

# Westdeutscher Rundfunk Köln

Institution under Public Law

## Special Terms and Conditions

for Deliveries and Services (excluding construction work)

Issued: March 2005

### 10 Conclusion of Contract

WDR's legal representative is the Director-General. The interests of WDR may also be represented by two authorised representatives of the Director-General. Information relating to the scope of existing powers of attorney shall be provided by WDR's legal adviser.

Contracts shall solely be legally valid if made in writing. The same shall apply to any amendments or supplements made thereto. Any relevant declarations of intent may only be provided by the authorised representatives of WDR.

### 11 Integral Parts of Contract

11.1 For all contracts concluded with WDR, the following shall apply in the following sequence:

- a) the terms and conditions of the contract;
- b) contract specifications, including the pertinent appendices, explanations as well as drawings and the respective technical specifications provided by WDR;
- c) the "WDR Special Terms and Conditions for Deliveries and Services";
- d) the "General Terms and Conditions for the Performance of Services VOL Part B";

With respect to items c) and d), the version valid on the day the contract is concluded shall be binding.

11.2 Solely the WDR Special Terms and Conditions shall apply. No other terms and conditions deviating from the aforesaid terms shall form part of the contract. This shall also apply to any such terms and conditions which WDR does not expressly contradict and any deliveries/services which WDR accepts without reservation.

In providing the delivery/service, the Contractor hereby acknowledges the sole validity of the WDR Special Terms and Conditions, including in instances where the Contractor has not confirmed these in writing prior to performance.

### 12 Performance

12.1 The Contractor hereby warrants that his deliveries/services are in compliance with the prescribed requirements and/or the specifications as well as the valid national safety regulations, accident prevention regulations (UVV), safety stipulations, most notably DIN, the VDE, VDI and EU

regulations as well as the ARD/ZDF specifications. Over and above the UVV stipulations set forth by the relevant German accident prevention and insurance association (*Berufsgenossenschaft*), the Contractor undertakes to meet in full the occupational health and safety regulations valid for WDR as well as the relevant ARD/ZDF accident prevention guidelines (UVR) along with the generally accepted safety, occupational medicine and ergonomic rules and regulations.

In addition, any devices/units that are to be supplied must to the extent applicable meet the European Union's fundamental requirements governing CE certification and be marked accordingly. The ARD/ZDF-specific rules and regulations shall be made available to the Contractor by WDR upon request.

12.2 When providing deliveries/services, the Contractor shall be obliged to observe the collective agreement stipulations which govern the working conditions for the employees being deployed.

The Contractor undertakes only to assign those deliveries/services to sub-contractors who have offered the same commitment in writing to the Contractor. The undertakings given by the sub-contractor are to be retained by the Contractor and presented to WDR upon request.

12.3 The Contractor undertakes and shall be responsible for ensuring that no temporary workers are deployed to perform deliveries/services in contravention of the statutory provisions - most notably Germany's laws governing temporary employment agency work (AÜG). Such a commitment given by the Contractor shall also extend to the behaviour of third parties who are commissioned by him as sub-contractors or who, for their part, have been entrusted by sub-contractors - irrespective of the level of subordination - with performing services prescribed under the contract. The Contractor has secured by contract the rights which he requires to monitor compliance of the regulations governing temporary work, including at the sites of his sub-contractors.

12.4 In the event that the offer should prescribe the sub-suppliers, sources of supply or certain makes, the Contractor may not change these without the consent of WDR. The Contractor shall remain solely responsible for ensuring that the deliveries/services are provided in compliance with the contract.

12.5 The Contractor shall at all times only provide those deliveries/services to WDR for which no third-party rights (property subject to right of retention), equitable liens, liens, copyrights, etc.) exist. He expressly warrants that the items or services provided are free from all such rights.

Should such third-party rights nevertheless exist, WDR shall, at the expense of the Contractor, be entitled to obtain consent from the authorised party for the contractually agreed use of the deliveries/services.

Should WDR infringe against any rights in the course of using the third-party deliveries/services, the Contractor shall hold WDR harmless from all financial claims and claims by way of legal action which may be asserted and shall assume all of the costs incurred, including any prosecution costs.

12.6 In the event that, as part of the deliveries/services, welding work and/or work related to specific risks and dangers (e.g. the risk of explosion, fire, the production of heat or smoke, and environmental pollution) needs to be carried out, the Contractor undertakes to inform WDR in written, verbal or telephonic form – depending on the urgency of the situation – prior to executing the work and to obtain the relevant approval from WDR. The pertinent safety regulations and specific safety requirements applicable at WDR for such instances are to be observed by the Contractor.

12.7 Materials found during disassembly or reconstruction work which consist of asbestos or are riddled with asbestos must be reported to WDR in writing immediately. This duty shall also apply in the case of doubt.

### **13 Delivery and Packing**

13.1 Unless otherwise stated, all deliveries/services shall be made free place of delivery/service, packing included, and with insurance to be obtained at the expense of the Contractor.

13.2 Packaging materials used for transportation, sales and secondary packaging must be in compliance with the relevant valid packaging ordinance and their return to the Contractor must at all times occur without expense for WDR. Failing this, WDR reserves the right to refuse acceptance. Any costs which occur as a result shall be borne by the Contractor.

Deliveries and/or the processing of hazardous substances shall be subject to the valid ordinance on hazardous substances. A safety data sheet is to be attached to each delivery/service.

13.3 Should partial deliveries/services be agreed, these are to be identified as such on the bill of delivery/services, shipping and invoice documents, etc.

13.4 A delivery note is to accompany the deliveries and shall state WDR's contract number as well as all of the details relevant to the delivery.  
The Contractor must seek confirmation from the WDR employee in charge of the services WDR has received. Said confirmation must be in the shape of a clearly legible signature placed on the proof of performance. The proof of performance must bear the contract number as well as all of the details required for the delivery.

### **14 Passing of Risk**

Following due and proper delivery to the place of fulfilment and/or upon final acceptance by WDR, all risks shall pass to WDR.

### **15 Warranty**

To the extent that no longer periods are prescribed under law, a warranty period of 2 years shall apply and begin upon delivery being effected at the place of fulfilment or following final acceptance.

Where deliveries/services are concerned for which no final acceptance has been agreed, WDR shall be deemed to have fulfilled its duty to examine and to make a complaint with respect to defects on receipt of the goods or services in the event that obvious defects are made known within 14 days following receipt of goods/provision of services.

### **16 Liability to Insure**

16.1 The Contractor warrants that he has sufficient liability insurance to cover any events of damage or loss which may occur in fulfilling the contract and that he has paid the due premiums.

16.2 At the request of WDR, the Contractor shall furnish written proof of the existence of the insurance policy or arrange for his liability underwriter to inform WDR of the scope of the liability insurance cover in favour of the Contractor and most notably to confirm the sum insured by virtue of the liability insurance and to notify WDR of any amendments to the insurance cover. The Contractor hereby agrees to WDR saving the requested data, where applicable, for the duration of the contract for the sole purpose of executing the contract. WDR undertakes to use the data in compliance with the law for the intended purposes and not to divulge it to third parties.

### **17 Invoicing**

17.1 All WDR payments shall be made solely after completed delivery/service at the place of fulfilment or upon acceptance and against invoice. The invoices are to state the contract number and be sent directly to: Westdeutscher Rundfunk Köln, Rechnungseingangsstelle, 50600 Köln, Germany.

17.2 The invoices must contain the details prescribed under Germany's regulations for the implementation of turnover tax (UstDV) in their relevant valid version. Should justified complaints arise following receipt of the respective invoice, the payment period shall not begin until a corrected invoice and/or the last missing document has been received.

17.3 In the event that miscalculations or errors in the documents supporting the invoice should be ascertained by the auditing authorities following acceptance of the final payment, the Contractor and awarding party shall be obliged to refund the amounts owing to the other party. The Contractor shall not be entitled to invoke any loss of enrichment (§ 818 Sect. 3 BGB – German Civil Code).

Errors within the meaning of this article are errors in the bills of quantities, i.e. deviations in bills of quantities and invoicing records from the actual performance or between each other.

17.4 In the event that claims arising from the contract should be assigned in part or in full, WDR shall solely be obliged to make payment to a new creditor provided that a deed of assignment has been submitted in accordance with § 410 BGB

## 18 Cancellation/Termination

18.1 The Contractor warrants that, for the purposes of fulfilling the deliveries/services to be provided to WDR, he shall not permit any third-party influence which is unrelated to or in breach of the contract. He especially warrants that he will not accept any financial payments in breach of the contract and/or any other non-cash or improper benefits from third parties and/or that he has not made and will not make any payments to WDR employees or third parties, most notably for the purpose of obtaining information or any other illegal services by illicit means.

In the event of any infringements, WDR shall be entitled to withdraw from or terminate the contract and/or to demand compensation.

WDR shall equally be entitled to take the aforesaid action in the event that offers are submitted which are founded on restrictive agreements within the meaning of § 298 StGB (German Penal Code).

Actions undertaken by the Contractor rank alongside those undertaken by people who have been entrusted by him to prepare, conclude or execute the contract or who perform activities of this kind with the Contractor's knowledge.

18.2 Should it be verified that the Contractor has reached an agreement in the procedure of awarding the contract which represents forbidden restrictive practices, he shall – subject to any concrete greater loss and subject to further contractual or legal claims being asserted by WDR - be liable to pay WDR 10% of the contract sum without being presented any proof of loss. This shall not apply if the Contractor can prove that the loss incurred is lower than the per diem rate.

18.3 Should the Contractor suspend his services or should insolvency proceedings be instituted against him, WDR shall be entitled to withdraw from the contract.

18.4 Legal transactions imposing obligations on one party only (especially notices of termination) shall also be valid without the submission of a power of attorney.

## 19 Confidentiality

The Contractor undertakes to hold in confidence the content of this agreement as well as all of the commercial and operational matters relating to WDR which become known to him as part of this cooperation, most notably any trade and business secrets, internal administrative and other confidential affairs. This agreement shall also apply over and above the term of the contract. The Contractor shall impose the same duty to observe confidentiality on any and all persons and companies he commissions. All data gathered or evaluated in EDP programs is to be secured in compliance with the valid data protection regulations.

## 20 Place of Fulfilment / Court of Jurisdiction

The place of fulfilment shall be the place of delivery/service prescribed by WDR.

The court of jurisdiction shall be Cologne, Germany.

German law shall be applied to the exclusion of the UN Sales Convention.

## 21 Severability Clause

In the event that any of these individual provisions and/or any individual provisions of the contract should be or become invalid, the remaining provisions shall remain unaffected. To the extent that certain provisions should not have become an integral part of the contract or are invalid, their content shall be governed by the statutory provisions.