

**General Purchasing Conditions (GPC) of Arvato Systems GmbH, An der Autobahn 200, 33333 Guetersloh, Germany, and its affiliated companies (hereinafter: Client) for the procurement of services**

(Version: November 2017)

**1 Scope of application**

1.1 These General Conditions of Purchase apply exclusively and to all contracts concluded for the procurement of services. Conditions of the Contractor which contradict or deviate from these conditions are explicitly not recognized. General conditions of business of the Contractor are not recognized even if the Client does not explicitly object to them.

1.2 These General Purchasing Conditions apply only to companies in the sense of § 14 para. 1 German Civil Code (BGB); they are also agreed for all future agreements with the Contractor.

1.3 The application of the business conditions of the Contractor or third parties by means of conduct implying acceptance is excluded. The acceptance of deliveries or services and payment by the Client shall in particular not render the business conditions of the Contractor to a component of this agreement.

**2 The scope of the service**

The subject of this agreement is the provision of services including the corresponding materials such as, for example, documentation (user handbooks etc.), concepts, drafts and the provision of other services related to the provision of the primary services by the Contractor in accordance with the order.

**3 Principles of the provision of the service**

3.1 The Contractor shall provide the contractually-agreed services according to the state of the art at the time of conclusion of the agreement and by personnel qualified for the provision of the agreed services.

3.2 The contact partners of the contract parties are solely the responsible contact partners named in the agreement. The Client shall only transfer requests regarding the services to be provided exclusively to the contact partner named by the Contractor and not issue instructions to other personnel employed by the Contractor. The personnel employed by the Contractor shall not enter into an employment relationship with the Client, even if they provided services on the latter's premises.

3.3 A person employed by the Contractor to fulfil the agreement may only be replaced for serious reason and with the approval of the Client. The consequences of the resulting initial training shall be borne by the Contractor. The interests of the Client must be given appropriate consideration by the Contractor when selecting its personnel.

3.4 The Client may demand the exchange of a person employed by the Contractor for the fulfilment of the agreement if said person has violated contractual obligations or does not possess the required specialist knowledge. The costs resulting from the exchange must be borne by the Contractor.

3.5 The employment of third parties as subcontractors for the Contractor requires the prior authorization of the Client, which must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements.

3.6 All deadlines set by the Client shall be binding.

**4 Placement of orders**

4.1 The content of the order, which must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements, shall be solely decisive for the provision of the service. Verbal ancillary agreements are not made, and shall only come into effect upon confirmation by the Client, which must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements.

4.2 The Contractor is obligated to accept the order within a period of 14 days. This period shall begin upon receipt of the (see 4.1) order, which must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements. Any acceptance after the end of this period shall be considered a new offer. This shall only assume legal validity if the Client does not veto it within 14 days.

4.3 Cost estimates, the development of offers, the creation of specifications, project planning documents, plans, drawings and models or other related preparations or similar items shall only be subject to costs upon specific agreement.

**5 Modification of the service**

5.1 The Client may demand modifications to the scope of services within the Contractor's capabilities after conclusion of the agreement, unless these are unreasonable for the Contractor or non-workable. The demand for modification must be documented in text form according to the applicable law and shall be pursuant to the eIDAS requirements. (see 4.1).

5.2 The Contractor must verify the demand for modification by the Client and inform the Client in in text form according to the applicable law and shall be pursuant to the eIDAS requirements (see 4.1) within 10 working days (Monday to Friday) whether it is unreasonable for the Contractor or non-workable. If the demand for modification is reasonable and workable, the Contractor must submit an offer indicating the duration of the services, planned deadlines and effects on the remuneration or agree the execution of the requested modification with the Client – in text form according to the applicable law and shall be pursuant to the eIDAS requirements (see 4.1) in both cases. If a comprehensive verification of the demand for modification is required, the Contractor may request an extension from the Client.

5.3 The Client will accept or decline the Contractor's offer within the binding period. Agreed modifications to the services must be bindingly documented by amendments to the agreement.

5.4 The Client and Contractor may agree that the services affected by the demand for modification may be interrupted until the necessary amendments have been made to the contractual agreements.

5.5 If the necessary amendments to the contractual agreements are not made within the binding period for the offer, the work shall be continued on the basis of the agreement. The period for the services shall be extended by the number of working days on which the work was interrupted following the demand for modification and/or the verification of the demand for modification. The Contractor may de-

mand the agreed compensation for its efforts or a corresponding increase in the agreed remuneration for the duration of the interruption, unless the Contractor has otherwise employed its personnel affected by the interruption or negligently failed to do so.

## **6 Usage rights, exploitation rights**

6.1 The Contractor irrevocably grants the Client, the company affiliated with Bertelsmann SE & Co. KGaA in the sense of §§ 15 et seq. German Stock Corporation Act (AktG), as well as Bertelsmann SE & Co. KGaA itself, all necessary, exclusive, transferable, licensable, spatially (globally) and temporally unlimited usage and exploitation rights to the products of the services and the corresponding materials, in particular documentation and handbooks, concepts and drafts.

6.2 All products of the work are freely transferable and unencumbered by the rights of third parties.

## **7 Other obligations of the services**

7.1 Documentation: In addition to the creation and delivery of the results of the work, the Contractor is obligated to transfer a specification or sufficient documentation regarding the provision of the services, as selected by the Client.

7.2 Data carrier: The products of the work must be provided, at the Client's discretion, by the Contractor in sufficient quantities on suitable data carriers or via down/upload in a suitable file format together with the documentation if required. The transfer of risk shall occur upon transfer of the data carrier and/or upon defect-free storage of the products of the work on a data carrier of the Client.

7.3 Security: The Contractor shall ensure that the products of the work do not contain any functions which permit security features to be weakened, avoided or disabled and which are not notified to the Client in text form according to the applicable law and shall be pursuant to the eIDAS requirements, prior to transfer. It shall further ensure that the products of the work do not permit unauthorized third parties to access the system or data of the Client without the latter's authorization.

## **8 Installation and configuration / Quality assurance / Training**

8.1 Insofar as the order does not specifically state otherwise, the obligation to transfer the products of the work shall also include the installation and configuration of the products of the work.

8.2 The Contractor shall provide a number of employees for the installation and configuration sufficient to ensure a quick and effective installation and configuration which does not negatively affect the Client's business operations.

8.3 Upon initial operation of the products of the work, the Client is entitled to carry out a quality assurance period of 30 working days from completion of the installation. Within these 30 working days, the Client is entitled to cancel the products of the work insofar as the contractually-agreed functions of the products of the work have not been fulfilled.

8.4 The Contractor shall support and train the employees of the Client to the extent required to permit the Client to make expert use of the products of the work (orientation).

8.5 The Client may request additional training from the Contractor in exchange for the payment of remuneration at usual market prices.

## **9 Principles of personnel deployment**

9.1 The Contractor is to render its services via its own or third-party personnel (hereinafter "personnel").

9.2 The Client is entitled by way of a justification, which must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements, to demand the replacement of the personnel deployed by the Contractor if the personnel concerned repeatedly violates contractual duties or if some other important reason exists vis-à-vis the personnel deployed preventing cooperation between the Client and the Contractor.

Insofar as the Contractor deploys third-party personnel (such as freelancers or temporary staff), the Client may moreover demand the replacement of the third-party personnel subject to the provision of justification, which must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements, of this, if further engagement could not reasonable be expected to be acceptable to the Client. The Contractor in its sole responsibility ensures and controls as a primary contractual duty that possibly deployed external personnel or sub-contractors will be deployed and managed pursuant to legal provisions, in particular that pension and social contributions will be paid correctly. Upon Client's request the Contractor is to provide evidence of a documentation regarding performed controls and confirm proper conduct in text form according to the applicable law and shall be pursuant to the eIDAS requirements, towards the Client. Inconsistencies or missing confirmation documents entitle the Client to terminate the contractual relationship immediately and extraordinarily without notice.

The Contractor is to comply without delay with any demand lodged by the Client in respect of the replacement of personnel. The additional expenses incurred due to personnel enhancement or replacement shall be borne by the Contractor.

9.3 The Contractor is to name its own project manager in the single order as a central point of contact. This project manager is to manage the entire project work on behalf of the Contractor and is the only person with exclusive authority of instruction vis-à-vis the personnel deployed by the Contractor. As far as the Client is concerned, it is to appoint its own project manager as the central point of contact for all project implementation matters. This project manager is to manage the entire project work on behalf of the Client. The Client's project manager has no authority of instruction vis-à-vis the Contractor's personnel - either in technical/subject-related or disciplinary terms.

9.4 On no account will the Contractor's personnel be integrated into the Client's operation. The Contractor remains fully and solely responsible for such personnel and also retains the exclusive authority to instruct. There will be no work-sharing collaborative arrangements between personnel of the Client and the Contractor's personnel. The personnel deployed by the Contractor will not be included in the internal holiday planning and absence management of the Client. Times of deployment or service times will only be agreed with the project manager contractually specified by the Contractor. The Contractor's personnel will not take part in internal meetings and events of the Client with company-specific content and activities (e.g. presentation/seminar sessions, company parties). They will only be allowed to take part in project and technical meetings which are directly connected with specifying the contractual performance, the provision of services or the approval of services. The Contractor and the personnel deployed by the same will use their own equipment/resources unless there is an objective reason which necessitates the use of the Client's equipment (e.g. IT security, data protection).

9.5 No project-related agreements, instructions or comparable communication will take place between the personnel deployed by the Contractor and the personnel of the Client without the participation of the project managers mentioned in Section 9.3. The Contractor must call on the Cli-

ent's project manager for binding information and for all queries arising in the context of the fulfilment of the contract. The project manager of the Client will provide information without delay and make or communicate decisions. Decisions and information provided by other persons are only binding for the Contractor and his personnel if they have been initiated or confirmed in text form according to the applicable law and shall be pursuant to the eIDAS requirements, by the project manager of the Client.

9.6 In the event of any complaints concerning faults/defects in the service provided by the Contractor, the Contractor's project manager is the sole point of contact for the project manager of the Client. The Contractor's service provision will not be the subject of complaint towards any other of the Contractor's personnel.

9.7 The Contractor will ensure that all the personnel deployed by him have read, understood and are aware of the rules presented to the Contractor with regard to confidentiality, data protection, plant safety/work security, the information sheet on the German Federal Data Protection Act (Bundesdatenschutzgesetz), the flyer for emergencies as well as the Client's information security (IS) policy, and that they observe such rules accordingly.

9.8 On request, the Contractor must keep the Client informed at reasonable intervals of the status and progress of the project and adherence to contractual demands, and communicate any interim results. Moreover, the Client may request to access/inspect the relevant documents and parts thereof.

## **10 Personnel deployment on end-customer's premises**

10.1 Insofar as the Contractor provides services to an end-customer of the Client in the context of this agreement, the Contractor and the Client will each be solely responsible for their own respective personnel. This means that neither the Client's personnel nor the Contractor's personnel will be integrated into the end-customer's operations. There will also be no work-sharing collaborative arrangements and no direct communication between personnel of the Contractor, the Client or the end-customer.

10.2 Any project-related agreement, instruction or comparable communication with the end-customer will exclusively take place via the Client's project manager mentioned in Section 9.3. This project manager is the sole point of contact for both the end-customer and the Contractor's project manager with regard to the services to be provided to the end-customer of the Client as part of this agreement. In all other respects, the above provisions of Sections 9.3 to 9.6 will apply mutatis mutandis.

## **11 Minimum wage**

11.1 The Contractor shall pay its employees the statutory minimum wage. At the Client's request the Contractor, during the entire term of the contract up to six months after the end of the present contractual relationship, shall prove to the Client within 14 days that it has complied with this obligation by submitting suitable documents [particularly documents in accordance with § 17 (1) of the Minimum Wage Act (Mindestlohngesetz, MiLoG), clearance certificates from the responsible social insurance fund, holiday pay fund etc.].

11.2 The Contractor shall on first demand indemnify the Client against all third-party claims (particularly those of the Contractor's employees, the Client's own clients, the Federal Labour Office) in connection with any breach of the obligation to pay the statutory minimum wage.

11.3 The Contractor shall impose an obligation of the same extent on any possible sub-contractor to verifiably pay the statutory minimum wage and indemnify the Client, in the

same way as the Contractor bears an obligation under Sections 11.1 and 11.2. If the sub-contractor uses the services of other sub-contractors, the Contractor shall ensure that the corresponding obligation is also imposed on all sub-contractors.

11.4 The Contractor shall be liable to the Client for all third-party claims resulting from any breach of the obligation to pay the statutory minimum wage by sub-contractors.

## **12 Remuneration**

12.1 The services provided by the Contractor shall fundamentally be remunerated by the Client either as incurred or at a fixed price. The following sections shall apply.

12.2 If nothing different is agreed, the following regulations shall apply to remuneration as incurred:

- a) Remuneration on a time and material basis established in the agreement is payment for the time required for the contractually-provided services.
- b) Remuneration on a time and material basis shall be due upon receipt of a verifiable invoice, the certificate of performance signed by the Contractor and countersigned by the Client and execution of quality assurance.
- c) The signature of the certificate of performance by the Client shall not indicate that the work was carried out with the required quality.
- d) Quality assurance shall take place following fulfilment of the conditions named in point c), at the latest upon defect-free acceptance by the Client and/or its end client, which must be at least in text form according to the applicable law and shall be pursuant to the eIDAS requirements.
- e) Travel time for required business travel from the place of work shall be invoiced at 50% of the corresponding hourly rate. There shall be no further claims to remuneration for travel time.

12.3 If nothing different is agreed, the following regulations shall apply to remuneration at a fixed price:

- a) A fixed price established in the agreement is payment for all services owed according to the agreement.
- b) A fixed price shall be due following full provision of the services and successful quality assurance.

12.4 All agreed prices are to be understood as plus the legally-applicable VAT and include any ancillary costs, in particular travel costs, travel time, transport costs and customs duties.

12.5 In the event of incorrect, deficient or partial delivery, the Client is entitled to refuse payment until proper delivery.

12.6 Unless a differing regulation applies, remuneration shall be due for payment 30 days after receipt of a verifiable invoice, but only following quality assurance of the products of the work. The invoice must include the Client's order number and, if no fixed price remuneration is agreed, details of the provision of services (including time, location, service provided).

12.7 The Contractor shall grant the Client a discount of 3% of the invoice amount in the event of payment within 14 days after receipt of the verifiable invoice.

12.8 The Contractor is only entitled to withhold payments or services and products of work or to offset them against counterclaims if the Contractor's claims from the same legal relationship have either been recognized in text form according to the applicable law and shall be pursuant to the

eIDAS requirements, by the Client or there is a legally-enforceable ruling resulting from court proceedings. The assignment of claims of the Contractor against the Client to third parties is excluded.

### **13 Default**

In the event of default, the Client shall be entitled to the legal claims. Furthermore, in the event of a default by the Contractor, the Client is entitled to demand a contractual penalty of 0.5% of the total order value per day of default.

Insofar as the Contractor exceeds an agreed delivery deadline by more than 7 calendar days, the Client is entitled to immediately withdraw from the agreement.

The contractual penalty may be applied until final payment of the remuneration.

A contractual penalty paid by the Contractor for default shall be credited to any on-going claims for damage compensation.

Any further claims by the Client in the event of default shall remain unaffected.

### **14 Qualitative defects in services**

14.1 If the service is not provided, not provided according to the contract or is defective, and if this is the responsibility of the Contractor, the latter shall be obligated to provide the service without additional cost to the Client within an appropriate period in accordance with the contract. This is subject to an objection by the Client which must be submitted within 2 weeks after acknowledgement. If a significant portion of the contractual provision of the service does not occur within the grace period set by the Client, for reasons which are the responsibility of the Contractor, the Client shall be entitled to remedy the defects at the Contractor's costs, either by itself or through third parties, or to terminate the agreement without notice. In this case the Contractor shall be entitled to a claim for compensation for the services provided under the agreement up until the date on which the termination comes into effect. Compensation shall only be waived for services which the Client demonstrates are not utilizable or are without interest for it within a period of 4 weeks after the declaration of the termination.

14.2 The statutory limitation for claims for qualitative service defects is curbed if the parties negotiate regarding their existence or scope or if the Contractor verifies the existence of a defect itself. The curbing of the statutory limitation shall end if the Contractor informs the Client, in text form according to the applicable law and shall be pursuant to the eIDAS requirements, that negotiations have ended or if the result of the verification by the Client is submitted or the Contractor waives the continuation of the remediation of the defect in text form according to the applicable law and shall be pursuant to the eIDAS requirements. The resumption of negotiations, verification or remediation of the defect shall lead to a renewed curbing of the statutory limitation.

14.3 The right to extraordinary termination for cause shall remain unaffected.

### **15 Force majeure**

If, due to force majeure (comprehensive listing: war, unrest, industrial action, lock-out, fire and flooding), the Contractor is unable to duly provide the service, the Client may choose to withdraw from the agreement instead of unilaterally extending the period for the contractual provision of the service.

### **16 Liability**

16.1 If the Client demands compensation instead of the service, the claim for provision of the service shall only expire upon payment of the compensation by the Contractor.

16.2 Legal provisions shall also apply.

### **17 Rights of third parties**

Insofar as the products of work delivered by the Contractor violate the rights of third parties and such at least slightly-negligent violations are based on a service of the Contractor, the latter shall be obligated to hold the Client free of all third party claims and all costs related to legal defense, including costs for the suitable acquisition of licenses, at the first request.

### **18 Confidentiality**

18.1 The Contractor undertakes to maintain the confidentiality of all information (e.g. business and operational secrets, data, technical and commercial information of any type) of which it becomes aware in the context of this contractual relationship via the Client and the order, whether verbal, in writing, in electronic or other form, including beyond the duration of the contractual relationship and to maintain silence on this topic. The information must be stored in such a way as to exclude any misuse.

18.2 The Contractor shall further be obligated to ensure that its employees, consultants and other vicarious agents which are charged with the execution of the agreement and receive information in accordance with 18.1 are obligated in writing to maintain this confidentiality.

### **19 Data protection and security**

19.1 The Contractor shall ensure that all persons charged with the fulfilment of this agreement shall comply with legal data protection regulations and are demonstrably obliged to maintain data confidentiality in accordance with data protection rules.

19.2 In case of contract data processing, the contractual parties shall conclude a separate agreement in accordance with § 11 German Federal Data Protection Law (BDSG).

19.3 The Client expressly does not grant any authorization for the use of contact data for marketing purposes. Any forwarding, transmission or other use of the contact data of the Client is explicitly prohibited.

19.4 The Contractor is obligated to take all necessary measures to ensure information and operational security as well as quality assurance for the Client. The corresponding regulations and bulletins from the Client made available to the Contractor at its request shall apply.

### **20 Insurance**

20.1 The Contractor is obligated to maintain operational liability insurance throughout the entire duration of the agreement, the scope and amount of which shall be appropriate for the liability risks under this agreement.

20.2 At the request of the Client, the Contractor shall provide evidence of the purchase and existence of the insurance as well as the payment of the corresponding premiums.

### **21 Audit**

21.1 The Customer is entitled to check compliance with the use restrictions agreed in the agreement at the premises of the Contractor with timely prior notice and during office hours.

21.2 Such an audit shall be carried out by the Customer or by an auditing company to be specified by the Customer.

21.3 The confidentiality of information of the Contractor shall be protected; reasonable security provisions shall be taken into consideration.

21.4 The Contractor is obliged to grant access to all systems, books, records, business processes and equipment

that the Customer requires to carry out a proper and thorough audit. The Contractor shall cooperate with such an audit as required.

## **22 Final provisions**

22.1 This agreement may only be transferred to third parties with the authorization, which must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements, of the other party. On the Client's side, third parties in the sense of this clause are not the companies affiliated with Bertelsmann SE & Co. KGaA, Guetersloh, Germany, in a group (§§ 15 et seq. AktG) or Bertelsmann SE & Co. KGaA itself.

22.2 The Contractor is not entitled to name the Client, details of the order or the end client of the Client as references without the latter's explicit authorization, which must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements.

22.3 The contractual conditions established in these contractual conditions may not exceed 5% of the total value of the order overall.

22.4 The Contractor acknowledges the regulations of the 'Supplier Code of Conduct' of Bertelsmann SE & Co. KGaA and is obligated to act in accordance with said regulations. This code of conduct for business partners is available at [www.ethics.bertelsmann.com](http://www.ethics.bertelsmann.com).

22.5 Modifications, amendments and the annulment of this agreement must be in text form according to the applicable law and shall be pursuant to the eIDAS requirements. The same shall apply for the annulment of the requirement of the written form.

22.6 The existence of this agreement shall not be affected by the validity of individual provisions or loopholes. An invalid provision or a loophole must be replaced and/or filled by a valid provision which corresponds as much as possible with the intent and purpose of the invalid provision or remaining regulations of this agreement.

22.7 The laws of the Federal Republic of Germany apply, to the exclusion of UN-CISG. The place of jurisdiction for all disputes arising from this agreement is the court factually and locally responsible for the Client.