

BUREAU INTERNATIONAL DES POIDS ET MESURES General Purchasing Conditions

1. Acknowledgement of orders

The acknowledgment of the Bureau international des poids et mesures (hereinafter also the BIPM) orders implies the Contractor's acceptance of the present General Purchasing Conditions (GPC).

The GPC are constituted by the general conditions herein and any specific conditions mentioned by the BIPM in its order.

The BIPM will only be bound by the order if it is written and issued by the BIPM's procurement services. The order, the specific conditions and the GPC are deemed accepted as soon as the Contractor accepts the order.

2. Information and data handed over

The Contractor shall only use the information and data, oral or written (including software) obtained from the BIPM and/or its staff in the framework of the order's performance. All data and information are the BIPM's property; upon BIPM's request, such data and information, and all copies, shall be immediately handed over insofar as such data and information are under written form, floppy disk or magnetic tape.

The Contractor shall not disclose any such data and information to any third body without the prior written agreement of the BIPM. The Contractor shall not declare the BIPM as its client and shall not use the BIPM's name and logos.

The BIPM remains the sole owner of the studies, surveys, samples and documents, whatever their nature is, handed over or sent by the Contractor to the BIPM in the framework of the order's planning and performance. The Contractor waives in advance any claim for payment with regard to these studies, surveys, samples and documents.

3. Equipments and devices made available to the Contractor

The BIPM remains the sole owner of the equipments and devices (e.g. prototypes, tools, templates, molds, gauges, plans, software, drawings, models and patterns, technical specifications, reports and all other kind of documents, stands and mountings) made available by the BIPM to the Contractor, as a loan, in order to allow it to perform its obligations.

Equipments and devices made available to the Contractor by the BIPM are under the Contractor's custody. It shall contract all insurances necessary for insuring all the risks associated with this custody. Insurance Certificates covering those risks shall be sent for information to the BIPM.

Whenever the properties of the Contractor are under a seizure procedure, it shall inform accordingly the BIPM and let the Bailiff know that the equipments and devices made available by the BIPM to the Contractor belong to the BIPM and are immune of any legal and administrative constraints.

4. Assignment

The Contractor shall not assign or sub-let the order's performance, in all or part, without the BIPM's prior written agreement. If a sub-contracting contract is in force, the Contractor is still responsible for the complete performance of the order.

5. Price - Invoices - Payment

Prices stated in the order are always to be considered as D.D.U. Incoterm, BIPM's headquarters. All freight and shipping expenses of goods, equipments and devices delivered to the BIPM are paid by the Contractor. The BIPM is in charge of all the import and customs procedures.

Upon delivery and acceptance of the goods and/or services and full performance of the order, the BIPM shall pay to the Contractor the unit prices stated in the order, within the stated milestones. Pursuant to the immunities enjoyed by the BIPM, unit prices shall be franco, without customs taxes and any taxes.

Prices are firm and fixed.

The order's currency shall be Euro.

Payments shall be made by wire transfer or by banque cheque.

The Contractor is not entitled to any other sums than the ones it is entitled to pursuant to the order.

No partial invoicing is allowed, unless prior agreement of the accounting services.

Invoices shall be in triplicate and shall be sent or hand-delivered to the BIPM, under separate and sealed envelopes bearing the mention "Invoices". They shall be sent to the BIPM's accounting services. Invoices must always show the order's number and the delivery document(s)' number(s).

Unless agreed otherwise, payment shall be effected within 30 days of invoice's receipt at the BIPM, end of the month the 10th. Unless otherwise agreed, no advance payment shall be made further to the order's acceptance.

6. Shipment and packaging

Any delivery with a lorry shall be subject to the following conditions: maximum height: 3,60 meters and maximum authorised load: 10 tons.

Whatever is the shipment mode and irrespective of any contrary clause, the Contractor is responsible for the condition of the ordered goods, equipments and devices, as well as for any consecutive damages.

Moreover, the Contractor shall make the necessary provision for sufficient packaging of the goods, equipments and devices, with a view to protecting them against the normal transportation's risks.

All parcels shall show in a conspicuous location: the order's number and the name of the BIPM's Section, as identified in the delivery address. The Contractor shall only hold the property of the packaging used for the shipment of goods, equipment or device delivered to the BIPM, if they show in a conspicuous location the Contractor's name and the deposit's value. The BIPM shall hold the property of any packaging it owns.

7. Delivery documents

Any delivery shall be accompanied by a numbered delivery document, in duplicate, which model can be imposed on the Contractor by the BIPM and showing the:

- shipment's date;
- recipient BIPM's Section, as identified in the delivery address ;
- order's reference ;
- Contractor's identification ;
- identification of the goods, equipment and device delivered and, when applicable, identification by parcels;
- if need be, number of the box used for packing.

The delivery is acknowledged by the delivery of a receipt to the Contractor or by the signature of a copy of the delivery documents.

Any delivery without delivery documents showing all the requested information may be rejected and returned to the contractor at its own costs.

8. Delivery deadlines, penalties and alternative supplier

Upon receipt of the order, the Contractor has 48 (forty-eight) hours to acknowledge receipt of the BIPM's order and confirm the delivery deadlines. Unless otherwise agreed, deadlines are meant goods, device or equipment delivered at the location specified in the order. If the order is not performed within the agreed upon deadlines, the BIPM reserves the right to terminate the order without any indemnity and further to a single notice by registered letter with recorded delivery, without prejudice to any action that could be exerted by the BIPM further to any total or partial failure of the Contractor to perform is contractual obligations.

The delivery deadlines may only be extended further to a *force majeure* event, which make impossible the performance of the order.

Whenever the delivery deadlines are not abided by, penalties shall be imposed on the Contractor calculated as follows:

$P = V * R / 1000$, in which:

- P = the penalties' amount;
- V = the value of the performance items on which the penalties are calculated; this value equals to the value of the payment of part of the late performance items, or of the whole performance items, if the whole goods, equipment, or device cannot serve their agreed upon purpose due to the late delivery;
- R = number of days of delay.

Whenever the order is terminated, the penalties may be imposed until the eve (included) of the date of the termination's entry into force.

In addition to the penalties and without prejudice of the right of the BIPM to terminate the order, whenever the Contractor, further to a

formal notice, did not do its utmost to perform the order within the agreed upon deadline, the BIPM shall be entitled to recover from the Contractor the additional costs incurred in procuring replacement goods, device or equipment from an alternative supplier.

9. Acceptance and Warranties

Delivered goods, equipment, device and/or services shall strictly conform, with regard to quantity and quality, to the terms of the order and its annexed documents. The acceptance of Goods, equipment, device and/or services delivered shall only be final and without reservation, further to an inspection by the BIPM of their technical specifications. When the acceptance is conditional until the Contractor rectify defects or supply replacement items, it will only be final when all and every defects are rectified. The information shown on the delivery documents are purely indicative in that respect.

The Contractor warrants that the delivered goods, equipment, device and/or services conform to the order and in particular to their proper use, as identified in the order or arising from their nature. It also warrants that they shall be of satisfactory quality, sound in design and in conformance in all respects with the state of art and norms and shall be free of defects in material, creation, conception or performance.

The Contractor is responsible for any damages linked to the performance of the order and shall indemnify for any damage or loss in connection with its defaulting performance. The Contractor shall contract an insurance policy covering all these risks. The Contractor shall hold the BIPM harmless against any counter-claim that could be made against the BIPM by third parties as a result of the performance of its obligations, with regard to its employees and properties, and generally speaking against any direct or indirect claim.

10. Work and services at the BIPM

When the order implies assembly, mounting, building and commissioning, the Contractor shall perform its full obligations under the order at its own risks. The Contractor shall strictly conform to and abide by the BIPM's Health and Safety Manual (or its equivalent).

11. Intellectual property rights

The BIPM retains the right to:

- Reproduce any results arising from the performance of the order (hereinafter the results) and any associated documents;
- Manufacture or order the manufacturing of any items, device or constructions which conform to the results arising from the performance of the order or any part thereof;
- Communicate to third parties the results, including the surveys' files, trials' reports, documents and information of any kind related to the performance of the order;
- Freely publish the results; this publication shall mention the name of the Contractor.

The Contractor shall not, without the prior and written agreement of the BIPM:

- use the results for trade purposes;
- communicate the results to third parties, with or without charge ;
- publish the results. The publication shall not mention that the survey has been financed by the BIPM.

The Contractor shall communicate to the BIPM, upon request, all its knowledge resulting from the performance of the order, whenever licensed or not.

The BIPM shall consider the methods and know-how of the Contractor as confidential, unless these methods and know-how are part of the scope of the order.

Titles protecting existing inventions, inventions made or used under the performance of the order, cannot be opposed to the BIPM in order to prohibit their use.

The Contractor shall hold the BIPM harmless against any claim that could be made against the BIPM by third parties with regard to their intellectual, artistic or industrial property rights, pursuant to the performance of the order or the use of their results, in particular with regard to the right of reproduction.

The BIPM shall hold the Contractor harmless against any claim that could be made against the Contractor by third parties with regard to the use imposed, under the order's terms, on the Contractor of their intellectual, artistic or industrial property rights, proceeds and methods.

Further to any expression of claim by a third party against the Contractor or the BIPM, they shall do their utmost to put and end to any rights' infringement and give each other a mutual hand, in particular through communication of all evidences or useful documents they may hold or obtain.

12. Termination

The BIPM reserves the right to terminate the order without any notice or indemnity, without prejudice of any claim or action it may initiate in case of total or partial failure of the Contractor to perform its contractual obligations and/or if the Contractor underwent frauds or provide corrupt gifts in the framework of the call for tenders or the performance of the order.

Whenever the BIPM terminates the order, in part or in all, without any default on the part of the Contractor, it does not have to motivate its decision. In addition to the payment of performed items or fractions of performed items and to the reimbursement of any advance expenses (upon receipt of corresponding vouchers), the Contractor shall receive a fixed and final compensation amounting to a maximum of 3% (three per cent) of the orders' balance; this amount excludes any additional compensation and includes in particular any Contractor's shortfall in earnings.

Whoever is responsible for the termination and whatever is its rationale, such termination shall be notified by registered letter with recorded delivery and be automatic, *ipso jure* and without any further formalities.

13. Applicable law and disputes' settlement

- 13.1 Given that the BIPM is an international organisation, the dispute, controversy or claim shall be first decided in accordance with the provisions of the order and, should it be necessary, with French law. The order's provisions shall be given precedence over all Statutes, Rules and Regulations and any domestic law referred to in such provisions.
- 13.2 Any dispute arising out of the interpretation or performance of the order that could not have been settled through a mutual agreeable agreement within 15 (fifteen) days after due notice given by a party to the other, shall be referred to, and finally determined by, arbitration, pursuant to articles 13.3 to 13.6 below.
- 13.3 The arbitrator is chosen by the Parties by mutual agreement within 15 (fifteen) days after expiry of the mutual agreement deadline referred to in article 13.2.
- 13.4 If the Parties are unable to agree on an arbitrator within the deadline set out in article 13.3, the arbitrator will be randomly drawn within 8 (eight) days from the expiry of such deadline. Each party shall propose an arbitrator's name. Should one Party fail to designate an arbitrator or to show up when the draw takes place, the most active party shall do it on the last day of the 8 (eight) days deadline referred to above and shall seize the arbitrator immediately.
- 13.5 The arbitrator shall deliver its decision within 30 (thirty) days after receipt of the registered letter sent by the most active party and seizing him/her. He/she shall decide the case by applying the order's provisions and, in the alternative, the law applicable to the order. The place of arbitration shall be Paris (France). The languages to be used in the arbitral proceedings shall be English. The costs of the arbitration shall be determined by the arbitrator but shall not exceed the total price of the order. These costs shall be paid by the defaulting party.
- 13.6 The decision of the arbitrator shall be binding upon the Parties.