

1. General items, Scope

These General Conditions of Purchase ("XFEL-General Conditions of Purchase") shall apply to the contractual relationship between the European X-Ray Free-Electron Laser Facility GmbH ("Principal") and the contracting party ("Agent"), unless otherwise agreed in writing. By submitting a tender, by returning an order confirmation, or by accepting or executing an order, the Agent implicitly accepts the XFEL-General Conditions of Purchase.

Any differing General Conditions of the Agent shall apply only if, and as far as, they are recognised expressly in writing, even if the Agent has referred to them and the Principal does not expressly object to them.

In bilateral commercial transactions, the XFEL-General Conditions of Purchase apply also for all future legal relations or following transactions between the Principal and the Agent without the need of an explicit reference to the XFEL-General Conditions of Purchase. Additionally, according to contract type, the current versions of VOL/B (Verdingungsordnung für Leistungen, Teil B = Contracting Rules for Award of Service Performance Contracts, Part B) or VOB/B or C (Verdingungsordnung für Bauleistungen, Teil B/C = Contracting Rules for Award of Public Works Contracts, Part B/C) shall otherwise apply.

Order number, reference code, and the date of Principal's letters are to be quoted in all correspondence, including invoices.

2. Tender, order, confirmation of order

The Agent is required in his tender to adhere to the quantity, quality and execution specified in the Principal's inquiry or, if issued, the invitation to tender. Separate alternative tenders are permissible. Tenders shall be submitted in duplicate and free of charge for the Principal. The Agent shall be bound to his tender for a period of one month. No order shall be binding unless placed in writing. Verbal agreements shall be valid only if set down or confirmed in writing by the Principal. The Agent shall confirm orders to the Principal without delay by means of the attached contract duplicate or confirmation form.

3. Prices

The agreed prices are fixed prices, excluding sales tax (Value Added Tax), free to place of use (unloaded), including packing and other ancillary costs.

4. Performance of contract, compliance with provisions

The Agent shall undertake to comply with relevant statutory, technical, and official provisions and requirements when performing this contract. Goods supplied or services rendered must comply with relevant safety, employment protection, accident prevention, and other legal requirements and technical regulations (according to the CE conformity marking e.g. the Bauproduktengesetz (German Construction Product Act), the Gesetz über die elektromagnetische Verträglichkeit von Betriebsmitteln (German Act on Electromagnetic Compatibility of Equipment), das Gesetz über Funkanlagen und Telekommunikationsendeinrichtungen (German Act on Radio and Telecommunications Equipment), the Eichgesetz (German Weights and Measures Act), the Geräte- und Produktsicherheitsgesetz (GPSG, Equipment and Product Safety Act) together with its related regulations, such as the Niederspannungsverordnung (1.GPSGV, German Low Voltage Regulation), the Druckbehälterverordnung (6.GPSGV, German Pressure Tank Regulation), the Gasverbrauchseinrichtungsverordnung (7.GPSGV, German Gas Installations Regulation), the Schutzausrüstungsverordnung (8.GPSGV, German Protective Equipment Regulation), the Maschinenverordnung (9.GPSGV, German Machinery Regulation), the Aufzugsverordnung (12.GPSGV, German Elevator Regulation) and the Druckgeräteverordnung (14.GPSGV, German Pressure Equipment Regulation). The Agent must calculate in any safety devices and conformity markings required in accordance with such regulations. The calculation shall form part of the supply, even if not expressly mentioned by the Principal in orders, inquiries, or tender invitations. If the Agent has any doubts about the kind of performance desired by the Principal, then the Agent shall notify the Principal thereof in writing before contract closure.

All documents associated with the delivered item(s) (test records, factory certificates, drawings, plans, parts lists, manuals, etc.) necessary for acceptance, operation, maintenance, and repair form part of the Agent's supply obligation, and shall therefore be furnished free of charge.

Subcontractors shall not be engaged by the Agent without the Principal's consent.

5. Delivery periods

The agreed delivery dates are binding. The decisive criterion in determining compliance with agreed delivery dates or delivery periods is receipt of goods, free of defect, at the place of receipt and/or use specified

by the Principal, or acceptance (see sec. 10) of the supply or service rendered by the Principal. Acceptance of the delayed supply or service shall entail no waiver of possible claims to payment of contractual penalties or other damages. No explicit reservation of rights is required in this respect.

Where deliveries are made earlier than agreed, the Principal reserves the right to return the goods at the Agent's expense. If goods delivered early are not returned, they shall be stored until the scheduled delivery date by the Principal or by a third party at the Agent's expense and risk. In the event of early delivery, the Principal reserves the right to hold back payment until the agreed due date is reached. Partial deliveries shall be accepted only on the basis of written agreement. When agreed partial consignments are sent, the remaining quantity scheduled for delivery shall be indicated.

6. Information and testing rights

The Principal and its authorized representatives are entitled to inform themselves on the Agent's premises, and within normal working hours, regarding performance of supply in compliance with the contract, to attend tests of the Agent and to conduct their own tests. The Principal shall be entitled to require that tests be performed by the Agent, within appropriate bounds. In such instances, the Principal shall bear the costs of its own personnel, materials and any tests that he orders. The costs of repeat tests resulting from defects for which the Agent bears responsibility detected during previous tests shall be borne by the Agent.

If subcontracts are awarded, then the Agent shall undertake to ensure that the subcontractor contractually agrees to grant the Principal's rights within the scope mentioned above with regard to information and tests conducted on the subcontractor's premises.

Any such tests shall not release the Agent from his obligation to rectify defects or from his general liability.

7. Alteration of contract, assignment of claims, offsetting

The Principal shall be entitled to request subsequent alterations to the nature of the goods or services within the limits of the Agent's technical capability. Any changes affecting prices, delivery time or other conditions must be agreed in writing.

The Agent may not assign any claims against the Principal without the Principal's prior written consent, which said consent shall not be refused without good cause. Sec. 354a HGB (Handelsgesetzbuch = German Commercial Code) shall remain thereby unaffected. The Agent may offset only outstanding amounts against undisputed or legally established counterclaims. The Principal shall be entitled to offset any claims of the Agent against its own counterclaims, including claims against the Agent arising from other contractual relationships.

The Agent shall enjoy rights of retention only to the extent that such rights are based on undisputed or legally established counterclaims arising from the same contractual relationship.

8. Shipment, customs, passing of risk

Each delivery shall be accompanied by two delivery notes that state the order number, a description of the goods, and the delivery date. Dispatch notices shall be sent to the Principal in the event of shipments of considerable duration or consignments of substantial size. All consignments that the Principal has to clear through customs shall be sent via the customs office "Hamburg-Oberelbe" (overland freight) or via the customs office "Hamburg-Fuhlsbüttel" (air freight). The competent customs office must be indicated on the relevant shipping documents.

Risk shall pass to the Principal only when the goods are handed over to the Principal (unloaded) at their place of use. If deliveries include installation or assembly, or if they involve other legally required or otherwise agreed to acceptance procedures (see sec. 10), said risk shall pass to the Principal on acceptance (see sec. 10) of the supply or service.

9. Insurance costs

Transport insurance shall be stipulated in the name of, and debited to the Agent. The Principal shall not bear such costs.

10. Acceptance

Even if acceptance is not prescribed by law or by the applicable VOB/VOL, formal acceptance testing of all items produced or services rendered specifically for the Principal must be carried out and documented by a written acceptance test report. The same shall apply to deliveries that include erection and/or assembly or an agreed to period of trial operation. Acceptance shall be formally stated following flawless trial run if trial operation has been agreed to under contract. Such acceptance shall be

subject to the provisions of the applicable VOL/VOB supplemented by the contract law provisions laid down in the BGB (Bürgerliches Gesetzbuch = German Civil Code).

11. Title, confidentiality

Title to and copyright in any documents belonging to the Principal, which the Principal has made available to the Agent, shall remain with the Principal. Upon demand, such documents shall be returned to the Principal without delay (with the exception of copies of documents which the Agent is legally obliged to keep). Documents may only be used for the purposes specified in the contract, and must not be passed on to third parties without Principal's prior express consent.

The Agent shall be obliged to maintain confidentiality in respect of all illustrations, drawings, calculations, and other documentation and information received. The obligation of confidentiality also extends to technical or commercial data not in the public domain, as well as to personal data. The Agent shall oblige the personnel it deploys to maintain confidentiality. The obligation of confidentiality shall also remain in force on completion or cancellation of the contract. Subcontractors shall likewise be subject to such obligation of confidentiality.

Materials of any kind provided by the Principal shall remain the Principal's property. These materials are to be labelled as such. They are to be stored, marked, and managed separately, and they are to be used in accordance with the principles of economical business management. Use of such materials is solely permissible for orders which the Principal has placed in writing. Evidence of consumption is to be furnished. The Agent shall provide replacements in the event of diminished value or loss, beyond the scope of normal wear and tear or storage time, for which he himself is responsible.

If materials provided by the Principal are processed, converted, combined or mixed with other materials by the Agent, then the Principal shall acquire title to the new object in proportion to the invoice value of the processed, reformed, combined, or mixed materials relative to the value of the other processed materials at the time of processing or combining. The processing or converting shall always be performed on behalf of the Principal. The Agent shall hold any such co-owned new object in safe custody for the Principal free of charge.

Supplies and services rendered by the Agent shall not entail reservation of title.

12. Invoice and payment

Invoices shall be submitted in triplicate. The invoice must quote the Principal's order number. The invoice shall be accompanied by necessary evidence, such as bills of lading, weight notes, time sheets, etc. If legally required information, supporting documentation, or the order number is missing, or if the order number is stated incorrectly, where responsibility for such an error lies with the Agent, the additional expenditure shall be charged to him. Where the above requirements are not met, the Principal shall be entitled to request that the Agent corrects and resubmits such invoices. The Principal reserves the right to refuse acceptance of non-verifiable invoices. In such cases, the allowable period for payment shall not begin until submission of a verifiable invoice. Sec. 286 subsec. 3 BGB shall not apply. All payments are, as a matter of principle, subject to the proviso that delivery of goods or rendering of services is completed in compliance with contract; such payments shall not impair the Principal's right to complain.

Unless otherwise agreed, payment shall be effected net cash within thirty days after contractual delivery or rendering of services, alternatively after the legally required or otherwise agreed to acceptance (see sec. 10), as well as receipt of a correct invoice. Payment shall be deemed effected upon receipt of the Principal's transfer order by the Principal's bank.

13. Elimination of defects

The Agent shall warrant careful and proper performance of his obligations under the contract. The Agent shall particularly warrant compliance with the Principal's stipulated specifications, drawings and other execution requirements (e.g. directives from authorities, professional associations, and trade associations) in compliance with the state-of-the-art technology, and he shall warrant the quality, appropriateness and completeness of the supplied goods, with regard to material, design, and execution, and of the documents (drawings, plans, etc.) that constitute part of the delivery.

Any quality claims or other statements made with regard to the goods, the product, or the service rendered, whether contractually, in advertising, in analyses, in product brochures, or the like, shall be considered as agreed to characteristics under the law. The Principle shall be entitled to cancel the contract and claim damages related to the full scope of supplies and services contracted, even in the event of only minor non-conformance with the agreed to characteristics or minor impairment of usability.

The obligation to complaint at bilateral commercial transactions, according to sec. 377 HGB, applies to the Principal in case of obvious defects only. The notice period shall then be two weeks. The Agent shall eliminate any defects in the supply or service rendered on demand, without delay and at

no charge, including of any ancillary costs, either by way of repair, exchange of the faulty part or replacement delivery, at the Principal's discretion. Any further claims, in particular in respect of cancellation, reduction and/or damages, shall remain unaffected. In urgent cases, the Principal shall also be entitled, in consultation with the Agent, to eliminate the defects itself or to arrange for such defects to be eliminated by a third party.

14. Proprietary rights, licences

The Agent accepts liability for ensuring that the delivered items are unencumbered by rights of third parties in Germany or in the intended destination country, and in particular that no third party patents, licences, or other proprietary rights are infringed by the supply and use of the contracted items. In the event of infringement of industrial property rights, the Agent shall be obliged to compensate the Principal for any resulting loss and shall indemnify the Principal against any such claims by third parties. The Principal shall also be entitled, at the Agent's expense, to acquire from the holder of such rights the approval for delivery, commissioning, use, resale, etc. of the delivered items as necessary to fulfil the contractual purpose if the Agent is unable to acquire such rights, definitively refuses, or disregards such rectification.

The Agent grants the Principal free, non-exclusive, irrevocable licence to all industrial property rights, applications for such rights and inventions arising from performance of this contract in Germany or abroad. The Agent further grants the Principal irrevocable, free, nonexclusive right of use of all know-how and all innovations and improvements arising from performance of this contract. The Principal shall be entitled to transfer to its shareholders' licences and rights of use according to the previous paragraph. This shall also apply beyond the duration of the contract. The Agent shall agree the above-mentioned rights in favour of the Principal expressly with its subcontractors.

15. Advertising material

The Agent may refer to business relations with the Principal in advertising material only with explicit written consent from the Principal.

16. Termination and rescission

The Principal shall be entitled, without prejudice to any other rights pertaining to termination and rescission, to terminate or rescind the contract if the Agent or Agent's authorized representatives directly or indirectly offer, promise, or grant advantages to persons entrusted by the Principal with duties in the fields of research, development, purchasing, or general administration. The Principal shall moreover be entitled to demand damages for all losses sustained. The Principal shall furthermore be entitled to rescind or terminate the contract if insolvency proceedings have been opened against the Agent's assets, or if application has been made for such proceedings, or if the Agent suspends payments other than on a temporary basis.

17. Safety and working regulations

Relevant safety and working regulations of the Principal or Deutsches Elektronen-Synchrotron (German Electron-Synchrotron, DESY) shall be observed in the event of goods supplied to or services rendered on premises of the Principal or DESY. For this purpose, said regulations shall form a component of the contract. The Agent is obliged to follow the instructions of the co-ordinator (technical officer) duly appointed by the Principal or DESY in terms of the Professional Association Accident Prevention Regulations "Allgemeine Vorschriften" (General Provisions), as defined in the current, applicable version. If the supplied goods or services involve hazardous working materials, as defined by the Gefahrstoffverordnung (German Regulation on Hazardous Materials), the nature of such materials must be clearly stated in delivery documents, and the "Safety Data Sheet" must be supplied with said documents in compliance with the REACH-Regulation (EC) No. 1907/2006.

18. Place of performance and venue for disputes

Place of performance for the Agent shall be Hamburg or any other place of use designated by the Principal. The sole venue for all disputes arising from contracts shall be Hamburg, provided the Agent is a commercial trader.

19. Applicable law

Contracts shall be governed by the law of the Federal Republic of Germany.

The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.