1. General terms
1.1 These Purchasing Terms are applicable to purchasing contracts, contracts for work and services and to hybrid forms of the same signed between Fraunhofer-Gesellschaft zur Foerderung der angewandten Forschung e.V. of Munich (hereinafter: “FhG”) and the Contractor (hereinafter: “Contractor”). They apply in relation to companies, legal entities of public law and separate estate under public law (sec. 310 (1) of the General Civil Code (BGB)).
1.2 The contract signing is governed exclusively by the regulations cited in item 4.2. The Contractor’s standard business terms do not become a component part of the contract. Anything else will only apply if FhG has expressly given its written consent.

2. Bids
Bids must meet the specifications of the enquiry or invitation to bid. The expense of generating bids and transmitting supplemental documents or Information will not be compensated.

3. Prices
Prices are set prices without value-added tax. Delivery is DAP at point of reception under Incoterms 2010, including unloading. Unless otherwise agreed, Contractor must take out shipping insurance and bear the costs for this as well as the costs for customs and packing.

4. Order and order confirmation
4.1 The order/contract must be in writing. This also applies to changes. FhG may revoke the order if the Contractor fails to confirm it in writing within two weeks of receipt (order confirmation).
4.2 The following apply in the sequence following to fulfilment of FhG orders for supplies and services:
- The order document with the special contractual terms contained in it,
- The contract documents (specifications and any eventual supplementary contract terms),
- For contracts subject to VO/VA or vgl: standard contract terms for execution of services (VO/VA) in the version applicable when the order is placed,
- These SPT,
- Relevant statutory and regulatory regulations and conditions including standardisation and accident prevention regulations such as CE, VDE or the Electrical and Electronic Equipment Act (ElektroG) etc., each in the version applicable when the order is placed.

5. Farming out orders to third parties
Farming out orders to third parties and farming out part of the order to subcontractors is not approved without FhG’s written consent. Any breach of this will entitle FhG to withdraw from the contract, either in full or in part.

6. Delivery deadline
The delivery deadlines specified by FhG are binding (relative firm deal). If missing the deadline is expected, the Contractor must immediately notify FhG of this in writing, giving the reasons for it and specifying the duration of the delay. Any eventual consequences of lateness will not be affected by such notification.

7. Ensuring deadlines
7.1 In the absence of laterally FhG is entitled, after prior warning, to claim late delivery compensation in the amount of 0.5% for every week of delay commenced of that part of the order that cannot be used, but only up to a total of 5% of the value of the order.
7.2 The right is reserved to assert damage compensation claims going beyond this.

8. Shipping, customs and export control
A delivery ticket must be enclosed with the delivery. For delivery from foreign customs jurisdictions the Contractor must send an order confirmation (order confirmation).

9. Acceptance
If acceptance is provided for, the corresponding proof will be incumbent upon the Contractor (hereinafter: “Contractor”). Th ey apply in relation to companies, legal entities of public law and separate estate under public law (sec. 310 (1) of the General Civil Code (BGB)).

10. Liability for flaws
10.1 Payment and early payment discount deadlines start to run at the earliest with receipt under Incoterms 2010, including unloading. Unless otherwise agreed, Contractor must take out shipping insurance and bear the costs for this as well as the costs for customs and packing.

11.2 FhG may only be declared late in paying by being given a warning. Sec. 286 (3) BGB should be complied with.

12. Liability for flaws also relates to replacement deliveries and services including subsequent improvement work. The statute of limitations for the flaw claims is suspended upon receipt of the written reporting of the flaw until the Contractor has successfully remedied the flaw or rejected the claims to (addional) subsequent improvement work. The statute of limitations for flaw liabilities starts to run again after remedey of the flaw.

13. Compliance with norms and standards
13.1 The specifications and functions as stipulated shall be deemed to be contractually binding.
13.2 The Contractor must comply with the relevant laws of its country of registration as well as the relevant laws of the country of operation of the Contractor and of FhG. Should the regulations of the relevant countries contradict each other, then, legislative norms shall take precedence over sub-legislative norms. If law is contradictory at the same level there shall be no breach of contract for compliance with one of the norms and the resulting breach of the other one. The Contractor shall be obliged, by prudent selection of its subcontractors and suppliers and reasonable monitoring of them, to work towards ensuring that they also do not commit breaches of law.

13.3 The Contractor shall further be obliged to comply with the minimum standards set forth in the ILO core labour standards (www.ilo.org).

14. Termination of the contract for cause
14.1 The Contractor must ensure that appropriate measures have been taken to prevent countermeasures and to prevent acceleration payments abroad and favours to elected representatives.

14.2 The Contractor must comply with the relevant laws of its country of registration as well as the relevant laws of the country of operation of the Contractor and of FhG. Should the regulations of the relevant countries contradict each other, then, legislative norms shall take precedence over sub-legislative norms. If law is contradictory at the same level there shall be no breach of contract for compliance with one of the norms and the resulting breach of the other one. The Contractor shall be obliged, by prudent selection of its subcontractors and suppliers and reasonable monitoring of them, to work towards ensuring that they also do not commit breaches of law.

15. Assignment of claims and setoff
15.1 Serious breaches of item 14 shall entitle FhG to cancel the contract for cause.

15.2 FhG shall furthermore be entitled to cancel the contract for cause if

- the contract is in the process of liquidation;
- the contract must be considered to be unreliable due to any demonstrable serious misconduct, such as bribery, sec. 334 of the German Penal Code (StGB), subsec. fraud, sec. 264 StGB or similar actions outside of proper business customs;
- the Contractor in tendering procedures has deliberately made inaccurate statements in regard to its reliability as well as its qualifications and performance capacity;
- the Contractor’s bid is based on collusion to restrict competition within the meaning of sec. 298 StGB.

15.3 If FhG terminates the contract according to the provisions of item 15.1 then it will be entitled to return any performance already rendered. It must compensate the Contractor pro rata in the framework of the contract price for the value of performance not already availed of. Where appropriate already delivered parts of the contract the Contractor must reimburse FhG for the compensation already paid.

15.4 The Contractor must compensate FhG for all damages directly or indirectly caused by termination of the Contract. The Contractor will not be entitled to any other rights due to termination of the contract than claims to compensation for deliveries or services already availed of. Of statutory regulations only secs. 347 through 351 and sec. 354 BGB will remain unaffected. Sec. 3 (7) VOB/UB will otherwise apply.

15.5 If there is cause according to item 15.1 or 15.2 and if the Contractor is liable for the same then the Contractor must pay FhG a contractual penalty in the amount of 5% of the value of the order. Damage compensation claims in accordance with item 15.5 will remain unaffected.

16. Obligation to retake/discard dispose of items under the Electrical and Electronic Equipment Act (ElektroG) and the Packaging Ordinance (VerpackV)
The Contractor is responsible for obligations to retake and dispose of items contained in sec. 19 (1) ElektroG and in secs. 4 and 5 VerpackV and must bear any additional costs for this. Should one or more provisions be or become fully or partially without legal effect this will not impair the legal validity of the remaining provisions. The same will apply in case of a gap in provisions.

17. Provision of spare parts
The Contractor must put itself under an obligation to provide in connection with the delivered goods a spare parts documents to FhG and to maintain stocks of the spare parts indicated therein for a period of five years, reckoned from receipt of the goods and, where appropriate for, from the date of acceptance of the delivery or service. Upon request, the spare parts are to be supplied at any time before a corresponding invoice. In case of spare parts requisitions the price of the part may not be higher than is indicated in the spare parts documents provided but for increased costs caused by rises in prices or salaries and for which the Contractor is not responsible an appropriate cost increment may be charged.

18. Intellectual property rights
The Contractor must hold FhG harmless against any third-party claims for direct or indirect breaches of intellectual property rights for which the Contractor is responsible.

19. Assignment of claims and setoff
19.1 Assignment of any of the Contractor’s claims on FhG, including within the Contractor’s consolidated corporate group, will require the prior written consent of FhG.

19.2 The Contractor will only be entitled to a right of setoff or retention for counterclaims that have been definitively adjudicated or are undisputed.

20. Applicable law and jurisdiction
20.1 The law of the Federal Republic of Germany is applicable with the provisions of the UN Convention on the International Sale of Goods expressly barred.

20.2 The venue of performance for deliveries and services will be the address indicated in the order document. The venue of performance for payments is Munich.

21. Miscellaneous
Should one or more provisions be or become fully or partially without legal effect this will not impair the legal validity of the remaining provisions. The same will apply in case of a gap in provisions.