

# **General Terms and Conditions of Purchase (AEB) of Arvato Systems GmbH, Reinhard-Mohn-Straße 18, 33333 Gütersloh, and its affiliated companies (hereinafter referred to as the "client") for the procurement of services**

(December 2021)

## **1 Scope**

1.1 These GPC shall apply exclusively and to all contracts concluded for the procurement of services. Contradictory terms and conditions of the contractor or terms and conditions of the contractor that deviate from the user of these terms and conditions are expressly not recognized. General terms and conditions of the Contractor shall not become part of the contract even if the Client does not expressly object to them.

1.2 These GPC shall only apply to companies within the meaning of § 14 para. 1 BGB (German Civil Code); they shall also be agreed for all future contracts with the contractor.

1.3 Inclusion of the terms and conditions of the contractor or third parties through conclusive action is excluded. In particular, the acceptance of deliveries or services as well as payment by the Customer shall not make the Contractor's terms and conditions of business the subject of this agreement.

## **2 Object of the service**

The subject of this contract is the provision of services including the associated materials such as documentation (user manuals etc.), concepts, drafts as well as the provision of other services related to the service by the Contractor in accordance with the order.

## **3 Principles of service provision**

3.1 The Contractor shall provide the contractually owed services in accordance with the state of the art at the time of conclusion of the contract and by personnel qualified to provide the agreed services.

3.2 Contact persons of the contracting parties are exclusively the responsible contact persons named in the contract. Furthermore, the Customer shall be entitled to effectively make declarations with regard to the services to be rendered by the Contractor not only to the responsible contact person named by the Contractor but also to his representative.

3.3 The Client may demand the replacement of a person employed by the Contractor for the performance of the contract if this person has breached contractual obligations or does not possess the necessary expertise. The costs arising from the replacement shall be borne by the contractor.

3.4 The involvement of third parties as subcontractors of the Contractor requires the prior consent of the client in text form.

3.5 All dates specified by the client are always binding.

## **4 Placing of orders**

4.1 Only the content of the order is decisive for the provision of services. Oral subsidiary agreements have not been made and only become effective upon confirmation by the client.

4.2 The Contractor is obliged to accept the order within a period of 14 days. The period begins with receipt of the order signed in text form. An acceptance declared after the expiry of the period shall be deemed to be a new offer. This

can only become legally effective if the client does not object within 14 days.

4.3 Cost estimates, the preparation of quotations, the preparation of specifications, project planning documents, plans, drawings and models or other related elaborations or similar are only subject to a separate agreement.

## **5 Change of service**

5.1 After conclusion of the contract, the Client may demand changes to the scope of performance within the scope of the Contractor's capacity, unless this is unreasonable or impracticable for the Contractor. The request for changes must be documented in text form.

5.2 The Contractor shall examine the Client's request for modification and notify the Client in writing within 10 working days (Monday to Friday) whether the modification is unreasonable or not feasible for the Client. If the change request is reasonable and feasible, the Contractor must either submit an offer stating the period of performance, planned dates and effects on the remuneration or agree with the Client - in each case in text form - on the implementation of the requested changes. If a comprehensive examination of the request for changes is necessary, the Contractor may request an extension of the deadline from the Customer.

5.3 The Customer shall accept or reject the Contractor's offer within the offer acceptance period. Agreed changes to services are to be documented in a binding manner by means of a corresponding adaptation of the contract.

5.4 Customer and Contractor may agree that the services affected by the change request shall be interrupted until the necessary adjustment of the contractual agreements.

5.5 If the necessary adjustment of the contractual agreements is not achieved within the binding period of the offer, the work will be continued on the basis of the contract. The performance periods shall be extended by the number of working days on which the work was interrupted as a result of the request for modification or the examination of the request for modification. For the duration of the interruption, the Contractor may demand the agreed expense allowance or a reasonable increase in the agreed fixed price, unless the Contractor has otherwise deployed or maliciously refrained from deploying his employees affected by the interruption.

## **6 Rights of use, Exploitation rights**

6.1 The Contractor grants the Client, the within the meaning of §§ 15 ff. AktG with Bertelsmann SE & Co. KGaA group companies and the Bertelsmann SE & Co. KGaA itself irrevocably all necessary, exclusive, transferable, sublicensable, geographically (worldwide) and temporally unlimited rights of use and exploitation of the work results created by the service and the associated materials, especially documentations and manuals, concepts and drafts, for the purpose of the contract.

6.2 All work results are to be transferred free of third-party rights.

## 7 Other performance obligations

7.1 **Documentation:** In addition to the preparation and handing over of the work results, the Contractor owes the handing over of a service description or sufficient documentation on the performance of the service, at the discretion of the Client.

7.2 **Data carriers:** The work results are to be provided by the contractor in sufficient number on suitable data carriers or by download/upload in a suitable data format, in each case together with documentation, at the choice of the client. The transfer of risk shall take place upon delivery of the data carrier or upon defect-free storage of the work results on a data carrier of the Customer.

7.3 **Security:** The Contractor shall ensure that the work results do not contain any functionalities which make it possible to attenuate, circumvent or eliminate security functions and which have not been made known to the Client prior to delivery, at least in text form. Furthermore, he shall ensure that the work results do not enable unauthorised third parties to gain access to the Client's systems or data without the Client's consent.

## 8 Installation and configuration / quality control / training

8.1 Unless otherwise expressly stipulated in the order, the obligation to provide the work results also includes the installation and configuration of the work results.

8.2 For installation and configuration, the Contractor shall provide a sufficient number of employees to ensure fast and effective installation and configuration that does not interfere with the Client's business operations.

8.3 When the work results are used for the first time, the client is entitled to carry out a quality inspection of 30 working days from completion of the installation. Within these 30 working days, the Client is entitled to cancel the work results at any time if the contractually agreed functions of the work results are not fulfilled.

8.4 The Contractor shall support and train the Client's personnel to the required extent so that the Client is able to use the work results competently (instruction).

8.5 The client can demand further training from the contractor against payment of a fee customary in the market.

## 9 Principles of personnel deployment

9.1 The Contractor shall provide its services independently or with its own or third-party personnel (hereinafter referred to as "Personnel").

9.2 The Client is entitled to demand the replacement of the personnel employed by the Contractor, with justification, which may be provided in text form, if the Contractor has repeatedly breached contractual obligations or if there is any other important reason in the personnel employed which prevents cooperation between the Client and the Contractor.

If the Contractor uses external personnel (such as freelancers or temporary workers), the Client may also demand the replacement of the external personnel with justification, if a further deployment is not reasonable for the Client. As the main contractual obligation, the Contractor shall ensure and control on its own responsibility that any external specialists or subcontractors it employs are deployed and controlled in accordance with the statutory regulations. At the request of the Customer, the Contractor shall provide the Customer with documentation of the controls carried out and confirm the correctness of the controls in text form. Inconsistencies or missing confirmation proofs entitle the customer to an immediate

extraordinary termination of the contractual relationship. The additional expenditure resulting from personnel expansion or personnel change is to be borne by the contractor.

9.3 In the individual contract, the contractor designates its own project manager as central contact person. This person controls the entire project work on the contractor's side. On the other hand, the client provides its own project manager as the central contact person for the entire project management. The project manager controls the entire project work on the part of the client.

9.4 Under no circumstances will the contractor's personnel be integrated into the client's business. The contractor shall remain solely responsible for such personnel to the full extent. There shall be no division of labour between the staff of the contracting authority and the staff of the supplier. The personnel employed by the contractor shall not be included in the internal holiday planning and representation arrangements of the customer. Periods of deployment or service times are agreed exclusively with the project manager contractually appointed by the contractor. The contractor's personnel do not take part in internal meetings and events of the customer with company-specific content and events (for example, presentation round, company party). The only possible participation is in project and technical meetings which are directly connected with the concretization of the contractual service, the provision of services or the acceptance of services. The contractor as well as the personnel employed by him use his own operating resources, unless an objective reason makes the use of the customer's operating resources necessary (e.g. IT security, data protection).

9.5 Without the participation of the responsible project managers, no project-related coordination, instructions or comparable communication takes place between the contractor's personnel on duty and the client's personnel. The Contractor shall involve the Client's project manager for binding information and for all questions arising from the performance of the contract. He shall provide information and make decisions or communicate them without delay. Decisions and information of other persons shall only be binding on the Contractor and his personnel if they have been made or confirmed by the Customer's project manager in text form.

9.6 In the event of any complaints about defects in the performance of the Contractor, the Contractor's project manager shall be the sole contact person for the Client's project manager. No complaints about the performance of the Contractor shall be made to the Contractor's other personnel.

9.7 The Contractor shall ensure that all personnel deployed by it has taken note of the regulations regarding confidentiality, data protection, plant security, the information sheet on the Federal Data Protection Act, the flyer for emergencies as well as the Customer's information security guidelines and complies with the regulations accordingly.

9.8 Upon request, the Contractor shall inform the Client at a reasonable distance about the status of the project and compliance with the contractual requirements and shall provide interim results. In addition, the Customer may request to inspect the relevant documents and extracts thereof.

## 10 Personnel deployment for end customers

10.1 If the Contractor provides services to an end customer of the Client within the scope of this Agreement, the Contractor and the Client shall each remain solely responsible for their personnel. This means that neither the Customer's personnel nor the Contractor's personnel will be

integrated into the operation of the end customer. Furthermore, there is also no cooperation based on the division of labour and no direct communication between the personnel of the contractor, the client and the end customer.

10.2 Every project-related coordination, instruction or comparable communication with the end customer is carried out solely by the responsible project manager of the client. This person is the exclusive contact person for the end customer as well as for the Contractor's project manager with regard to the services provided at the Client's end customer within the scope of this Agreement. In all other respects, the above provisions of Clauses 9.3 to 9.6 apply *mutatis mutandis*.

## 11 Minimum wage

11.1 The contractor is obliged to pay his employees the statutory minimum wage. At the request of the Client, the Contractor shall prove to the Client that this obligation has been fulfilled by submitting suitable documents (in particular documents in accordance with Section 17 (1) MiLoG, clearance certificate from the competent social security or holiday fund, etc.) within 14 days for the entire duration of the contract up to six months after termination of the present contractual relationship.

11.2 The Contractor shall indemnify the Client from all claims of third parties (in particular employees of the Contractor, Client's customers, Federal Employment Agency) in connection with the breach of the obligation to pay the statutory minimum wage on first demand.

11.3 The Contractor is obliged to oblige any subcontractor to pay the statutory minimum wage and release the Client from work to the same extent as the Contractor itself is obliged to do under Clauses 11.1 and 11.2. If the subcontractor in turn uses subcontractors, the Contractor shall ensure that all subcontractors are also obliged accordingly.

11.4 The contractor is liable to the client for all claims of third parties arising from the breach of the obligation to pay the statutory minimum wage by subcontractors.

## 12 Compensation

12.1 In principle, the services provided by the contractor are remunerated by the contracting authority either on a time and material basis or at a fixed price. The following paragraphs shall apply.

12.2 Unless otherwise agreed, the following regulations apply to remuneration according to expenditure:

- a) A remuneration based on time and effort agreed in the contract is the remuneration for the time spent on the services owed under the contract.
- b) A remuneration according to expenditure is due upon receipt of a verifiable invoice, the proof of performance signed by the contractor and countersigned by the client, and after successful quality testing.
- c) The signature of the performance record by the client does not yet indicate that the work has been performed in the required quality.
- d) The quality inspection shall be carried out after the requirements mentioned in point c) have been met, at the latest upon written and unobjectionable receipt by the customer or his end customers.
- e) Travel time for business trips from the place of assignment will be charged at 50% of the respective hourly rate. There are no further claims for compensation for travel time.

12.3 Unless otherwise agreed, the following regulations apply to the remuneration at a fixed price:

- a) A fixed price agreed in the contract is the remuneration for all services owed under the contract.
- b) A fixed price is due after complete provision of the service and successful quality inspection.

12.4 All agreed prices are exclusive of the legally applicable sales tax and include all incidental expenses, in particular travel expenses, travel times, transport costs and customs duties.

12.5 In case of wrong, bad or partial deliveries, the client is entitled to refuse payment until proper fulfilment.

12.6 Unless otherwise agreed, the remuneration is due for payment 30 days after receipt of a verifiable invoice, but in principle only after successful quality control of the work results. The invoice must contain the order number of the client and, if no lump-sum remuneration has been agreed, details of the service provision (including time, place, service rendered).

12.7 In the event of payment within 14 days of receipt of the verifiable invoice, the contractor shall grant the client a discount of 3% on the invoice amount.

12.8 The Contractor is only entitled to withhold payments or services and work results or to offset them against counterclaims if the claims asserted by the Contractor from the same legal relationship have either been acknowledged by the Client at least in text form or a legally binding decision has been made in legal 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 is entitled to the statutory claims. In addition, in the event of default on the part of the Contractor, the Client shall be entitled to demand a contractual penalty of 0.5% of the total order value per day of default.

If the Contractor exceeds an agreed delivery date by more than 7 calendar days, the Client is entitled to withdraw from the contract immediately.

The contractual penalty can be claimed until the final payment of the remuneration.

A contractual penalty paid by the contractor for delay shall be set off against any further claim for damages.

Further claims of the client in case of delay remain unaffected.

## 14 Qualitative performance disorders

14.1 If the service is not provided, not provided in accordance with the contract or provided in a defective manner and if the contractor is responsible for this, he is obliged to provide the service in accordance with the contract within a reasonable period of time without additional costs for the client. A prerequisite for this is a complaint by the client, which must be made within 2 weeks of becoming aware of it. If the contractual provision of the service is not successful in essential parts for reasons for which the Contractor is responsible within the reasonable period of grace to be set by the Customer, the Customer shall be entitled to remedy the defect itself at the expense of the Contractor, to have it remedied by third parties or to terminate the contract without notice. In this case, the Contractor shall be entitled to remuneration for the services rendered on the basis of the contract until the termination becomes effective. The remuneration shall only be waived for those services for which the client proves within 4 weeks

after the declaration of the termination that they are not usable and of no interest to him.

14.2 The statute of limitations for claims arising from qualitative deficiencies in performance is suspended if the parties negotiate the existence or scope of such deficiencies or if the contractor himself checks the existence of a deficiency. The suspension of the statute of limitations shall be terminated if the Contractor notifies the Client in text form that the negotiations have ended or the result of the examination is sent by the Client or the Contractor refuses to continue the rectification of the defect in text form. The resumption of the negotiation, examination or removal of defects shall again lead to the suspension of the limitation period.

14.3 The right to extraordinary termination for good cause remains unaffected.

## **15 Force majeure**

If the contractor is unable to provide the service on time due to force majeure (war, riots, strikes, lock-outs, fire and floods), the client may choose to withdraw from the contract instead of unilaterally extending the deadline for providing the service in accordance with the contract.

## **16 Liability**

16.1 If the client demands compensation for damages instead of performance, the claim for performance shall not lapse until the contractor has paid the compensation.

16.2 In all other respects the statutory provisions shall apply.

## **17 Third-party rights**

Insofar as the work results supplied by the contractor violate the rights of third parties and this at least slightly negligent violation of rights is based on a performance by the contractor, the contractor undertakes to indemnify the client on first demand from all claims of third parties raised thereupon as well as from all costs associated with the legal defence including the costs for an adequate licence acquisition.

## **18 Confidentiality**

18.1 The Contractor undertakes to keep secret and to maintain secrecy about all information (e.g. business and trade secrets, data, technical and commercial information of any kind) which it has come to know about the Customer and the order within the scope of this contractual relationship, whether verbally, in writing, in electronic or any other form, even beyond the duration of the contractual relationship, and to maintain silence about this. The information must be stored in such a way that any misuse is excluded.

18.2 Furthermore, the Contractor guarantees that its employees, consultants and other vicarious agents who are entrusted with the execution of the contract and who receive information in accordance with 18.1 are bound in writing to secrecy.

## **19 Privacy and security**

19.1 The Contractor shall ensure that all persons entrusted with the performance of this contract observe the statutory provisions on data protection and are demonstrably obliged to maintain data secrecy in accordance with the rules on data protection.

19.2 In the case of order processing, a separate agreement shall be concluded between the contracting parties.

19.3 The client expressly does not give his consent to the use of the contact data for advertising purposes. Any

disclosure, transmission or other use of the client's contact data is expressly prohibited.

19.4 The Contractor undertakes to take all necessary measures to ensure information and operational safety and quality assurance at the Client's premises during the performance of the contract. The relevant guidelines and information sheets of the Customer shall apply, which shall be made available to the Contractor at its request.

## **20 Insurance**

20.1 The Contractor undertakes to maintain a business liability insurance policy throughout the duration of the contract, the scope and amount of which is appropriate to its liability risks under this contract.

20.2 Upon request of the Customer, the Contractor shall provide evidence of the conclusion and existence of the insurance policy and the payment of the corresponding premiums.

## **21 Audit**

21.1 The Client is entitled, either himself or through an appointed third party, to carry out an audit once a year, after prior notice and during business hours, at the Contractor's premises for the purpose of checking the Contractor's compliance with the contractual obligations.

21.2 The confidentiality of the contractor's information shall be respected and appropriate security provisions shall be taken into account.

21.3 The Contractor is obliged to grant access to all systems, books, records, business processes and facilities that the Client requires in order to conduct a proper and thorough inspection. The Contractor shall provide the necessary cooperation in such an inspection.

## **22 Termination/Term**

22.1 The term is specified in the respective contract.

22.2 Unless otherwise agreed in the respective individual contract, the Client may terminate the individual contract at any time with a notice period of 2 weeks.

22.3 The right to extraordinary termination for good cause remains unaffected.

## **23 Final provisions**

23.1 This agreement can only be transferred to third parties with the consent of the other party in text form using an electronic signature (in accordance with eIDAS requirements). On the part of the customer, third parties within the meaning of this clause are not the companies affiliated with Bertelsmann SE & Co KGaA, Gütersloh, group companies (§§ 15 ff. AktG) and Bertelsmann SE & Co KGaA itself.

23.2 The contractor is not entitled to name the client, details of the order or the client's end customer as a reference without the client's express consent.

23.3 The contractual penalties referred to in these contractual conditions may not exceed 5% of the total contract value.

23.4 The contractor acknowledges the provisions of the Supplier Code of Conduct of Bertelsmann SE & Co KGaA and undertakes to act in accordance with them. This Code of Conduct for business partners can be found at [www.bertelsmann.de/unternehmen/grundwerte/compliance/geschaeftpartner/](http://www.bertelsmann.de/unternehmen/grundwerte/compliance/geschaeftpartner/).

23.5 Changes, additions and the cancellation of this contract require text form by means of electronic signature (according to eIDAS requirements). This means that an e-mail format does not meet these requirements. The same

applies to the cancellation of the written form requirement. All design rights must always be asserted with a signature variant that is at least eIDAS-compliant.

23.6 The existence of this contract is not affected by the invalidity of individual provisions or by loopholes in the regulations. An ineffective provision or a loophole shall be replaced or filled by a valid provision which corresponds as far as possible to the meaning and purpose of the omitted provision or the remaining provisions of this contract.

23.7 The law of the Federal Republic of Germany shall apply, excluding the UN Convention on Contracts for the International Sale of Goods. The place of jurisdiction for all disputes arising out of or in connection with this contract is the court which is competent for the client in terms of subject matter and location.