

GENERAL CONDITIONS OF THE CONTRACT

The Contract consists of a Purchase Order and these General Conditions. In the event of conflicting interpretations, the purchase order shall take precedence over the General Conditions. If the specification and the Contractor's quote are annexed to the purchase order, the specification shall take precedence over the quote and the Contract shall take precedence over both. The several instruments shall be an integral part of the Contract and, subject to the above, they shall be taken as mutually explanatory.

ARTICLE 1 – PERFORMANCE OF THE CONTRACT

- 1.1.** The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.
- 1.2.** The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be executed.
- 1.3.** Without prejudice to Article 3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- 1.4.** The Contractor must ensure that any staff performing the Contract has the professional qualifications and experience required for the execution of the tasks assigned to him.
- 1.5.** The Contractor shall neither represent the Contracting Authority nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.
- 1.6.** The Contractor shall have sole responsibility for the staff who execute the tasks assigned to him. The Contractor shall make provision for the following employment or service relationships with his staff:
 - Staff executing the tasks assigned to the Contractor may not be given orders direct by the Contracting Authority;
 - The Contracting Authority may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Contracting Authority any right arising from the contractual relationship between the Contracting Authority and the Contractor.
- 1.7.** In the event of disruption resulting from the action of a member of the Contractor's staff working on the Contracting Authority premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The Contracting Authority shall have the right to request the replacement of any such member of staff, stating its reasons for so doing. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor shall be responsible for any delay in the execution of the tasks assigned to him resulting from the replacement of staff.
- 1.8.** Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor shall immediately

and at his own initiative record it and report it to the Contracting Authority. The report shall include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with his obligations under the Contract. In such event the Contractor shall give priority to solving the problem rather than determining liability.

- 1.9.** Should the Contractor fail to perform his obligations under the Contract, the Contracting Authority may - without prejudice to its right to terminate the Contract - reduce or recover payments in proportion to the scale of the failure. In addition, the Contracting Authority may claim compensation or impose liquidated damages provided for in Article 12.

ARTICLE 2 - LIABILITY

- 2.1.** The Contracting Authority shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the Contracting Authority.
- 2.2.** The Contractor shall be liable for any loss or damage sustained by the Contracting Authority in performance of the Contract, including in the event of subcontracting under Article 6 but only up to three times the total amount of the Contract. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or by its employees, the Contractor shall remain liable without any limitation as to the amount of the damage or loss.

ARTICLE 3 - CONFLICTS OF INTEREST

- 3.1.** The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such conflict of interest could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interest which could arise during performance of the Contract must be notified to the Contracting Authority in writing without delay. In the event of such conflict, the Contractor shall immediately take all necessary steps to resolve it.

The Contracting Authority reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which it shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflicts of interest. Without prejudice to Article 1 the Contractor shall replace, immediately and without compensation from the Contracting Authority, any member of his staff exposed to such a situation.

- 3.2.** The Contractor shall abstain from any contact likely to compromise his independence.
- 3.3.** The Contractor declares:
- that he has not made and will not make any offer of any type whatsoever from which an unjustified advantage can be derived under the Contract,
 - that he has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either

directly or indirectly, inasmuch as it is an incentive or reward relating to performance of the Contract.

- 3.4.** The Contractor shall pass on all the relevant obligations in writing to his staff, board, and directors as well as to third parties involved in performance of the Contract.

ARTICLE 4 - CONFIDENTIALITY

The Contractor undertakes to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

ARTICLE 5 - DATA PROTECTION

5.1 Processing of personal data by the contracting authority

Any personal data included in or relating to the FWC, including its implementation, shall be processed in accordance with Regulation (EU) No 2018/1725. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the FWC by the data controller.

The contractor or any other person whose personal data is processed by the data controller in relation to this FWC has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) No 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

Should the contractor or any other person whose personal data is processed in relation to this FWC have any queries concerning the processing of its personal data, it shall address itself to the data controller. They may also address themselves to the Data Protection Officer of the data controller. They have the right to lodge a complaint at any time to the European Data Protection Supervisor.

Details concerning the processing of personal data are available in the data protection notice published on the contracting authority's website.

5.2 Processing of personal data by the contractor

The processing of personal data by the contractor shall meet the requirements of Regulation (EU) No 2018/1725 and be processed solely for the purposes set out by the controller.

The contractor shall assist the controller for the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this FWC as laid down in Chapter III (Articles 14-25) of Regulation (EU) No 2018/1725.

The contractor shall inform without delay the controller about such requests.

The contractor may act only on documented written instructions and under the supervision of the controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

The contractor shall grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the FWC. The contractor must

ensure that personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article 4.

The contractor shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing, in order to ensure, in particular, as appropriate:

- a) the pseudonymisation and encryption of personal data;
- b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

The contractor shall notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the contractor becomes aware of the breach. In such cases, the contractor shall provide the controller with at least the following information:

- a) nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- b) likely consequences of the breach;
- c) measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.

The contractor shall immediately inform the data controller if, in its opinion, an instruction infringes Regulation (EU) 2018/1725, Regulation (EU) 2016/679, or other Union or Member State data protection provisions as referred to in the tender specifications.

The contractor shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 41 under Regulation (EU) 2018/1725 to:

- a) ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
- b) notify a personal data breach to the European Data Protection Supervisor;
- c) communicate a personal data breach without undue delay to the data subject, where applicable;
- d) carry out data protection impact assessments and prior consultations as necessary.

The contractor shall maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties.

The contracting authority is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services)

and data security, which includes personal data held on behalf of the contracting authority in the premises of the contractor or subcontractor.

The contractor shall notify the contracting authority without delay of any legally binding request for disclosure of the personal data processed on behalf of the contracting authority made by any national public authority, including an authority from a third country. The contractor may not give such access without the prior written authorisation of the contracting authority.

The duration of processing of personal data by the contractor will not exceed the period referred to in Article 19. Upon expiry of this period, the contractor shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

For the purpose of Article 6, if part or all of the processing of personal data is subcontracted to a third party, the contractor shall pass on the obligations referred to in this article in writing to those parties, including subcontractors. At the request of the contracting authority, the contractor shall provide a document providing evidence of this commitment.

ARTICLE 6 - SUBCONTRACTING

- 6.1.** The Contractor shall not subcontract without prior written authorisation from the Contracting Authority nor cause the Contract to be performed in fact by third parties.
- 6.2.** Even where the Contracting Authority authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Contracting Authority under the Contract and shall bear exclusive liability for proper performance of the Contract.
- 6.3.** The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the Contracting Authority is entitled by virtue of the Contract, notably Article 19.

ARTICLE 7 - AMENDMENTS

Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties before fulfilment of all their contractual obligations. An oral agreement shall not be binding on the contracting parties.

ARTICLE 8 - ASSIGNMENT

- 8.1.** The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the Contracting Authority.
- 8.2.** In the absence of such authorisation, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the Contracting Authority.

ARTICLE 9 - USE, DISTRIBUTION AND PUBLICATION OF INFORMATION ABOUT THE CONTRACT

- 9.1.** The Contractor shall authorise the Contracting Authority to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, and the amount paid. Where personal data is concerned, Article 5 shall apply.
- 9.2.** Unless otherwise provided, the Contracting Authority shall not be required to distribute or publish documents or information supplied in performance of the Contract. If it decides not to distribute or publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the Contracting Authority.
- 9.3.** Any distribution or publication of information relating to the Contract or use of outcome of the implementation of the Contract and provided as such by the Contractor shall require prior written authorisation from the Contracting Authority and, if so requested, shall mention that it was produced within a contract with the Contracting Authority. It shall state that the opinions expressed are those of the Contractor only and do not represent the Contracting Authority 's official position.
- 9.4.** The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the Contracting Authority has specifically given prior written authorisation to the contrary.

ARTICLE 10 – OWNERSHIP OF THE RESULTS – INTELLECTUAL AND INDUSTRIAL PROPERTY

Any results or rights thereon, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the Contracting Authority, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.

ARTICLE 11 - FORCE MAJEURE

- 11.1.** Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- 11.2.** Without prejudice to Article 1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- 11.3.** Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to perform his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually executed.

11.4. The contracting parties shall take the necessary measures to reduce damage to a minimum.

ARTICLE 12 – LIQUIDATED DAMAGES

Should the Contractor fail to perform his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the Contracting Authority 's right to terminate the Contract, the Contracting Authority may decide to impose liquidated damages per calendar day of delay according to the following formula:

$$0.3 \times (V/d)$$

V is the price specified in the purchase order;

d is the duration specified in the purchase order or, failing that, the period between the date of issue and the delivery or performance date specified in the purchase order, expressed in days.

The Contractor may submit arguments against this decision within thirty days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Contracting Authority within thirty days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. These liquidated damages shall not be imposed where there is provision for interest for late completion. The Contracting Authority and the Contractor expressly acknowledge and agree that any sums payable under this article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such failure to perform obligations.

ARTICLE 13 - SUSPENSION OF THE CONTRACT

Without prejudice to the Contracting Authority 's right to terminate the Contract, where the Contract is subject to irregularities, fraud or breach of obligations the Contracting Authority may suspend the performance of the Contract or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. The Contracting Authority shall as soon as the verification is completed give notice to the Contractor to resume the service suspended or inform that it is proceeding with contract termination. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.

The contracting authority may in addition suspend the time allowed for payments in accordance with Article 16.

ARTICLE 14 - TERMINATION

14.1. The Contracting Authority may terminate the Contract in the following circumstances:

- (a) if provision of the services under the contract has not actually started within 15 days of the scheduled date and the contracting authority considers the new date proposed, if any, unacceptable;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the contract;
- (c) if the contractor does not perform the contract in accordance with the tender specifications or is in breach of another substantial contractual obligation.

- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 136(1) of the Financial Regulation¹;
- (e) if the contractor or any related person is subject to any of the situations provided for in points (c) to (h) of Article 136(1) or to Article 136(2) of the Financial Regulation.
- (f) if the procedure for awarding the contract or the performance of the contract prove to have been subject to irregularities, fraud or breach of obligations;
- (g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the contractor is in a situation that could constitute a conflict of interest or a professional conflicting interest;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the performance of the contract or substantially modify the conditions under which the contract was initially awarded or a change regarding the exclusion situations listed in Art 136 of the Financial Regulation that calls into question the decision to award the contract;
- (j) in the event of force majeure, where either resuming implementation is impossible or the necessary ensuing amendments to the contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the contractor is in breach of the data protection obligations resulting from Article 5;
- (l) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679.

14.2. In case of force majeure, notified in accordance with Article 11, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in the purchase order.

14.3. Prior to termination the Contractor shall be given the opportunity to submit his observations.
Termination shall take effect on the date on which a registered letter with acknowledgment of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

14.4. Consequences of termination

In the event of the Contracting Authority terminating the Contract in accordance with this article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted service. On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.

The Contracting Authority may claim compensation for any damage suffered and recover any sums paid to the Contractor under the Contract.

¹ Regulation (EU, EURATOM) No 2018/1046 on the financial rules applicable to the general budget of the Union.

On termination the Contracting Authority may engage any other contractor to execute or complete the services. The Contracting Authority shall be entitled to claim from the Contractor all extra costs incurred in doing so, without prejudice to any other rights or guarantees it has under the Contract.

ARTICLE 14A – IRREGULARITIES, FRAUD OR BREACH OF OBLIGATIONS ATTRIBUTABLE TO THE CONTRACTOR

Where, after the award of the Contract, the award procedure or the performance of the Contract prove to have been subject to irregularities, fraud or breach of obligations, and where such irregularities, fraud or breach of obligations are attributable to the Contractor, the Contracting Authority may refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with the Contractor, in proportion to the seriousness of the errors, irregularities of fraud.

ARTICLE 15 – INVOICING AND PAYMENTS

15.1 Within sixty days of completion of the tasks referred to in the purchase order, the Contractor shall submit to the Contracting Authority an invoice quoting the reference number of the Contract to which it relates.

Payments shall be executed only if the Contractor has fulfilled all his contractual obligations by the date on which the invoice is submitted.

15.2 Payments are executed in the currency of the contract.

Costs of the transfer are borne in the following way:

- costs of dispatch charged by the bank of the Contracting Authority are borne by the Contracting Authority,
- cost of receipt charged by the bank of the Contractor are borne by the Contractor,
- all costs of repeated transfer caused by one of the parties are borne by the party who caused repetition of the transfer.

ARTICLE 16 – GENERAL PROVISIONS CONCERNING PAYMENTS

16.1. Payments shall be deemed to have been made on the date on which the Contracting Authority 's account is debited.

16.2. The payment period stipulated in the purchase order may be suspended by the Contracting Authority at any time if it informs the Contractor that his invoice is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. The Contracting Authority may proceed with further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the invoice is admissible.

The Contracting Authority shall notify the Contractor accordingly and set out the reasons for the suspension by registered letter with acknowledgment of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period shall begin to run again once the suspension has been lifted.

16.3. In the event of late payment the Contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200. In case interest does not exceed EUR 200, the Contractor may claim interest within two months of receiving the

payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ("the reference rate") plus eight percentage points ("the margin"). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the Contracting Authority may not be deemed to constitute late payment.

ARTICLE 17 - TAXATION

- 17.1.** The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.
- 17.2.** The Contractor recognises that the Contracting Authority is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to the provisions of Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union.
- 17.3.** The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for performance of the Contract are exempt from taxes and duties, including VAT.
- 17.4.** Invoices presented by the Contractor shall indicate his place of taxation for VAT purposes and shall specify separately the amounts not including VAT and the amounts including VAT.

ARTICLE 18 - RECOVERY

- 18.1.** If total payments made exceed the amount actually due or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the Contracting Authority.
- 18.2.** In the event of failure to pay by the deadline specified in the debit note, the sum due shall bear interest at the rate indicated in Article 16.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.
- 18.3.** The Contracting Authority may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor also has a claim on the Contracting Authority that is certain, of a fixed amount and due.

ARTICLE 19 - CHECKS AND AUDITS

- 19.1** Pursuant to Article 255 of the Financial Regulation applicable to the general budget of the European Communities, the Court of Auditors shall be empowered to audit the documents held by the natural or legal persons receiving payments from the budget of the Union from signature of the Contract up to five years after payment of the balance.
- 19.2** The Contracting Authority or an outside body of its choice shall have the same rights as the Court of Auditors for the purpose of checks and audits limited to compliance with contractual obligations from signature of the Contract up to five years after payment of the balance of the last implementation.

- 19.3** In addition, the European Anti-Fraud Office may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) No 1073/1999 from signature of the Contract up to five years after payment of the balance of the last implementation.
- 19.4 The European Public Prosecutor's Office established by Council Regulation (EU) 2017/19392 ('the EPPO') have the same rights as the contracting authority, particularly right of access, for the purpose of checks, audits and investigations.

² Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office