made by Fraunhofer do not constitute any consent with any deviating terms and conditions of the Contractor.

2.4 If the contract constitutes subcontracting to third parties within the framework of public project funding or a public contract, the contract's effectiveness shall be subject to the proviso that the corresponding grant notice award is issued or the main contract is awarded and will remain in force and effect. The provisions set forth in the grant notice or in the main contract shall apply in addition.

3. Terms of Delivery

3.1 Unless otherwise agreed, delivery shall be made in accordance with rule DPU of the Incoterms 2020, to the designated destination or to the designated place at the destination, including unloading.

3.2 If the Contractor's is headquarters are located in Germany or within the European Union, the Contractor is obliged to deliver goods that have already been cleared through customs.

3.3 Unless otherwise agreed, Contractor agrees to take out transport insurance.

4. Prices and Terms of Payment

4.1 The agreed prices are net prices. Value added tax, if any, must be shown separately.

4.2 The agreed price includes all ancillary costs, in particular transport insurance, packaging, freight, shipment, and, in cases subject to Clause 3.2 hereunder, customs charges.

4.3 The period allowed for payment shall commence running upon receipt of the invoice at the earliest, however not before receipt of the goods; if inspection and acceptance is provided for, such period shall commence upon the acceptance of the delivery/service.

4.4 Fraunhofer shall only be in default upon receipt of a reminder; Section 286 (3) German Civil Code (BGB) shall not apply.

5. Subcontracting Orders to Third Parties

Subcontracting orders to third parties and outsourcing parts of the delivery to subcontractors is not permitted without the consent of Fraunhofer. Consent given in text form shall be deemed sufficient. Any violation, breach or infringement of the aforesaid will entitle Fraunhofer to withdraw from the contract, either in full or in part.

6. Date of Delivery

The delivery dates specified by Fraunhofer shall be binding (relative fixed-date transaction). If missing the deadline is expected to occur, Contractor shall notify Fraunhofer without undue delay in text form of this circumstance, stating the reasons for and specifying the duration of the delay. Notifying Fraunhofer of a delay in delivery shall have no effect on the consequences that may arise from or out of this delay.

7. Assurance of Deadlines

7.1 In the event of default Fraunhofer shall be entitled to claim compensation for each day of default in the amount of 0.1 % of the value of that part of the service or delivery which cannot be used, but in total no more than a maximum of 5% of the net invoice value.

7.2 Notwithstanding Section 341 (3) BGB, Fraunhofer may claim payment of the contractual penalty at any time until the invoice has been paid in full.

7.3 Fraunhofer reserves the right to assert further damage compensation claims. In this case, claims asserted under Clause 7.1 shall be taken into account.

8. Subsequent provision of security in the event of impending forfeiture of funds

8.1 If delays occur in the performance of the contract that also affect invoicing and payment, Fraunhofer is entitled to subsequently require the Contractor to provide a guarantee if and to the extent that there is a concrete risk of forfeiting the funding underlying the contract and this risk can be averted by settling the invoice prior to full performance.

8.2 There is a particular risk of funding being forfeited if Fraunhofer has earmarked public funds to finance the order and payment of those funds is no longer possible after certain deadlines have passed. Upon request, Fraunhofer must provide the Contractor with evidence of the specific risk of funding forfeiture by submitting the relevant documents.

8.3 The amount of the guarantee subsequently requested corresponds to the gross amount that Fraunhofer must advance in order to prevent the funds from lapsing. This amount corresponds to the total outstanding remuneration, regardless of when it is due. The guarantee must be issued by a credit institution or credit insurer authorized in the European Union.

8.4 If the Contractor is responsible for the delay, they shall bear the costs of the guarantee. In this case, the Contractor is obligated to submit, within a reasonable period set by Fraunhofer of at least 14 days, an open-ended guarantee for the required amount, waiving the defenses under Sections 770 and 771 BGB, and to invoice the guaranteed amount.

8.5 If the Contractor is not responsible for the delay, the allocation of costs and the terms of the guarantee shall be agreed upon individually between Fraunhofer and the Contractor.

8.6 The guarantee shall be returned as soon as the Contractor has fully fulfilled its obligations in accordance with the contract or the purpose of the security has otherwise been satisfied.

9. Shipping, Customs and Export Control

9.1 Delivery shall be made in accordance with the provisions specified in Clause 3 and must be accompanied by a delivery note. In regard to deliveries from foreign customs jurisdictions, Contractor must contact well in advance the indicated place of use to arrange for customs clearance and import formalities. Contractor must inform Fraunhofer in writing and in a timely manner of the following: HS code, country of origin, and, if requested by Fraunhofer, supplier's declarations of preferential origin (for European contractors) or movement certificates (for contractors from non-European countries).

9.2 Where applicable, Contractor shall inform Fraunhofer, likewise well in advance and in writing, of the following: the registration of the goods to be delivered that are listed as 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 in the quote, delivery note and invoice). Any expenses and losses that Fraunhofer may incur due to the absence or incorrectness of this information shall be borne by Contractor.

10. Acceptance

If acceptance of a delivery is provided for, the Contractor is responsible for the proof of successful acceptance. In general, acceptance is documented by way of an acceptance protocol which has to be jointly signed by both parties.

11. Invoicing

11.1 All invoices must be sent to the billing address specified in the letter of award or in the contract, always quoting the Fraunhofer order number. As long as an invoice lacks the Fraunhofer order number, the Contractor's payment claims shall not be due for payment.

11.2 For every order a separate invoice must be issued. Invoices must be itemized in accordance with the Fraunhofer order document. Partial and final invoices must be designated as such.

11.3 Fraunhofer's sales tax identification number (UIN) is DE 129 515 865. Any invoice issued to Fraunhofer must show the UIN.

12. Passing of Risk

Risk passes to Fraunhofer upon receipt of the goods or—where acceptance has been provided for—at the time when acceptance of delivery or service has been declared.

13. Liability for Defects

13.1 The specifications and functions stipulated in the awarded order shall be deemed contractually agreed. In the event of defects, Fraunhofer shall be entitled to exercise their statutory rights following the conditions of Section 14 VOL/B.

13.2 The costs incurred for remedying defects shall be borne by the Contractor and shall include in any case all expenses incurred for carrying out the remediation of defects as well as the costs for packaging, shipment and insurance.

13.3 Liability for defects also applies to replacement deliveries and services, including subsequent improvement work. The limitation period for claims for defects shall be suspended from the date of when the written notice of defects was served until the time when the Contractor has successfully remedied the defect or rejected the claims for (further) improvement work.

13.4 As regards remedy of defects by subsequent delivery, the limitation period will recommence; in the event of rectification, the limitation period shall only start running again, if the defect is of the same type or if it is the result of inadequate rectification.

14. Compliance

14.1 Contractor shall comply with all legal obligations applicable to them when fulfilling the order, including in particular payment of taxes, levies and social security contributions, adherence to occupational health and safety regulations and granting employees at least those minimum working standards, including payment of minimum wages, which are binding for the relevant service in particular by law, statutory order, or a generally binding collective agreement. This obligation also includes the applicable legal provisions relating to anti-corruption, money laundering, and antitrust law, as well as the provisions on sanctions lists and export control.

14.2 Contractor agrees to ensure, by way of careful selection of their subcontractors and suppliers and reasonable monitoring of such, that they likewise will not commit any legal violations, breaches or infringements in relation to the contractual relationship with Fraunhofer.

14.3 The contracting parties shall mutually support each other with regard to measures intended to prevent compliance violations relating to the fulfillment of the contract. In particular, the contracting parties shall immediately inform each other, if they become aware of a material violation or breach of criminal and administrative-fine provisions of the applicable legal obligations under Clause 14.1 above and/or gain knowledge of an official investigation or legal proceedings initiated by or against the contracting party themselves, their employees, managers, or affiliated companies, representatives, and other companies associated with the contract, and if these circumstances are specifically related to this contract. The above obligation to provide information does not apply, if there are legal reasons for not doing so or if the provision of such information is banned by the investigating authorities.

14.4 The aforesaid obligations of the contractor shall apply with retroactive effect from the time of first contact between the contracting parties.

15. Sustainability Standards

15.1 Contractor agrees to comply with Fraunhofer's "Sustainability Standards for Suppliers (NHS)" which have become an integral part of the contract. Contractor shall indemnify and hold harmless Fraunhofer from and against any claims made by third parties arising from or out of a violation, breach or infringement of Fraunhofer's Sustainability Standards for Suppliers, unless they are able to prove that they are not responsible for the violation, breach or infringement.

15.2 In the event of Contractor's violation, breach or infringement of Fraunhofer's Sustainability Standards, Fraunhofer shall be entitled to suspend the performance of the contract, if Contractor fails to remedy the breach, violation or infringement within a reasonable period of time. Notwithstanding the above, Fraunhofer reserves the right to resort to the rights set forth in Clause 16.

16. Termination of the Contract for Cause

16.1 Fraunhofer may withdraw for cause from or cancel the contract with immediate effect, in particular, if

- Contractor is in serious breach of Clause 14 (Compliance), 15 (Compliance with Sustainability Standards for Suppliers – NHS) or Clause 21 (Confidentiality),
- before Contractor has completely fulfilled the contract, an offence under Section 123 (1 to 4) German Act against Unfair Competition (GWB) has occurred, and Contractor fails to provide any proof of self-cleaning pursuant to Section 125 GWB immediately after receipt of the notice of withdrawal,
- Contractor's integrity is questioned is to be considered as unreliable due to a proven act of serious misconduct, e.g. criminal offences against competition (Sections 298 et seq. German Criminal Code (StGB)), criminal offences in office (Sections 331 et seq. StGB), subsidy fraud (Section 264 StGB) or similar acts beyond proper business practices,
- Contractor provided misleading information in the tender process, intentionally or by negligence, in particular with regard to eligibility criteria or reasons for rejection which significantly influenced the contract-awarding decision,
- Contractor's bid is based on collusion to restrict competition within the meaning of Section 298 StGB.
- the Contractor fails to comply with the requirement to provide security in accordance with Clause 8.1 in conjunction with Clause 8.4 within the specified time limit.

The same shall apply, if insolvency proceedings or comparable proceedings have been applied for or opened against Contractor's assets which may result in a significantly increased risk for the performance of services in accordance with the contract.

16.2 If Fraunhofer terminates the contract pursuant to the provisions of Clause 16.1, Fraunhofer has the right to return any services or deliveries already rendered. Any (partial) acceptance that has already taken place shall not preclude this. Partial services or deliveries shall be remunerated at the contractually agreed prices, insofar as Fraunhofer has use for such. As regards returned services, Contractor shall reimburse Fraunhofer for any payments already made.

16.3 As regards circumstances covered by Clause 16.1, sentence 1 Contractor shall compensate Fraunhofer for all losses directly or indirectly incurred as a result of the termination of the contract. As regards statutory provisions, only Sections 347 to 351 and Section 354 BGB shall remain unaffected.

16.4 If there is cause as set forth in Clause 16.1, sentence 1, Contractor shall pay to Fraunhofer a contractual penalty in the amount of 5% of the net invoice value, regardless of whether the contract continues to exist. Claims for damages pursuant to the provisions set forth in Clause 16.3 shall remain unaffected.

17. Obligation to Take Back and Dispose of Items

Contractor shall be liable for compliance with the obligations to take back and dispose of items set forth in Section 19 (1) of the German Electrical and Electronic Equipment Act (Elektrogesetz) and Section 15 of the German Packaging Act (Verpackungsgesetz) and shall bear any costs incurred in this regard.

18. Availability of Spare Parts

Contractor agrees to maintain spare parts in stock for a period of 5 years, calculated from the date of receipt of goods or, if acceptance is provided for, from the date of acceptance of the delivery item, and, if necessary, sell them at usual market prices.

19. Intellectual Property Rights

19.1 Contractor warrants and represents that they are not aware of any third-party rights or other deficiencies in title that would contradict the use of the service owed.

19.2 Contractor shall be liable to those who claim an infringement of property rights against Fraunhofer. Contractor shall immediately indemnify and hold harmless Fraunhofer from and against all such claims and compensate Fraunhofer for all related detriments and losses. Any other claims or rights of Fraunhofer, e.g. withdrawal from the contract, reduction of price, or compensation for damages, shall remain unaffected.

19.3 Contractor is obliged to disclose in their tender offer the fact whether the use of third-party software and/or open-source software components is required for the use of the object of performance.

19.4 If, within the framework of order fulfillment, services are rendered which may result in copyright-protected pieces of work or inventions, Contractor shall grant Fraunhofer with regard to all work results generated in relation to the contract the exclusive, world-wide, perpetual, irrevocable, non-terminable, and royalty-free right to use and to exploit the content of any known types of use. Contractor agrees, when subcontracting to third parties with regard to the order awarded to them, to ensure the transfer/granting of rights of use to Fraunhofer within the aforesaid meaning by way of including a corresponding clause in the relevant subcontracting contract.

20. Assignment of Claims and Offsetting

20.1 Assignment of any claims the Contractor holds against Fraunhofer, including the assignment within Contractor's group of companies, requires the prior written consent of Fraunhofer.

20.2 Contractor shall have a right of set-off or retention only on finally adjudicated or undisputed counterclaims. Contractor may only exercise a right of retention, if their counterclaim is based on the same contractual relationship.

21. Confidentiality

21.1 Contractor shall treat as confidential all business and trade secrets that may become known to them in the course of fulfilling the contract, and treat as confidential all manufacturing processes and any other personal, business-related and operational facts and circumstances that have come to their knowledge during and after the termination of the contractual relationship.

21.2 When involving employees, Contractor must ensure that confidential information will be disclosed only to the extent that is deemed necessary for the proper execution of the order. Contractor shall make sure that their employees—within the scope of legal tools—are bound to secrecy in accordance with the provisions set forth in Clause 21.1 above.

21.3 All documents provided by Fraunhofer to the Contractor and any copies made thereof must be returned upon Fraunhofer's request, but no later than upon expiry of the contract. Fraunhofer is entitled to request the secure deletion or destruction of all or part of the documents instead of their return. Fraunhofer may request Contractor to provide evidence of such confidential waste disposal, and to confirm this, at their discretion, by means of a corresponding declaration or otherwise. Legal archiving requirements shall remain unaffected.

22. Data Privacy

22.1 Contractor shall make sure that all persons engaged by them with the processing or fulfillment of the contract will comply with the statutory provisions on data protection.

22.2 If Contractor processes personal data on behalf of Fraunhofer, the contracting parties shall conclude a Data Processing Agreement (DPA) under Art. 28 General Data Protection Regulation (GDPR). In the case of joint responsibility, the contracting parties shall conclude an additional agreement on joint controlling in accordance with Art. 26 GDPR.

23. Reference Naming & Use of Trademark/Logo

23.1 Using Fraunhofer's name as a reference for commercial purposes of the Contractor, either in digital or analog form, is only permitted with the prior express consent of Fraunhofer.

23.2 The same applies to Contractor's use of Fraunhofer's logo, which is a registered trademark.

24. Applicable Law, Place of Performance and Legal Venue

24.1 The laws of the Federal Republic of Germany shall apply, with the provisions of UN Convention on the International Sale of Goods (CISG) being expressly excluded.

24.2 The place of performance for deliveries/services is the address agreed by the parties. The place of performance for payments is Munich, Germany.

24.3 Any disputes arising in relation to the contract or these Standard Purchasing Terms shall be settled before the courts in Munich, Germany.

25. Miscellaneous

25.1 Should one or several provisions of these terms be or become invalid or ineffective as a whole or in part, this will not affect the validity or effectiveness of the remaining provisions. The same shall apply mutatis mutandis to any gaps. In this case, the Parties will replace the invalid provision with a valid provision that comes as close as possible to the economic purpose of the invalid provision.

25.2 Ancillary agreements, changes and amendments shall be made at least in text form to be valid and effective. The same shall apply mutatis mutandis in respect to waiving this text form requirement.

25.3 These Purchasing Terms of the Fraunhofer-Gesellschaft e. V. are available in German and English. Both versions are equally binding. However, in the event of any discrepancies or ambiguities between the language versions, the German version shall prevail and shall be exclusively authoritative for the interpretation of these terms.

Contact

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