

1. General Information

1. These General Terms and Conditions of Purchase (hereinafter referred to as "GCP") shall apply, unless otherwise agreed in writing between European X-Ray Free-Electron Laser Facility GmbH (hereinafter referred to as "Client") and the Contractor (hereinafter both jointly referred to as "Contracting Parties"), to all deliveries and services ordered by the Client. These GCP shall also apply in particular to contracts for the purchase and/or delivery of movable goods (hereinafter referred to as "Goods"). Contracts for construction services shall be excluded from the application of these GCP.
2. Any general terms and conditions of the Contractor deviating from these GCP shall only apply if and to the extent they have been expressly accepted in writing by the Client. This shall also apply if the Contractor refers to its general terms and conditions; in this case, no objection by the Client is required.
3. With the exception of statutory written form requirements, the written form within the meaning of these GCP shall also be deemed to have been complied with if transmission is conducted by electronic means. In this respect, transmission by unencrypted email shall suffice, unless otherwise stipulated in the tender conditions.
4. The General Terms and Conditions of Contract for the Execution of Services (VOL/B) shall apply in addition to these GCP in their currently valid version.
5. These GCP shall only apply to companies within the meaning of § 14 BGB (German Civil Code), legal entities under public law and special funds under public law (within the meaning of § 310 para. 1 BGB).
6. The Client is a public contracting authority within the meaning of public procurement law.
7. Offers, order confirmations, delivery documents, and invoices shall be submitted by the means of information transmission provided for in the respective announcement or the award documents of the Client and, with the exception of the offer, shall state the Client's order number, the article number, the delivery quantity, and the delivery address.

2. Offer, Order, Order Confirmation

1. The offer shall be submitted free of charge and without obligation for the Client.
2. The Contractor shall adhere to the inquiry or invitation to tender with regard to quantity, quality, and design in the offer and, in the event of a deviation, shall expressly refer to this.
3. Ancillary offers shall only be permitted if the Client expressly allows them and if they are explicitly designated as such.

4. In general, the Contractor shall be bound by its offer for a period of 30 calendar days, unless a longer period is agreed. The contract shall be concluded in accordance with the provisions of public procurement law by acceptance of the offer by the Client (hereinafter referred to as "Purchase order"). In order to be binding, the Purchase order must be in writing in accordance with Sec. 1 para. 3 GCP.
5. Verbal agreements shall only be valid if the Client confirms them in writing. Purchase orders shall be confirmed by the Contractor in writing without undue delay. If the Contractor does not confirm the Purchase order in writing within 14 calendar days of receipt, the Client shall be entitled to revoke it.

3. Prices

1. The agreed net prices shall be fixed prices and include delivery to the point of use (unloaded) as well as all services and ancillary services of the Contractor (e.g. assembly, installation) as well as all ancillary costs (e.g. customs, proper packaging, freight including pot. transport insurance). The statutory value added tax and pot. additional taxes incurred shall be specified separately on the invoice.
2. Price escalation clauses are only be permitted in exceptional cases, even in the case of longer delivery/service periods. If a price clause is desired for delivery/service periods of more than 18 months, the offer must include a percentage breakdown of the material, wage and fixed components and the calculation basis for this.
3. Unless otherwise agreed, a payment term of 30 calendar days is agreed. If the invoice is paid within 14 calendar days, a discount of 3% is permissible. For the timeliness of payment, the receipt of the transfer order at the bank of the Client shall be sufficient
4. The payment period shall run from the time at which both the proper invoice is received and the Supplies are accepted by the Client or the Services are fully performed and accepted (Sec. 11 GCP).
5. If the absence of the information required under Sec. 1 para. 7 GCP delays the processing of the invoice by the Client, the payment periods specified in Sec. 3 para. 3 GCP shall be extended by the period of the delay.

4. Contract execution, Compliance with Regulations

1. The Contractor assures that the relevant statutory and official regulations and requirements (including occupational health and safety and accident prevention regulations) and technical standards (e.g. DIN, VDE) will be complied with in the performance of the contract.
2. Moreover, the Contractor assures that all deliveries and services incorporate the latest state of technology.

3. In addition, the Goods to be delivered must comply with the applicable safety regulations (e.g. EU Directive 2006/42 on machinery, EU Directive 2014/35 on the market of electrical equipment designed for use within certain voltage limits, EU Directive 2014/30 relating to electromagnetic compatibility, EU Directive 2014/68 on the market of pressure equipment, EU Directive 2011/65 on the restriction of the use of certain hazardous substances in electrical and electronic equipment, German Product Safety Act (ProdSG - Act on making products available on the Market) and be provided with all prescribed markings (e.g. CE mark), declarations (e.g. declaration of conformity, declaration of incorporation) and documents (e.g. operating instructions, assembly instructions, safety data sheets). Protective devices, markings, declarations, and documents required according to such regulations shall be taken into account in the Contractor's calculation and shall be part of the scope of delivery, even if they are not requested separately by the Client.
 4. If the Contractor has any concerns regarding the type of execution described by the Client, the Contractor shall notify the Client thereof in writing without undue delay.
 5. All documents required for acceptance, operation, maintenance, and repair (plans, test reports, works certificates, drawings, operating instructions, etc.) shall be supplied by the Contractor free of charge, if necessary in reproducible form.
 6. The engagement of a subcontractor by the Contractor shall require the prior written consent of the Client. This consent may not be unreasonably refused or delayed by the Client.
- 5. Delivery or Service deadlines, Delays**
1. The agreed delivery or service times (dates or deadlines) are binding. The receipt of defect-free Goods at the place of receipt or use specified by the Client or the acceptance of the delivery or service by the Client shall be decisive for compliance with the delivery or service time.
 2. If delays are to be expected, the Contractor shall notify the Client thereof in writing without undue delay, stating the reasons and the expected duration.
 3. If the Contractor does not provide its delivery or service or does not do so within the agreed delivery or service time or if the Contractor is in default, the statutory or contractually agreed rules shall apply. The acceptance of the delayed delivery/service shall not constitute a waiver of the right to assert such claims. A special reservation is not required for this.
 4. Premature deliveries or services shall not be permitted.
- 6. Contractual penalty**
1. If delivery or performance deadlines are exceeded, the Client shall be entitled to demand a contractual penalty of 0.5 percent of the value of the part of the delivery or performance that cannot be used for each full week, but no more than 5% of the total order price excluding value added tax.
 2. The Client is entitled to claim the contractual penalty in addition to fulfilment and other claims. However, a paid contractual penalty shall be offset against claims for damages.
3. The Client can assert claims for forfeited contractual penalties up to the final payment.
- 7. Right to information and inspection**
1. The Client and its representatives shall be entitled to obtain information from the Contractor within the Contractor's operating hours regarding the contractual execution of the delivery or service, to participate in factory inspections and to carry out their own inspections. The Client may require the Contractor to carry out tests to a reasonable extent.
 2. The costs for own personnel and material as well for tests initiated by the Client shall be borne by the Client. If the agreed test is negative for reasons for which the Contractor is responsible and therefore has to be repeated, the entire costs of the new test shall be borne by the Contractor.
 3. The Contractor will make reasonable efforts to obligate its suppliers and subcontractors in writing that the inspection rights, stipulated in this Sec. 7, can also be exercised by the Client with said suppliers and subcontractors.
 4. The inspections do not release the Contractor from its liability for material defects and its general liability.
- 8. Amendment of contract, Set-off, Right of retention**
1. The Client can request amendments to the delivery item or the service even after conclusion of the contract, provided that this is within the scope of the Contractor's capabilities and is reasonable for the Contractor. Amendments and their implications for prices, delivery or performance times, or other conditions must be made in writing in accordance with Sec. 1 para. 3 GCP.
 2. The Client is entitled to rights of set-off (*Aufrechnung*) and retention (*Zurückbehaltungsrecht*) as well as the defense of non-performance of the contract (*Einrede des nicht erfüllten Vertrages*) to the extent provided by law. In particular, the Client shall be entitled to withhold payments due as long as the Client is still entitled to claims against the Contractor arising from incomplete or defective services.
 3. The Contractor shall have a right of set-off and retention only in respect of counterclaims that have become res judicata or are undisputed.

9. Foreign Trade Law

1. In accordance with the intergovernmental founding document of the Client, all orders shall serve exclusively peaceful, non-military purposes.
2. The Contractor must comply with all requirements of the applicable national and international foreign trade law (hereinafter referred to as "foreign trade law").
3. The Contractor shall, no later than two weeks after placing the Purchase order, notify the Client independently and in writing for each individual item of all information and subsequent changes thereto required by the Client for compliance with foreign trade and payments law in the case of export, import, and re-export, in particular:
 - 3.1. Any permission requirements for its Goods according to German, European (EU), and, if applicable, Chinese and US export, customs, and foreign trade law of the country of origin;
 - 3.2. All applicable export list numbers, in particular in accordance with Annex AL to the German Foreign Trade and Payments Regulation (AWV) or comparable list positions of relevant export lists including the "Export Control Classification Number" in accordance with the "US Commerce Control List" (ECCN), if the Goods are subject to the "US Export Administration Regulations" (EAR);
 - 3.3. The statistical commodity code number according to the current commodity classification of foreign trade statistics and/or the HS (Harmonized System) Code;
 - 3.4. Country of origin (non-preferential origin) and, if requested by the Client, (long-term) supplier declarations on preferential origin (for EU suppliers) or certificates on preferences (non-EU suppliers); and
 - 3.5. All information of the Contractor required by the Client for the fulfillment of its obligations under the EU Regulation 2023/956 establishing a carbon border adjustment mechanism; and
 - 3.6. Any other information required by the Client in this respect. Depending on the nature of the Goods, further forms relevant under foreign trade law may be necessary, which, if requested by the Client, shall be provided by the Contractor.
4. If the Contractor violates its obligations under Sec. 9 para. 2 and 3 GCP, it shall bear all expenses and damages as well as other disadvantages (e.g. additional claims for foreign import duties, fines) incurred by the Client as a result, insofar as the Contractor is responsible for the obligation violation. Notwithstanding this, the Client shall be entitled to withhold payment according to Sec. 13 para. 2 on a pro rata basis until the complete fulfillment of its obligations.
5. Only for those goods supplied by the Contractor (like materials acc. to Sec. 12 para. 3 GCP) to the Client under or in connection with this contract that fall under the scope of Council Regulation (EU) 833/2014 (concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine), the following provisions apply:
 - 5.1. The Client shall not sell, export, or re-export, directly or indirectly, such goods to the Russian Federation or for use in the Russian Federation.
 - 5.2. The Client shall undertake its best efforts to ensure that the purpose of Sec. 9 para. 5.1 GCP is not frustrated by any third parties further down the commercial chain, including by possible resellers.
 - 5.3. The Client shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of Sec. 9 para. 5.1 GCP.
 - 5.4. Any violation of Sec. 9 para. 5.1 to 5.3 GCP shall constitute a material breach of an essential element of this contract, and the Contractor shall be entitled to seek appropriate remedies, including, but not limited to:
 - (i) termination of this contract; and
 - (ii) a penalty of 30% of the total value of this contract or price of the goods exported, whichever is higher.
 - 5.5. The Client shall immediately inform the Contractor about any problems in applying Sec. 9 para. 5.1 to 5.3 GCP, including any relevant activities by third parties that could frustrate the purpose of Sec. 9 para. 5.1 GCP. The Client shall make available to the Contractor information concerning compliance with the obligations under Sec. 9 para. 5.1 to 5.3 GCP within two weeks of the simple request of such information.
6. The conclusion and implementations of the contract are subject to the permissibility under export control law.

10. Dispatch and customs

1. A dispatch note shall be sent to the Client in due time before the delivery items are dispatched. A delivery note shall be enclosed with the delivery. In the case of deliveries from foreign customs territory, the Contractor shall contact the Client in due time for customs and import processing.
2. Before delivery of the Goods to the respective point of use, the delivery documents shall be submitted to the central Goods receiving point of the Client in accordance with the invitation to tender. This applies in particular to the delivery of Goods with customs documents.

11. Acceptance/Partial acceptance for service contracts

1. If the delivery or service resulting from a works contract is carried out in accordance with the contractual conditions, it will be accepted. If a test run is agreed, the delivery or service is deemed accepted by means of a joint acceptance report after a flawless test run.
2. Acceptance according to § 640 para. 1 sent. 1 BGB is only valid, if it is in writing. § 640 para. 2 BGB remains unaffected.

12. Ownership conditions

1. Deliveries and services of the Contractor shall be made without extended or prolonged reservation of property rights. The Client acquires unrestricted ownership rights to the delivery or service upon handover or acceptance and full payment; the same shall apply to the documents supplied by the Contractor. If the order consists of a development, the Customer shall acquire sole ownership of the object of development, including any intellectual property rights thereto or, in the case of software, any other rights, upon acceptance of the performance.
2. By handing over the Goods, the Contractor declares that it is fully authorized to dispose and that there are no third-party rights.
3. Any materials provided by the Client shall remain the property of the Client. They shall be marked as such by the Contractor free of charge, stored separately and carefully and used only for the purposes of the contract in accordance with the principles of economic management. If material provided is processed, transformed, combined or mixed with other objects, the Client shall acquire sole ownership of the new item. The Contractor shall store these in safe custody for the Client free of charge.
4. Ownership and copyright of documents provided by the Client to the Contractor shall remain with the Client.

13. Invoicing, Payment

1. Invoices issued by the Contractor shall comply with the statutory requirements and must generally be submitted to the Client preferably in electronic form, stating the mandatory details of Sec. 1 para. 7 GCP: invoice@xfel.eu.
2. In the event of defective delivery or performance, the Client is entitled to withhold payment in full or in proportion to the value until proper fulfilment.
3. Payments are not made in advance. If payment in advance is expressly agreed in writing between the Client and the Contractor in deviation from these GCP, payments will only be made against an unlimited down payment guarantee on first demand reasonable to the Client in the amount of the respective down payment to be paid plus statutory value added tax.
4. Payments shall not be deemed to be an acknowledgement of performance in accordance with the contract, in particular of the fact that the deliveries and services provided are free of defects, nor shall they be deemed to be an acknowledgement of proper invoicing.
5. The Client shall only be in default of payment after a written reminder has been issued by the Contractor.

14. Material defects and defects of title liability

1. The Contractor is liable for material defects and defects of title according to the statutory provisions. The Contractor guarantees the diligent and proper fulfilment of the contract, (see Sec. 4 GCP). In urgent cases, the Client may, after consultation with the Contractor, carry out the rectification himself or have it carried out by a third party.

2. The defined specifications apply as contractually assured and guaranteed features of the delivery item or service. The provisions of §§ 633 para. 2 to 639 BGB also apply to purchase contracts as well as work and materials contracts (*Werklieferungsverträge*).
3. The statutory provisions (§§ 377, 381 HGB – German Commercial Code) shall apply to the commercial duty to inspection and objection.
4. The Contractor provides the same warranty for replacement parts and repair work that it does for the delivery item; the warranty period starts once the defect, which was complained about, has been remedied. For delivery parts which could not remain in operation due to warranty defects, an ongoing warranty period is extended by the time of the interruption of operation caused by the defect. The costs to be borne by the Contractor to remedy the defects also include the expenses for packaging, freight and delivery, the work expended for dismantling and installation, travel expenses and the performance of the rectification of defects at the Client's premises.

15. Intellectual property rights

1. The Contractor is liable for ensuring that no third-party intellectual property rights are violated during the execution of the contract and during the delivery and use of the delivered item or service. Upon first written request, the Contractor shall indemnify the Client against any third-party claims arising from any intellectual property right infringements.
2. The Client is entitled to obtain the necessary authorization for delivery, commissioning, use, resale, etc. of the delivery item or service from the owner of such intellectual property rights at the Contractor's expense if the Contractor is unable to obtain such rights, finally refuses such subsequent performance, or is in default with subsequent performance.
3. The Contractor shall grant the Client free-of-charge a non-exclusive and irrevocable license to all domestic and foreign intellectual property rights, applications for intellectual property rights, and inventions, insofar as they have arisen during the performance of this contract. Furthermore, the Contractor shall grant the Client free-of-charge an irrevocable and non-exclusive right to use all know-how and every innovation and improvement, insofar as these have arisen during the performance of this contract. The Client is entitled to transfer licenses and rights of use within the meaning of the above paragraph to its shareholders. This shall also apply beyond the term of this contract. The Contractor shall expressly agree the above rights with its subcontractors for the benefit of the Client.

16. Spare parts

If the Contractor intends to discontinue the production of spare parts for the products delivered to the Client, the Contractor must notify the Client of this in writing in due time so that the Client has the opportunity to acquire the required spare parts within a reasonable period. If the Contractor becomes aware that the manufacturer of the parts used by the Contractor for the product intends to stop their manufacture, the Contractor must inform the Client in writing thereof immediately.

17. Termination and Withdrawal

1. Irrespective of any other termination and withdrawal rights, the Client is entitled to terminate or withdraw the contract with immediate effect if the Contractor commits acts within the meaning of §§ 333, 334 of the German Criminal Code (StGB) (granting benefits; giving bribes) or it can be proved that the Contractor committed serious misconduct which calls into question the Contractor's reliability. The Client can also demand compensation for all damages from the Contractor.
2. The Client can also withdraw from the contract or terminate it with immediate effect if insolvency proceedings have been opened against the Contractor's estate or if the Contractor temporarily suspends its payments.

18. Security and Regulatory provisions

1. In the case of deliveries and services on the premises and/or in the rooms of the Client or the Deutsches Elektronen-Synchrotron (DESY), the respective access, safety and order regulations (e.g. safety training, registration in the guest and external company portal (GPEX), use of transponders, PPE, hot work permit) of the Client or DESY must be observed, which are an integral part of the contract for these cases in their respective valid version. In some cases, this may require the collection and processing of personal data.
2. The Client in particular has the domiciliary rights over its premises and rooms and may transfer this right in whole or in part to third parties. The Contractor including its servants (*Erfüllungsgehilfe*) is accordingly obliged to follow the instructions of the Client. The same applies to DESY and its premises and rooms.
3. If the delivery or service contains hazardous working materials within the meaning of the German Ordinance on Hazardous Substances (*GefStoffV*), this must be clearly indicated in the delivery documents and the legally required safety documentation must also be supplied.

19. Non-disclosure, Data protection

1. The Contractor shall keep all images, drawings, calculations, and other documents and information (hereinafter referred to as "Confidential Information") received for the execution of the Purchase order strictly confidential and to disclose them only to employees who have been obliged to treat them confidentially. Confidential Information may only be disclosed to third parties with the prior written consent of the Client, which must be granted in the event of proven judicial or statutory claims for disclosure. The obligation to maintain confidentiality shall also apply after the termination of this contract; it shall expire - unless otherwise agreed - five years after the conclusion of the contract or if and to the extent that the Confidential Information has become public domain.
2. The aforementioned Confidential Information made available to the Contractor by the Client shall remain the property of the Client and must be returned to the Client without request, free of charge, and in full, as soon as it is no longer required for the performance of the contract. In this case, any copies made shall be destroyed; the only exception to this is storage within the scope of statutory storage obligations.
3. Products that are manufactured according to documents drawn up by the Client or according to Confidential Information or with tools of the Client or replicas of tools may only be used by the Contractor for test purposes and may not be presented, offered, or delivered to third parties. This shall also apply *mutatis mutandis* to standard products of the Contractor modified according to the Client's specifications.
4. The Contractor is prohibited from obtaining Confidential Information by means of reverse engineering. This includes all actions, including observation, testing, examination, and disassembly, and, if necessary, reassembly, with the objective of obtaining Confidential Information.
5. The Contractor undertakes to process personal data in accordance with EU Regulation 2016/679 - General Data Protection Regulation (GDPR) and the applicable national implementation regulations as well as relevant other data protection regulations, to treat such data confidentially and not to process such data outside the purpose of the respective contract.
6. Personal data will only be transferred to third parties if this is necessary for the execution of the contract or if there is a legal obligation to transfer such data. Insofar as third-party service providers are commissioned by the Contractor to fulfil the contract, these are contractually obligated to comply with data protection provisions in accordance with the GDPR.
7. The Contractor shall take technical and organizational measures to the extent provided for by the relevant data protection regulations to safeguard the confidentiality, availability, and integrity of the personal data made available by the Client. In particular, the Contractor shall obligate all its employees to confidentiality with regard to personal data and to instruct them accordingly, pointing out the fines and penal provisions of the GDPR.

20. Compliance and Anti-Corruption Clause

1. The Contracting Parties expressly declare their intention to comply with the relevant statutory provisions in connection with the contractual relationship. Against this background, the Client shall in particular not tolerate any corruption and expects the Contractor to refrain from any form of corruption.
2. In particular, the Contractor and its employees undertake in connection with the contractual relationship to comply with the applicable anti-corruption and money laundering laws, the law on the protection of business secrets (GeschGehG), the laws on ensuring compliance with collective agreements and minimum wages, as well as to comply with the provisions of antitrust law, labor law, and environmental protection regulations.
3. The Contractor has to establish sufficient control and supervisory measures - and provide written evidence upon request - that effectively prevent misconduct by its employees. If the Contractor discovers that it or its employees have violated one of the regulations set out in this Sec. 20 GCP or if there is a suspicion of a violation, the Contractor must immediately notify the Client of this in writing and cooperate with the Client in any investigations.
4. If one of the obligations stipulated in this Sec. 20 is violated by the Contractor or one of its employees, the Client is entitled to withdraw from all existing contracts with the Contractor or to terminate them with immediate effect, without prejudice to any other statutory or contractual (Sec. 17 para. 1 GCP) rights of withdrawal or termination.
5. The other contractual and statutory claims of the Client remain unaffected.
6. The Contractor will make reasonable effort to ensure compliance with the obligations stipulated in this Sec. 20 by its subcontractors.

21. Advertising Material

The Contractor may only refer to the business connection with the Client in advertising material with the Client's prior written consent.

22. Place of fulfilment and Jurisdiction

The place of fulfilment for the Contractor is the registered office of the Client or another place of use designated by the Client. The exclusive place of jurisdiction is Hamburg, Germany, insofar as the Contractor is a merchant, a legal entity under public law, or a special assets (*Sondervermögen*) under public law.

23. Applicable law

The law of the Federal Republic of Germany applies. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) and the collision regulations of international private law do not apply.

24. Final provisions

Should individual provisions of these GCP be invalid, this shall not affect the validity of the remaining provisions.