

Supplementary terms and conditions of Norddeutscher Rundfunk for awarding contracts for the supply of goods and services – hereinafter referred to as "ZVB/NDR"

1 Basis

1.1 The supplementary terms and conditions (ZVB) of Norddeutscher Rundfunk (**NDR**) take into account the general situation at the time of the conclusion of contracts based on consistent procurement practices. These are supplementary terms and conditions within the meaning of Article 1 of the General Terms of Contract for the Provision of Supplies and Services (Allgemeine Vertragsbedingungen für die Ausführung von Leistungen/ VOL/B).

1.2 In addition to the ZVB/**NDR**, the VOL/B, as amended at the time of the conclusion of contract, form an integral part of the contract. The VOL/B were last published in the Federal Gazette No 178a of 23 September 2003.

1.3 The contractual relationships are furthermore governed by the German Regulation PR No 30/53 on prices for public contracts of 21 November 1953 (Federal Gazette No 244 of 18 December 1953), as amended.

2 Scope of application (cf. Article 1 VOL/B)

These ZVB/**NDR** apply to all contracts for the provision of supplies and services – except for construction works. In the field of information technology, the standard terms and conditions of **NDR** for the supply of goods and services in the field of information technology (IT terms/**NDR**) may apply in a supplementary manner.

3 Order placement

3.1 To be effective, any orders placed by **NDR** must be in writing and duly signed by two persons authorised to represent the **NDR**. This applies mutatis mutandis to any changes or additions to contracts. Information on powers of attorney can be obtained from **NDR**'s general counsel, Rothenbaumchaussee 132, 20149 Hamburg, Germany. To be effective, oral arrangements must be confirmed in writing by **NDR**. Where, in urgent cases, an order is placed orally, a written contract shall be obtained without undue delay.

3.2 Orders placed electronically by **NDR**'s Einkauf und Logistik (procurement and logistics) department may be dispatched without a signature on the original if the value of the order is below EUR 5,000 and if this procedure has been agreed with the supplier in writing in advance.

3.3 The following documents apply to orders placed by **NDR** in the following order of precedence:

- a) the service description and specifications/service range (plans, mono- and detail drawings, calculations, etc.),
- b) written bids, offers, and orders, containing the special terms and conditions of **NDR** and any minutes of the negotiations,

c) regulations, guidelines, and working group results of ARD/ZDF, as amended at the time of the conclusion of contract,

d) any supplementary terms and conditions of **NDR**,
e) standard terms and conditions of **NDR** for the supply of goods and services in the field of information technology (IT terms/**NDR**) to the extent that they designated as an integral part of the contract,

f) these supplementary terms and conditions,
g) General Terms of Contract for the Provision of Supplies and Services - Part B (VOL/B),

h) all ordinances (such as the Workplaces Ordinance ("Arbeitsstättenverordnung"), Hazardous Substances Ordinance ("Gefahrstoffverordnung")), regulations (such as accident prevention regulations of insurers), guidelines (such as workplace guidelines), norms (such as DIN, VDI/VDE, ISO) and industry standards (such as the information sheets of the trade associations) in their respective applicable version. The rules and regulations of the federation of liability insurers, the grid connection conditions of the local authorities and the gas, water, district heating, and electricity suppliers.

3.4 In the case of deviations and inconsistencies, the integral parts of the contract listed under Section 3.3 shall apply in the order set forth there; text and description shall have priority over drawings, unless the contractual documents expressly provide that drawings, designs, samples, or models shall have priority for performance.

3.5 Service specifications within the above meaning also include technical guidelines and technical terms and conditions of delivery.

4 Nature and scope of performance (cf. Article 1 VOL/B)

4.1 All prices specified are fixed prices exclusive of the respective applicable VAT. Prices include the cost of packaging, loading, shipment to the point of delivery or acceptance, and unloading, unless otherwise provided in the service specifications.

4.2 The supplier shall, where applicable, take back all packaging materials and dispose of them at its own cost.

4.3 The standard price shall be the contractual price even if in the offer the total amount of an ordinal figure (item) does not correspond with the result of the multiplication of the stipulated quantity with the standard price.

5 Alteration of services (cf. Article 2 VOL/B)

5.1 To be effective, any changes or additions to the contract must be made in writing and signed by two persons authorised to represent **NDR**. Information on powers of

- attorney can be obtained from **NDR's** general counsel, Rothenbaumchaussee 132, 20149 Hamburg, Germany.
- 5.2 In the event that the supplier demands a higher remuneration based on Article 2 (3) VOL/B, he shall notify **NDR** in writing, if possible stating the amount, in a timely manner prior to commencing performance.
- 5.3 The supplier shall prove upon request that the change in performance led to lower or higher costs.
- 6 Performance (cf. Article 4 VOL/B)**
- 6.1 **NDR** is entitled to review whether the performance conforms to the terms of the contract.
- 6.2 The supplier shall obtain all official permits and licences required to execute the order. If this is not possible for objective reasons, the supplier shall inform **NDR** in a timely manner that a permit is required. Where appropriate, **NDR** shall issue specific powers of attorney to authorise the supplier to represent **NDR** in obtaining the permit.
- 7 Accident prevention on site (cf. Articles 4 and 10 VOL/B)**
- 7.1 The supplier shall fully comply with the national occupational safety and accident prevention regulations, and the generally recognised rules and requirements relating to technological safety and occupational medical care. The supplier shall provide **NDR** with evidence thereof at its request. The supplier hereby warrants that the equipment to be delivered – where applicable – meets the basic requirements of the European Union's EC certification and that it has been appropriately labelled.
- 7.2 In the case of electrical equipment and live objects (such as mobile distributors and extension cords), which are brought by service providers or suppliers to **NDR's** premises as necessary work equipment, the supplier shall independently ensure that they have been tested in accordance with the DGUV/German Social Accident Insurance, Regulation 3 and are, therefore, safe to use. Furthermore, the supplier shall, in his/her own responsibility, ensure compliance with the safety regulations with regard to all work equipment.
- 7.3 In the event that, as part of the contractual performance, welding work or work involving special hazards (e.g. risk of explosion, fire, heat, smoke and dust development, environmental pollution) has to be carried out on **NDR's** premises, the supplier agrees to inform **NDR** thereof in a timely manner prior to the commencement of such work, and, where necessary, obtain **NDR's** written permission. The state occupational safety and accident prevention regulations and special safety requirements of **NDR** shall be strictly adhered to. Additional information is available to contracting parties in the **NDR** brochure Outside Suppliers and Service Providers on-site at **NDR**.
- 7.4 The supplier shall immediately inform **NDR** of any accidents involving personal injury or property damage.
- 8 Subcontractors**
- 8.1 The supplier may only delegate the provision of services for which the supplier's business is equipped with the prior consent of **NDR**. The delegation of services to subcontractors specified in the supplier's offer, to which **NDR** has not objected, will be deemed to have been approved.
- 8.2 In all other respects, the following applies:
- a) The supplier may only delegate services to subcontractors who are skilled, efficient, law-abiding, and reliable.
- b) Prior to engaging subcontractors, the supplier shall inform **NDR** in writing of the nature and scope of the service to be delegated, and the name and address of the proposed subcontractor. **NDR** is furthermore entitled to require proof of expertise, efficiency, compliance with laws and regulations and reliability, of the proposed subcontractor.
- c) If the supplier employs subcontractors who are not skilled, efficient, law-abiding, or reliable, or if he fails to provide, at **NDR's** request, evidence of compliance with these requirements, **NDR** will be entitled to set a reasonable deadline for remedy and, if this passes without yielding any result, withdraw the order. Under these conditions, **NDR** may also ask the supplier to replace the subcontractor at the supplier's expense.
- d) The supplier shall ensure that the subcontractor does not delegate the services assigned to him/her without **NDR's** prior written consent. The above provisions apply mutatis mutandis to transfers/assignments.
- 9 Termination for good cause (cf. Article 8 VOL/B)**
- 9.1 A good cause for termination is given, for example, if the supplier offers, promises, or grants, benefits to persons who are involved in the preparation, conclusion or implementation of the contract on behalf of **NDR** whether directly or indirectly through related parties. Such actions of the supplier will be treated in the same way as the actions of persons engaged or employed by him, irrespective of whether the benefits are offered, promised or granted to the aforementioned persons directly or to a third person in their interest.
- 9.2 To be effective, the notice of termination for good cause shall be served in writing.
- 9.3 **NDR** is entitled to terminate only parts of the performance.
- 10 Restrictions of competition (cf. Article 8 (2) VOL/B)**
- If the supplier has demonstrably entered into an agreement that constitutes an unlawful restriction of competition, he/she shall pay 15% of the order value to

NDR, unless either party can prove that the actual damage incurred was higher or lower.

This shall apply even if the contract has been terminated or completed.

This is without prejudice to any contractual or statutory claims of **NDR**, in particular those under Article 8 (2) VOL/B.

11 Acceptance (cf. Article 13 VOL/B)

11.1 The service or delivery shall be formally accepted. Article 13 (2) (3) VOL/B does not apply. The supplier shall request acceptance from **NDR**.

11.2 Acceptance shall take place by written declaration of acceptance of the person responsible at **NDR**. Any defects of the delivery or service shall be documented in the acceptance protocol.

11.3 **NDR** will only accept deliveries which include a delivery note, containing **NDR**'s purchase order number and all data required to check the contractually agreed specifications.

11.4 If partial deliveries and/or services have been agreed, they shall be marked accordingly on the delivery notes and/or specifications sheets, shipping documents, and/or accounting documents, etc.

11.5 Any original documents produced by the supplier for the performance of the contract, including data and data carriers, drawings as transparent copies, and documents furnished to the supplier by **NDR**, shall be surrendered to **NDR** upon **NDR**'s request, or, at the latest, at the time of the acceptance of the work; they shall become **NDR**'s rightful property.

In the event that, according to the contractual basics, the supplier is obliged under the contract to deliver documentation, he/she shall deliver it separately to **NDR** at the time of acceptance. **NDR** may retain payments to the supplier, or refuse acceptance, if and as long as the documentation is not complete and has not been duly and properly delivered.

11.6 The supplier shall have no right of retention whatsoever to the documents he/she produced and that are necessary for implementing the plans. In this respect, the supplier is under a duty to perform in advance until the ordered service or delivery has been accepted or completed, and upon conclusion of the contract the supplier transfers the right to use his/her plans and documents to **NDR**.

11.7 Unless otherwise agreed, the risk shall pass to **NDR** at the time of taking possession of the delivery at the delivery point if delivery is the agreed performance, or upon acceptance if assembly work is the agreed performance.

12 Warranty claims/damages (cf. Article 14 VOL/B)

The limitation period for warranty claims is, unless otherwise agreed, 2 years commencing on the date of

acceptance. If the manufacturers of individual components grant longer warranty periods or guarantees, they shall apply.

13 Invoices (cf. §§ 15 and 17 VOL/B)

13.1 **NDR** makes all payments exclusively on the basis of invoices. Depending on their purpose, they shall be referred to as invoices on account, partial final invoices or final invoices; invoices on account and partial final invoices shall be consecutively numbered.

13.2 Invoices shall be verifiable by presenting adequate evidence (e.g. time sheets, delivery notes, etc.) and shall be sent to the invoice address provided, stating the purchase order number and the recipient of the service. Invoices for deliveries and services on a time and material basis shall be issued together with corresponding evidence of materials used and time worked. They must be confirmed by **NDR**. Evidence of the time worked and material used can be confirmed only if both are within the scope of the written order and if specified in such detail that it can be checked for its accuracy and reasonableness. Measurements shall be taken in the presence of **NDR**.

13.3 Invoices shall be drawn up showing the contractual prices excluding sales tax (net prices); sales tax shall be shown at the end of the invoice with the tax rate applicable at the time of the creation of the tax, or, in the case of final invoices, at the time the service/delivery was performed.

13.4 Each invoice shall state the scope and value of all previous services, and all payments already received, separately stating the amounts of sales tax contained therein.

14 Services based on hourly rates (cf. Article 16 VOL/B)

The supplier shall submit on a weekly basis lists in duplicate copy showing services based on hourly rates. They shall contain

- the date,
- a precise designation of the place of performance,
- the type of performance,
- the names of employees and their respective professional, salary, or wage groups,
- the hours worked per employee, where appropriate broken down to extra hours, night work, work on Sundays or on public holidays, and any hardships or difficulties not taken into account in the hourly rate, and
- the characteristics and parameters of any devices/equipment.

Invoices for hourly rates shall be broken down according to the lists. The principal shall retain the originals of the lists, the supplier shall receive the confirmed copies.

15 Payment (cf. Article 17 VOL/B)

15.1 All payments shall be made non-cash in Euro. Unless otherwise agreed, payment shall be made strictly within 30 calendar days from receipt of a proper invoice (Section 13.1 and 13.2).

15.2 In the case of payment by transfer from an account, the date of payment shall be the day on which the financial institution received the executable payment order.

15.3 In the case of syndicates, the Principal may make payments with discharging effect to the authorised representative of the syndicate who is authorised to perform the contract, or according to his/her instructions. This shall apply even after the syndicate has been dissolved.

16 Assignment of claims (cf. Article 17 VOL/B)

Without **NDR**'s prior approval, the supplier is not entitled to assign to third parties any claims to which he is entitled against **NDR** under an order.

17 Excess payments (cf. Article 17 VOL/B)

17.1 In the case of an excess payment, the supplier shall refund the excess amount paid. If he/she fails to pay within 14 calendar days from receipt of the letter reclaiming the excess amount, he/she shall be in default from this date and shall pay interest on default of 8% above the base rate in accordance with Article 247 of the German Civil Code (BGB).

17.2 If **NDR** reclaims excess payments (Articles 812 et seq. BGB), the supplier may not invoke the defence of the loss of enrichment (Article 818 (3) BGB).

18 Set-offs (cf. Article 17 VOL/B)

The supplier may only set off claims that are undisputed, or res judicata against the Principal's claims. **NDR** shall be entitled to set off due counter-claims of any sort.

19 Security (cf. 18 VOL/B)

19.1 The security for the performance of the contract extends to the performance of all and any obligations under the contract, in particular to the contractual performance of the service, including billing, claims based on defects, and damages.

19.2 The security for claims based on defects extends to the satisfaction of the claims for defects, including damages and claims based on billing.

20 Guarantee (cf. Articles 17 and 18 VOL/B)

20.1 If the tender documents require that security be furnished in the form of a guarantee, **NDR**'s standard form ("supplementary agreement") shall be used.

20.2 The guarantee shall be furnished by

- a credit institution, or
 - a credit or surety bond insurer, accredited in the European Union, or
- in one of the Contracting States to the Agreement on the European Economic Area, or to the WTO Treaty relating to public procurement.
- If security is provided in the form of a guarantee, it is subject to the precondition that **NDR** accepts and acknowledges the guarantor as suitable.

20.3 The deeds of guarantee shall be drafted in correspondence with **NDR**'s standard forms.

20.4 The guarantee shall be furnished for the full amount of the security in one deed only.

20.5 The deed relating to the advance payment guarantee will be returned upon request if the advance payment has been credited to due payments.

21 Contracts with foreign suppliers

When interpreting the contract, the German version of the contract shall be the sole binding version. Declarations and negotiations shall be made and/or conducted in German. The contractual and extra-contractual relationships between the contracting parties shall be governed exclusively by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods.

22 Copyrights, publication, and related rights

22.1 The supplier transfers to **NDR** the exclusive, transferable, and unlimited usage rights to all plans, drawings, and any other elaborations that may be produced. In particular, **NDR** shall receive the right to reproduce, copy, publish, edit, and, in particular, to modify the aforementioned documents. The usage right is included in the reasonable remuneration due for production.

22.2 The supplier bears the risk of any copyright, licence, and industrial property right infringements of any kind. He/she shall ensure that the provision of his/her services/deliveries infringes no third party rights that may give rise to claims against **NDR**. **NDR** is entitled to demand to be informed by the supplier of the precautions he/she has taken.

22.3 Final planning documents of **NDR** that are made available to the supplier may be used exclusively for the purpose of the contract; they may be used for other purposes only with **NDR**'s prior written approval. Such documents shall be kept strictly confidential in relation to third parties.

22.4 In the event that a third party raises claims against **NDR** on the grounds of an infringement of intellectual property rights through the usage of the delivered products, and if consequently their usage is restricted or prohibited, the supplier shall be liable as follows:

The supplier shall at his/her discretion and his/her own cost alter or replace the delivered products in such a manner that the intellectual property right is not infringed whilst essentially corresponding with the agreed service or functional specifications in a way that is reasonable to **NDR**, or indemnify and hold harmless **NDR** from and against any licence fees claimed by the owner of the intellectual property right or the third party. If the supplier fails to do on reasonable terms, he/she shall take the products back and refund the remuneration paid, less an amount taking into consideration the scope and the time of usage. In this case, **NDR** shall return the products. The supplier's liability shall be subject to the precondition that **NDR** immediately informs the supplier of any third party claims, refrains from acknowledging the intellectual property right infringement claimed, and either leaves any disputes, including any extra-judicial arrangements, to the supplier or conducts them only in agreement with the supplier. Any legal fees incurred by **NDR** through its legal defence shall be borne by the supplier. If **NDR** ceases usage in order to minimize damage, or for other sound reasons, it shall inform the third party that the cessation of usage does not constitute an acknowledgment of the alleged intellectual property right infringement.

23 Data protection / secrecy / confidentiality

- 23.1 The supplier warrants that he/she and all persons entrusted by him/her with the provision of the agreed services / deliveries are familiar with and observe the statutory provisions relating to data protection. To this effect, the supplier shall take the necessary technical and organizational measures. The supplier hereby acknowledges that the EU General Data Protection Regulation (Regulation (EU) 2016/679 - GDPR) applies to the entirety of **NDR**.
- 23.2 The supplier shall take all measures necessary to perform data backups.
- 23.3 The supplier warrants that the goods/services to be supplied by him/her relating to the processing of personal data satisfy the legal requirements of German and European data protection laws, and he/she shall present evidence thereof to **NDR** without further request, by presenting written confirmation and other documents in an adequate form. Where data are processed on behalf of **NDR** within the meaning of Article 28 GDPR, a data processing agreement shall be concluded based on **NDR**'s standard contract for data processing pursuant to Article 28 GDPR.
- 23.4 The supplier shall ensure that, including himself/herself, all persons employed by him/her for the execution of the order are committed to respect data secrecy, and shall present evidence hereof to **NDR** at its request.
- 23.5 The supplier shall treat all information relating to **NDR**'s trade or business secrets, or to other matters concerning **NDR** or its employees, of which he/she becomes apprised during the execution of the contract or in connection with it, as strictly confidential. In particular, the supplier shall not be permitted to use such knowledge for other purposes than the contractual purpose, nor to pass it on to third parties. The supplier is aware that if he/she breaches this obligation, he/she will make himself/herself liable to damages or even prosecution.
- 23.6 The supplier shall continue to be bound by this obligation to maintain secrecy even after the contract terminates.
- 23.7 Any documents of **NDR** made available to the supplier under Section 5.5 to execute the order (Section 5.5) shall remain the property of **NDR**. They shall be returned by the supplier upon completion of the order, at the latest, or earlier at **NDR**'s request.
- 23.8 The supplier shall be liable for any damage suffered by **NDR** and caused by the supplier or his/her vicarious agents by breaching the aforementioned provisions. The supplier shall provide his/her employees and vicarious agents with information about the obligations and oblige them in a suitable manner. **NDR** is entitled to take suitable measures to monitor observance of the aforementioned provisions.

24 Place of performance

The place of performance is the place of delivery and performance specified by **NDR** in the order.

25 Place of jurisdiction

The place of jurisdiction for all disputes is Hamburg, Germany.