

## **PROCUREMENT TERMS**

### **of ProSiebenSat.1 Group**

#### **1 Preface – Area of application**

- 1.1 These procurement terms apply for orders, purchases or the utilisation of work and services by ProSiebenSat.1 Media SE and companies that ProSiebenSat.1 Media SE is directly or indirectly affiliated with and/or which are constituent companies in accordance with §§ 15 ff. AktG ("client"). The client's procurement terms are valid exclusively; any opposing terms or those differing from the contractual party's procurement terms are hereby expressly excluded. The client's procurement terms are also valid if the client, upon knowledge of the contractual party's opposing terms or those differing from the procurement terms of the client, unconditionally accepts the contractual party's delivery. The principles concerning a letter of confirmation are not applied here.

#### **2 Tender – Tendering documents**

- 2.1 The contractual party is obliged to confirm the order within 5 working days of receipt of said order.
- 2.2 All illustrations, service descriptions, drawings and other documents are subject to copy- and property rights of the client; they are not to be made accessible to third parties without explicit written authorisation by the client. They are only to be used for production in accordance with the client's order; also, they are to be returned immediately, either unrequested or upon the client's request, once the order has been processed. The aforementioned documents are to be treated with confidentiality towards third parties; number 12.2 of these procurement terms is additionally valid in this respect.

#### **3 Prices – Terms of payment**

- 3.1 The price stated in the order is binding. Unless otherwise stipulated, the price includes free delivery and appropriate packaging. Should the agreed services by the contractual party include delivery to and mounting at the application site, unpacking and disposal of packing material and transport equipment are part of the contractual party's obligations.
- 3.2 The contractual party is to pay all incurring customs duties, taxes, dues and costs for the construction due to the order.
- 3.3 All prices are plus VAT.
- 3.4 The entitlement to payment of the agreed fee arises after the full, and free of defects, provision of services, in the event that acceptance with the issue of a certificate of acceptance in accordance with number 6 is required, as well as upon receipt of the invoice in accordance with number 3. Payments are made within 14 days with 3% cash discount or net from the 15th to the 30th day. The payment period begins once a proper and verifiable invoice is available for the client. Payments are within the time limit if the client's payment authorisation is given within said period.
- 3.5 All payments by the client to the contractual party are solely made on the basis of invoices. The client can only process invoices if these – in accordance with the conditions shown in the client's order – state the appropriate order numbers; the contractual party is responsible for consequences arising from the non-compliance with this obligation, especially delays in payment.
- 3.6 The client is entitled to all rights to set off or retain within the legal scope.

## **4 Delivery**

- 4.1 The delivery time stated in the order is binding.
- 4.2 The contractual party is obliged to immediately notify the client should any circumstances arise or become evident that the bedungene delivery time cannot be kept. The agreed delivery time will not be extended on the basis of this notification.
- 4.3 The client is entitled to legal claims in the case of a delay in delivery. In particular, the client is entitled to claim for damages instead of service and cancellation once a reasonable time limit has unsuccessfully expired. Should the client claim for damages, the contractual party has the right to prove that he is not responsible for the breach of duty.
- 4.4 Premature deliveries and partial deliveries are only to be done with the client's written authorisation.
- 4.5 The contractual party is to compile or obtain all export documents and documentations.
- 4.6 The place of execution is the place of delivery stated in the order.
- 4.7 Should the provision of owed services be impossible for the contractual party or any other person due to reasons for which the client is not responsible, the client is freed from the obligation of paying the agreed fee.
- 4.8 The client is also entitled to commission third parties with the alternative provision of services should the contractual party be temporarily unable to provide the agreed services.

## **5 Excessive or deficient services; changes in the order for work services**

- 5.1 If the contractual partner owes the provision of work services, the client is entitled to changing the services agreed to in the order in the course of project handling. The contractual party is obliged to carrying out these changes within reason.
- 5.2 In the case of changes in the order, the contractual party is obliged to submit a respective written tender concerning the changes in the order immediately after notification by the client. This tender needs to especially contain, apart from changes in price and services, the effects on the agreed schedule.
- 5.3 The contractual party is obliged to provide the additional services requested by the client for the same prices as stated in the corresponding order. Services not included in the order are to be offered at terms customary in market. The contractual partner is obliged in any case, to assist the client in the examination of the appropriateness of the proposed terms by providing adequate documents, should the client request such actions. If no agreement can be reached, the client has the right to partially cancel the contract. All services incurring from then on are to be paid for separately. Additional claims, especially for loss of profit, are void.
- 5.4 Moreover, the client has the tight to reduce the services by up to 20% of the contract value and reduce the fee accordingly without the contractual party charging for further costs or loss of profit. Should any further reductions of the scope of services occur, the parties will agree an appropriate reduction of the total fee.

## **6 Acceptance**

- 6.1 Acceptance occurs when the contractual party owes the provision of work service. Acceptance is the acknowledgement of the contractual party's provided services by the client. Unless agreed otherwise, location of acceptance is the site of application of the plant. Acceptance has to be stated in written form. Initiation/utilisation of the plant or payment by the contractual party does not equal acceptance.
- 6.2 The contractual party delivers the plant mounted or installed, functioning, tested and ready for operation to the client at the agreed date of completion to enable acceptance.

- 6.3 Condition for acceptance is a successful acceptance test of the system that proves that there are no defects. Unless otherwise agreed, the acceptance test is the operation of the system by the client of at least two weeks, where the functions and performance requirements agreed in the contract are tested. The acceptance test is conducted by the client assisted by the contractual partner.

## **7 Transfer of perils – Documents**

- 7.1 In acts of sale, perils are transferred to the client at the agreed location.
- 7.2 Should the contractual party owe the production of a plant, perils are transferred upon acceptance. The regulations stated in number 6 are valid.
- 7.3 The contractual party is obliged to state the exact order numbers if the client on all shipping papers and delivery slips; should he refrain from doing so, the client is not responsible for any delays in processing.

## **8 Warranty**

- 8.1 The client is entitled to all legal claims for damages.
- 8.2 The client will reprimand the contractual party concerning any apparent and latent defects within a period of 2 weeks upon detection. § 377 HGB is thus ceded.
- 8.3 The return or collection of rejected goods is done for the contractual partner's own account and peril.
- 8.4 The client is entitled to self-remedy of defects at the contractual partner's cost if there is exigent circumstance or special need for urgency.
- 8.5 Payments by the client do not mean that the client accepts the delivery/work service as contractually compliant or free of defects.
- 8.6 The client's agreement for technical documents and/or calculations by the contractual party does not touch his liability for defects.
- 8.7 The contractual party obligates himself to ensure the delivery of parts for ten years with a maximal delivery period of 30 calendar days.

## **9 Product liability and third party insurance coverage**

- 9.1 The contractual party will exempt the client from any possible product liability insofar as he is responsible for the defect causing the claim to liability.
- 9.2 The contractual party obligates himself to keep a business- and product liability insurance with an insured sum of at least € 5 M. per personal damage/ object damage.

## **10 Property rights**

- 10.1 The contractual party guarantees that no third party's rights will be damaged in the course of his delivery.
- 10.2 Should the client be held responsible for this by a third party, the contractual party is obliged to exempt the client from these claims upon receipt of a first written request. The contractual party's obligation to exempt applies to all expenses that arise for the client directly from or from the context of the utilisation of third party.
- 10.3 The limitation period is ten years, calculated from completion of contract.

## **11 Provisions**

Parts of machinery ordered by the clients remain his property. These are only to be used according to the terms of the contract. The contractual party has liability for himself and vicarious liability for any damages to the provisions.

## **12 Non-disclosure**

12.1 The contractual party must not utilise or pass on business- and company secrets as well as knowledge of business processes and internal, especially confidential, matters of the client that have been made known to him in the course of his collaboration with the client to third parties.

12.2 The contractual party is obliged to keep all illustrations, calculations and other documents and information given to him strictly confidential. They may only be made available to third parties if the express authorisation by the client is given. The non-disclosure agreement is also valid after the termination of the contract; it becomes void once the production knowledge contained in the illustrations, drawings, service descriptions, calculations and other documents have been published.

## **13 Endangering of fulfilment**

Should the economic situation of the contractual party deteriorate in the duration of the order in such a way as to seriously endanger the fulfilment of the contract, if he (even temporarily) suspends payment or has filed for insolvency proceedings or judicial or extrajudicial composition proceedings, the client has the right to withdraw from the unfulfilled part of the contract. The client is eligible for full withdrawal of the fulfilment of that part of the contract is not of interest for the client.

## **14 Software**

14.1 Software is to be given to the client on customary media in machine-readable code along with user documentation.

14.2 Software individually developed for the client is to be given to the client with the source code and manufacturer documentation. Copies of the source code and manufacturer documentation are to be transferred at acceptance and have to be up-to-date at that time.

14.3 If the client purchases a programme in source code form, all warranty measures conducted by the contractual party on the software have to be entered into the source code and manufacturer documentation immediately; a copy of the respective updated status is to be immediately made available to the client.

## **15 Rights of use**

15.1 The contractual party transfers all rights of copy, use, performance protection, personal and other rights emerging and/or purchased in the course of the collaboration with the client, with their generation or transfer to the client for freely transferrable, temporally, spatially and objectively unconditional use including the right to alter, duplicate, change, expand and authorise the basic use by third parties.

15.2 All construction documents (e.g. descriptions, drawings, manuals, tables, circuit diagrams etc.) provided by the contractual party become the client's property when transferred to him. He is entitled to utilise and duplicate these documents without further charge.

15.3 The contractual party remains authorised to further utilise, even for third party orders, standard programmes, programme modules, tools and know how entered by him used in generating performance results.

- 15.4 The contractual party is requires a written authorisation by the client to publish any performance results generated for the client – even in part. Duplication, processing or other utilisation of the performance results generated for the client, fully or in part, is prohibited for the contractual party.
- 15.5 The contractual party may only advertise with his cooperation with the client if he has written authorisation by the client. All planned marketing activates are to be stated in detail.

## **16 Privacy protection**

Personal data is to be processed by the contractual party in accordance with legal regulations.

## **17 Miscellaneous**

- 17.1 The client is entitled to transfer all rights and obligations from the contract based on these terms and conditions to companies directly or indirectly affiliated with the client and/or which are constituent companies in accordance with §§ 15 ff. AktG.
- 17.2 Should individual regulations of the procurement terms or the contract become fully or partially void, the other regulations remain untouched by this.

## **18 Court of jurisdiction – Applicable law**

- 18.1 Court of jurisdiction is Munich (Amtsgericht or Landgericht München I). The client retains the right to file suit at the contractual party's court of jurisdiction.
- 18.2 All agreements are subject to German law excluding conflict rules and the United Nations Convention on Contracts for the International Sale of Goods (abbrev. CISG).

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Alterations and misprints excepted