



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 they shall be taken as mutually explanatory, subject to the above.

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 necessary steps to obtain any permit of 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 Agency 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 Agency;
 - the Agency 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 Agency any right arising from the contractual relationship between the Agency and the Contractor.
- 1.7** In the event of disruption resulting from the action of a member of the Contractor's staff working on Agency 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 Agency 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 Agency. The report shall include a description of the problem and an indication of the date on which it started and 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 Agency 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 Agency may claim compensation or impose liquidated damages provided for in Article 12.

ARTICLE 2 – LIABILITY

2.1 The Agency 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 Agency.

2.2 The Contractor shall be liable for any loss or damage sustained by the Agency in performance of the Contract, including in the event of subcontracting under Article 6 but only up to 3 (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 Agency in writing without delay. In the event of such conflict of interest, the Contractor shall immediately take the necessary steps to resolve it.

The Agency 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 Agency 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 the 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** Any personal data included in the Contract shall be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regards to the processing of personal data by the Communities institutions and bodies and on the free movement of such data¹. Such data shall be processed solely for the purposes of the performance, management and monitoring of the Contract by the entity acting as data controller without prejudice to possible transmission to the bodies charged with monitoring or inspection tasks in application of Union law.
- 5.2** The Contractor shall have the right of access to his/her personal data and the right to rectify any such data. Should the Contractor have any queries concerning the processing of his/her personal data, he/she shall address them to the entity acting as data controller.
- 5.3** The Contractor shall have the right of recourse at any time to the European Data Protection Supervisor.
- 5.4** Where the Contract requires the processing of personal data, the Contractor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data and the means by which the data subject may exercise his/her rights.
- 5.5** The Contractor shall limit access to the data to the staff strictly necessary for the performance, management and monitoring of the Contract.
- 5.6** The Contractor undertakes to adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:
- a) prevent any unauthorised person from having access to computer systems processing personal data, and especially:
 - unauthorised reading, copying, alteration or removal of storage media;
 - unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored personal data;

¹ OJ L 8/1 of 12.1.2001

- unauthorised use of data-processing systems by means of data transmission facilities;
- b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
- c) record which personal data have been communicated, when and to whom;
- d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the Agency;
- e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
- f) design its organisational structure in such a way that it meets data protection requirements.

ARTICLE 6 – SUBCONTRACTING

- 6.1** The Contractor shall not subcontract without prior written authorisation from the Agency nor cause the Contract to be performed in fact by third parties.
- 6.2** Even where the Agency authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the Agency 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 Agency 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 Agency.
- 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 Agency.

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

- 9.1** The Contractor shall authorise the Agency 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 Agency 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 Agency.
- 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 Agency and, if so requested, shall mention that it was produced within a contract with the Agency. It shall state that the opinions expressed are those of the Contractor only and do not represent the Agency'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 Agency 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 European Union, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitations, except where industrial or intellectual property rights exist prior to the Contract being entered into.

where industrial and intellectual property rights, including rights of ownership and use of the Contractor and third parties, exist prior to the Contract being entered into ("*pre-existing rights*") the Contractor shall list precisely at the end of the period of the execution of the tasks at the latest all materials, information, IT tools, methodology and any other results or parts of the result to which third parties have rights or for which the right is not to be unconditionally given to the European Union. For every listed item the Contractor shall described precisely the scope of pre-existing rights and other rights and the scope and the way, direct or indirect, of the partial vesting and thereby the effective transfer of rights to the European Union.

The Contractor shall present relevant and exhaustive evidence of acquiring all necessary rights together with presentation of the relevant result. In case parts of the results were created by employees of the Contractor, documentary evidence shall be provided as to how the creator's or author's rights were transferred to the Contractor.

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 the 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 Agency's right to terminate the Contract, the Agency may decide to impose liquidated damages per calendar day of delay according to the formula $0.3 \times (V/d)$, where V is the price specified in the purchase order and 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 30 (thirty) days of notification by registered letter with acknowledgment of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the Agency within 30 (thirty) days of 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 Agency 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 Agency's right to terminate the Contract, where the Contract is subject to substantial error, irregularity or fraud the Agency may suspend the execution 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 notification so provides. The Agency shall as soon as possible give notice to the Contractor to resume the services 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 part thereof.

ARTICLE 14 – TERMINATION

14.1 The Agency may terminate the Contract in the following circumstances:

- a) where the Contractor is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with legal provisions in the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;
- c) where the Agency has evidence or seriously suspects the Contractor or any related entity or person, of professional misconduct;
- d) where the Agency has evidence or seriously suspects the Contractor or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the European Union's financial interests;
- e) where the Agency has evidence or seriously suspects the Contractor or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the Contract;
- f) where the Contractor is in breach of his obligations under Article 3;
- g) where the Contractor was guilty of misrepresentation in supplying the information required by the Agency as a condition of participation in the Contract procedure or failed to supply this information;
- h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the Agency's opinion, have a significant effect on the performance of the Contract;
- i) where execution of the tasks has not actually commenced within the delivery or performance period set in the purchase order, and the new date proposed, if any, is considered unacceptable by the Agency;
- j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;
- k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

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 $\frac{1}{5}$ (one fifth) of the period laid down in the purchase order.

14.3 Prior to termination under point c), d), e), h) or k) 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 In the event of the Agency 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 appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required for tasks executed up to the date on which termination takes effect, within a period not exceeding 30 (thirty) days from that date.

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

On termination the Agency may engage any other contractor to execute or complete the services. The Agency 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 15 – SUBSTANTIAL ERRORS, IRREGULARITIES AND FRAUD 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 substantial errors, irregularities or fraud, and where such errors, irregularities or fraud are attributable to the Contractor, the Agency 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 or fraud.

ARTICLE 16 – INVOICING AND PAYMENTS

16.1 Within 30 (thirty) days of completion of the tasks referred to in the purchase order, the Contractor shall submit to the Agency 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.

16.2 Payments are executed in the currency of the Contract.

Costs of transfer are borne in the following way:

- costs of dispatch charged by the bank of the Agency are borne by the Agency,
- costs of receipt charged by the bank of the Contractor are borne by the Contractor,

- all costs or repeated transfer caused by one of the contracting parties are borne by the contracting party who caused repetition of the transfer.

ARTICLE 17 – GENERAL PROVISIONS CONCERNING PAYMENTS

17.1 Payments shall be deemed to have been made on the date on which the Agency's account is debited.

17.2 The payment period stipulated in the purchase order may be suspended by the Agency 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 Agency may proceed with further verification, including on-the-spot check, in order to ascertain, prior to payment, that the invoice is admissible.

The Agency 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.

17.3 In the event of late payment the Contractor shall be entitled to interest, provided the calculated interest exceeds EUR 200 (two hundred). In case interest does not exceed EUR 200 (two hundred), 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 7 (seven) 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 Agency may not be deemed to constitute late payment.

ARTICLE 18 – TAXATION

18.1 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.

18.2 The Contractor recognises that the Agency is, as a rule, exempt from all taxes and duties, including value added tax (VAT), pursuant to Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Union and the Headquarters Agreement between the Agency and the Government of Denmark of 17 August 1995.

18.3 The Contractor shall accordingly complete the necessary formalities with the relevant authorities to ensure that the goods and services required for the performance of the Contract are exempt from taxes and duties, including VAT.

18.4 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 19 – RECOVERY

19.1 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 Agency.

19.2 In the event of failure to pay by the deadlines specified in the debit note, the sum due shall bear interest at the rate indicated in Article 17.3. 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.

19.3 The Agency 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 European Union or the European Atomic Energy Community that is certain, of a fixed amount and due.

ARTICLE 20 – CHECKS AND AUDITS

20.1 Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Communities², 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 European Union from signature of the Contract up to 5 (five) years after payment of the balance.

20.2 The Agency or an outside body of its choice shall have the same right 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 5 (five) years after payment of the balance of the last implementation.

20.3 In addition, the European Anti-Fraud Office (OLAF) 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 5 (five) years after payment of the balance of the last implementation.

ARTICLE 21 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES

21.1 The Contract shall be governed by Union law, complemented, where necessary, by the national substantive law of Denmark.

21.2 Any dispute between the contracting parties resulting from the interpretation or application of the Contract which cannot be settled amicably shall be brought before the courts of Copenhagen.

² OJEU L 248/1 of 16.9.2002 as amended by Council Regulation (EC) No 1995/2006 of 13.12.2006, OJEU L 390/1 of 30.12.2006.