General Purchase Conditions (AEB)
- as at October 2012 -
of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

1 Applicability/Components of the Contract

1.1 Applicability of the General Purchase Conditions

Subject to Clause 1.2, these General Purchase Conditions apply to all supplies of goods and services between the Contractor and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH as the contracting party.

The Contractor must prepare its offer based on these General Purchase Conditions. The contract between the parties, in which only GIZ's General Purchase Conditions apply, will be deemed entered into once an order is issued by GIZ, after which any amendments to the contract require the written approval of GIZ. Unless GIZ has expressly agreed otherwise in writing, any general terms of conditions of business and/or payment of the Contractor which are attached to the latter's order confirmation or made available in any other way do not apply. GIZ's General Purchase Conditions apply even if GIZ accepts the goods and/or services in full knowledge of, and without objecting to, any conflicting or differing conditions of the Contractor.

1.2 Components of the Contract

The contract comprises exclusively 1.) either GIZ's written order with all annexes thereto **or** GIZ's contract for supply and services with all annexes thereto, 2.) the technical offer submitted by the Contractor, excluding any general terms and conditions of business and/or payment of the Contractor, 3.) these General Purchase Conditions, 4.) the shipping instructions (as a unilateral determination of contract terms on the part of GIZ), 5.) notes on export procedures (Merkblatt zum Ausfuhrverfahren/only applicable for German residents)[1], 6.) the Contracting Rules for Award of Public Service Contracts entitled 'Vergabe- und Vertragsordnung für Leistungen' (VOL) Part B in the version valid at the time the contract is signed, as well as 6.) GIZ's code of conduct[2].

In the event of discrepancies, the aforementioned contract documents apply in the order stated in subparagraph (1) above.

2 Procedures governing Supply/Transportation/Insurance

2.1 Pre-Shipment Inspections and Customary Quality Inspections

If quality inspections are customary or if it is agreed between the parties that inspections have to be carried out by the manufacturer or the Contractor, these must be conducted at the Contractor's expense. The inspection report (one original and one copy) must be forwarded to GIZ without delay as soon as the inspection has been performed, regardless of whether or not GIZ has taken part in the inspection. The Contractor is liable both for the truth and accuracy of its own inspection reports and for the truth and accuracy of inspection reports prepared by manufacturers or subcontractors.

In addition and if agreed between GIZ and the Contractor, GIZ itself, or a third party acting on its behalf, is entitled to inspect the quality of all goods before they are packed or shipped. The Contractor must inform GIZ at least two weeks in advance as to when the inspection may be conducted. The Contractor must provide the necessary personnel to carry out the inspection as well as the necessary measuring equipment, consumables, fuel and power requirements, in each case free of charge. The inspection conducted by GIZ, or a third party acting on its behalf, does not replace inspections that are customary in the business sector or other inspections which have been agreed.

The following applies to all inspections: Defects must be remedied by the Contractor without delay at its own expense. The inspections do not in any way prejudice GIZ's warranty claims or claims regarding defects and do not replace any necessary acceptance procedure.

2.2 Packing and Marking

Goods must be packed and marked in accordance with the specific requirements for the goods, the mode of shipment used, the means of transport as well as the laws and climatic conditions prevailing in the destination and transit countries.

GIZ may unilaterally specify further instructions regarding marking in the shipping instructions; the Contractor must comply with such further instructions. Unless otherwise specified in the shipping instructions, packages must be marked without any reference to content or company. Each package must be marked at least on two opposite sides, in accordance with GIZ's shipping instructions, with the gross and net weights, external dimensions and, where appropriate, with symbols for fragile goods, hook attachment points, indications of centre of gravity and potential dangers.

The Contractor is liable for proper packing and marking and for damage attributable to inadequate or defective packing or marking. If packing/marking is carried out by third parties, these are deemed subcontractors or vicarious agents of the Contractor. GIZ, as well as forwarding agents contracted by GIZ, are entitled, but not obliged, 1.) to refuse packages which do to not comply with the above conditions, 2.) to demand that the Contractor carry out subsequent performance (remedy or replacement), or 3.) if the Contractor is delayed in

[1] Can be downloaded at: http://www.giz.de/de/downloads/de-merkblatt-tz.pdf
[2] Can be downloaded at: http://www.giz.de/de/ueber_die_giz/284.html

carrying out subsequent performance, a) to remedy the shortcomings itself, b) to arrange for the shortcomings to be remedied, or c) to procure a replacement, in each case 1.)-3.) at the expense of the Contractor.

2.3 Delivery Clause

The term “delivery clause” means the Incoterms agreed in the contract, any amended or supplemented Incoterms in their amended or supplemented form, or, where no Incoterms have been agreed, any other individually agreed delivery clauses.

2.4 Delivery Documents

The term “delivery documents” means the documents listed under this Clause 2.4. and in the shipping instructions, as well as all additional accompanying documents which are required to deliver the goods to the location of use without any trouble or interruption in accordance with the respective export and import conditions.

The Contractor must make available the delivery documents in the quantity and in the language specified in the shipping instructions at the required time, but always in good time before the goods are shipped.

Unless otherwise specified in the shipping instructions, the delivery documents must be provided in the required language as stated in Germany's “K&M” (Konsulats- und Mustervorschriften) consular and import/export reference manual.

In addition to quoting GIZ's order number, the packing list must state the precise content, the gross and net weights and the complete markings of each package. An additional copy of the list must be included in each package.

In addition to the commercial invoice referred to in Clause 3.2.2 below, a so-called special invoice must be provided by the Contractor for customs clearance in the destination country. It must show the price of each individual article and must be drawn up as in a standard commercial CIF or CIP export transaction. If so required in the destination country, it must also be certified.

2.5 Additional Documents

The term “additional documents” means the documents listed under this Clause 2.5,, provided they are not already included under Clause 2.4.

The technical inspection certificates or official approval or registration certificates or certificates of origin or similar certificates specified in detail in GIZ's written order or contract for supply and services must be delivered to GIZ at the latest together with the delivery documents.

Two copies each of the operating instructions and any necessary assembly instructions in the language commonly used in the country of destination must be delivered together with the goods. If additional foundation layout plans and circuit diagrams are required for preparations for installations, such documents are to be submitted to GIZ in duplicate, quoting GIZ's order number, as soon as the written order or the contract for supply and services has been received.

2.6 Export Procedures

The Contractor must comply with the applicable regulations regarding foreign trade, payments and customs clearance.

For shipments which are delivered from an EU country to a third country, the Contractor is obliged to register the export in the AES (Automated Export System) with its inland customs office and to do so either as GIZ's direct representative if GIZ is listed as the exporter in the shipping instructions, or in its own name if the Contractor itself is listed as the exporter in the shipping instructions.

If the goods are supplied by a branch or a production facility of the Contractor in the Federal Republic of Germany, the Contractor must comply with GIZ's notes on export procedures.

The Contractor is liable vis-à-vis GIZ for damage arising as a result of a failure to comply with the requirements under this clause.

2.7 Transportation

If the Contractor is responsible for transportation, any assistance with the transportation which is provided by GIZ or the recipient of the goods or services in the country of destination does not release the Contractor from its obligation to duly carry out transportation to the place of delivery.

2.8 Special Conditions for Transportation by a Forwarding Agent of GIZ

If the main transportation is arranged by a forwarding agent contracted by GIZ, the following provisions apply:

The Contractor must notify the forwarding agent named in the shipping instructions of the delivery of the goods in good time before the agreed delivery date. Should no suitable means of transport be available to transport the goods to meet the agreed date, the Contractor is obliged to store the goods ready for shipping at its own expense and risk – but at the longest for one month – until they can be transported.

The forwarding agent contracted by GIZ is entitled to handle the complete transportation of the goods, including (without limitation) monitoring deadlines and issuing any necessary reminders to the Contractor acting in the name and on behalf of GIZ. The Contractor must comply in good time with the forwarding agent’s instructions. Any extra costs incurred as a result of the failure to comply with the shipping instructions or the forwarding agent's instructions must be borne by the Contractor.

The delivery documents must be delivered to the forwarding agent contracted by GIZ; the Contractor must also send a copy of each delivery document to GIZ.

2.9 Partial Deliveries

Partial deliveries may only be made with the prior written consent of GIZ. They must be identified as such in all shipping and delivery documents, as well as in the marking on the packages, and must be consecutively numbered.

2.10 Delivery Dates

Any early delivery of goods and/or services is only permitted with the prior written consent of GIZ or of the forwarding agent contracted by GIZ.

3 Payment Terms and Prices

3.1 Prices

The agreed prices are fixed prices and exclude additional claims on the part of the Contractor or price increases of any kind. Packing costs, additional costs, costs for drawing up or obtaining the delivery documents defined in Clause 2.4. and the additional documents as defined in Clause 2.5., transportation costs, assembly, installation as well as all customary accessories or accessories required for the commencement of operation are included in these prices.

The Contractor is obliged to make use of any possible exemption from value-added tax. If and insofar as goods or services are subject to value-added tax, the Contractor must show this separately in the invoice.

3.2 Payment Terms

3.2.1 Due Date

The purchase price must be paid within the agreed period for payment after submission of a proper itemised commercial invoice (Clause 3.2.2.), the delivery documents specified in Clause 2.4., the additional documents specified in Clause 2.5. as well as evidence of shipment as defined in Clause 3.2.2. If advance payments or partial payments are agreed, payment must be made within the agreed periods and upon presentation of the agreed documents and collateral. Unless otherwise agreed, where a contract for supply and services has been executed, the final invoice is not payable until a formal acceptance inspection has been carried out.

If partial deliveries not authorised under Clause 2.9. are made, the total purchase price is not due until the payment requirements for all goods and services, including the final partial delivery or final partial service, are fulfilled.

Discount periods do not commence until the claims for payment become due. To comply with a discount period, it is sufficient for the payment to have been effected by GIZ (as opposed to be received by the Contractor) within the period.

3.2.2 Commercial Invoice and Evidence of Shipment

The commercial invoice must be made out to GIZ and must quote GIZ's full order number. A separate commercial invoice must be made out for each shipment. If advance payments are agreed, they must be invoiced in the commercial invoice against which an advance payment is offset, and deducted once more from the overall amount.

Depending on the agreed delivery clause (as defined under Clause 2.3.), the following documents will be recognised as evidence of shipment: acknowledgements of receipt issued by the forwarding agent contracted by GIZ, ocean bills of lading, duplicate railway bills of lading, post office receipts, and FIATA combined transport bills of lading, air waybills or road haulage bills of lading made out by the respective carrier.

3.2.3 Assignment

Claims against GIZ may only be assigned with the prior written consent of GIZ.

3.2.4 Offsetting Claims/Rights of Retention

The Contractor may offset only such claims as are undisputed or established as having legal force. GIZ is entitled to all statutory rights of setting off and rights of retention without limitation.

3.2.5 Warranty Retention Amount

Unless a more extensive warranty retention amount has been agreed, GIZ is entitled to retain 15% of the invoice amount until the end of the statutory period (or the contractually agreed period, if this is longer) for warranty claims, if, at the time payment becomes due, settlement, insolvency or liquidation or similar proceedings have been initiated against the Contractor or an application for such proceedings has been filed.

4 Transfer of Risk/Ownership

The risk relating to price and performance is transferred in accordance with the delivery clause (as defined in Clause 2.3.), however no later than when ownership of the goods is transferred from the Contractor to GIZ.

Unless otherwise agreed, ownership of the goods is transferred from the Contractor to GIZ at whichever of the times listed below occurs first: the transfer of risk or full payment of the purchase price (with the exception of any agreed share for assembly/installation of work and any agreed warranty retention amount). If, at that time, the delivery of the goods has yet to take place, the Contractor must hold the goods in safekeeping for GIZ free of charge and/or hereby assigns to GIZ any present and future claims against third parties for the surrender of the goods.

Retention of title to the goods must be agreed in writing in a separate document signed by both parties.

Material or tools made available by GIZ or by the recipient named in the contract will remain the property of either GIZ or the recipient. Any processing or alterations carried out by the Contractor shall be carried out on behalf of the owner of processed or altered material, i.e. GIZ or the named recipient.

5 Breaches of Contract/Warranty

5.1 Default

If the Contractor is in default, GIZ is entitled to all statutory claims without limitation. If the Contractor is in default, GIZ is entitled to impose a contractual penalty amounting to 0.2% of the agreed purchase price per calendar day, up to a maximum of 5% of the agreed purchase price (including packing and freight costs, plus value-added tax where applicable). The contractual penalty may be invoked by GIZ until the time at which the final payment is

made, even if this right was not reserved upon acceptance of the goods. The contractual penalty will be deducted from more extensive claims for damages.

5.2 Warranty

The Contractor warrants that all goods and services are free from defects and that they fulfill the characteristics as agreed in the contract.

If a contract for supply and services has been executed, the Contractor warrants that the goods used (with the exception of goods provided by GIZ) as well as the manufacture, construction and planning (with the exception of manufacture, construction and planning carried out by GIZ) are free of defects and fulfil the agreed characteristics.

The Contractor warrants that the goods and services are suitable for use at the location of use taking account of the climatic, technical and legal conditions prevailing there and that they comply with the pertinent technical norms (e.g. EN, ISO, DIN, and VDE) in each case. The location of use of the goods is specified in GIZ's written order or in the contract for supply and services or, insofar as the location of use is not explicitly stated, it is the capital city of the destination country.

The Contractor warrants that the goods and services have no defects of title nor breach any copyrights, industrial or intellectual property rights or any other rights of third parties.

5.3 Claims for Defects

GIZ is entitled to all statutory claims concerning defects without limitation.

In the event of disagreement over defects, the Contractor bears the burden of proof for demonstrating that the said goods and services are free of defects.

GIZ is also entitled to enforce claims for damages incurred by the user of goods and services that arise due to defects or to failure on the part of the Contractor to comply with other contractual obligations.

The defects liability period for goods which have been repaired or replaced commences once again if the Contractor was obliged to render subsequent performance. For the period for which goods and/ or services are unavailable due to defects, the defects liability period is suspended.

5.4 Examination of Goods and Lodging of Complaints

To comply with the statutory obligation to examine goods and lodge complaints in respect of defects in due course, it is sufficient if GIZ examines the goods at the location of use. It is sufficient if the inspection is carried out with the resources available at the location of use. In the event of partial deliveries, the goods need not be examined until the final partial delivery has arrived at the location of use. If it is agreed that the goods are to be installed, assembled or placed into operation, GIZ does not need to inspect the goods before these steps have been carried out. If several goods of the same type are delivered, it is sufficient to examine the goods on a random basis. If random checks reveal defects, GIZ may assert claims for defects in relation to all of the goods and services.

Complaints regarding defects must be lodged with the Contractor without undue delay as soon as such defects are discovered. In cases where goods and services are intended for a foreign country, notice of defects is given in good time if lodged within 30 calendar days of whichever of the following occurs latest: 1.) arrival at the location of use or 2.) completed installation, assembly or commencement of operation. If defects are concealed, notice of the defect is given in good time in all cases if lodged within 15 calendar days of such defects being discovered.

If the Contractor fraudulently conceals a defect, it may not plead that GIZ breached its obligation to examine the goods and lodge a complaint in respect of defects. The same applies if the Contractor was unaware of the defect at the time of delivery due to gross negligence.

5.5 Liability

The Contractor is liable for all damage caused by itself, persons it employs for the performance of the contract, and its subcontractors, even if this damage was only indirectly caused in connection with the contract.

6 General Provisions

6.1 Rights of Termination and Withdrawal

GIZ is entitled to all statutory rights of termination and withdrawal without limitation. Furthermore, GIZ is entitled to withdraw from the contract if the Contractor becomes insolvent, if an application to initiate settlement, insolvency or liquidation proceedings is submitted, a liquidation settlement is reached, a decision on a restructuring plan is taken or a comparable measure is being carried out under a different legal system.

6.2 Applicable Law

The contract and all rights and obligations under or in connection with the contract are subject to the law of the Federal Republic of Germany, excluding the applicability of the United Nations Convention on Contracts for the International Sale of Goods, dated 11 April 1980, and other regulations within the meaning of Article 3, No. 2 of the Introductory Act of the German Civil Code.

6.3 Place of Jurisdiction

The sole places of jurisdiction are Bonn and Frankfurt am Main. GIZ may also bring legal action against the Contractor before the competent court at the location of the Contractor’s registered office.

6.4 Confidentiality/Publications

All data relating to the contract as well as any other information of which Contractor becomes aware under or in connection with this contract must be treated confidentially, also beyond the end of the contract. The Contractor is not permitted to use this data and information for its own purposes.

The publication of documents regarding the subject matter of the contract requires the prior written consent of GIZ. Consent is not required if the Contractor wishes to give a brief account of the contract and the goods and

services involved for public relations purposes. GIZ is entitled to publish documentation together with name details; this does also apply if the contractual relationship ends prematurely.

6.5 Written Form

Orders issued by GIZ are only valid if they are in writing. Supplements and amendments to the contract, including this clause, are valid only when made in writing.

6.6 Invalidity

Should individual provisions of this contract be or become invalid or unenforceable, the validity of all other provisions in the contract shall remain unaffected. The invalid or unenforceable provision is to be replaced by a valid and enforceable provision, the effects of which most closely replicate the economic objective which was pursued by the contractual parties with the invalid or unenforceable provision. This shall apply accordingly if it emerges that the contract has gaps or omissions.

7 Integrity and Social Standards

7.1 Integrity Rules

The Contractor is obliged to respect the rules and guidelines contained in the Code of Conduct (annex to the contract) in its dealings with GIZ's employees.

The Contractor is not permitted to accept any additional remuneration from third parties in connection with the contract.

The Contractor must not

- directly or through a third party, offer or give to a third party any gift or grant any other pecuniary and/or non-pecuniary advantages for itself or a third party in connection with the award and/or performance of the contract; this also includes facilitation fees;
- directly or through a third party, accept or demand gifts or other pecuniary and/or non-pecuniary advantages from third parties for itself or for others in connection with the award and/or performance of the contract: or
- agree with one or more other companies to restrict the competition.

The term “third party” includes employees, family members or other closely connected persons of both parties.

This Clause 7.1. does not apply to low value token gifts. Low value token gifts are occasional presents and other advantages within appropriate bounds as are in line with normal business practice and the value of which does not exceed EUR 35.00 per giver, recipient and calendar year.

7.2 Social Standards

In performing the contract, the Contractor is obliged to comply with the Fundamental Principles and Rights at Work in accordance with the Declaration of the International Labour Organization (ILO) of 18 June 1998 (the freedom of association and the right to collective bargaining, the elimination of all forms of forced and compulsory labour, the abolition of child labour and the elimination of discrimination in employment and occupation). In particular, the contractor is obliged in the performance of the contract to comply with the regulations through which the respective core labour standards of the ILO (conventions No. 29, No. 87, No. 98, No. 100, No. 105, No. 111, No. 138 and No. 182) have been enacted into the law of the country of destination. If the country of destination has not ratified one or more core labour standards or not enacted them in national legislation, the Contractor is obliged to comply with those regulations in the country of destination which pursue the same objective as the core labour standard.

7.3 Legal Consequences

If the Contractor breaches an obligation under Clauses 7.1. or 7.2. causing GIZ to terminate the contract, the Contractor is responsible for the termination.

In each of the cases set out under Clause 7, GIZ is entitled to exclude the Contractor from future competitions for a limited period and to a reasonable extent.

If the Contractor breaches an obligation under Clause 7.1. or 7.2., the Contractor is obliged to pay a contractual penalty of EUR 25,000 for each breach. If the advantage given is greater than EUR 25,000, the Contractor must pay a contractual penalty equal to this sum. This is without prejudice to any further claims for damages by GIZ. However, the contractual penalty will be deducted from such claims for damages.