

## **GENERAL CONDITIONS FOR PURCHASE ORDERS**

The contract shall consist of a purchase order and these general conditions, the specifications and the invitation. The various documents shall be deemed to be mutually explanatory. In the event of a conflict of interpretation between them, they shall take precedence in the order in which they are numbered (1. the purchase order and the general conditions, 2. the specifications and 3. the invitation) and they all in any event take precedence over the supplier/service provider's offer and its own general conditions which may not be applied to the contract.

### **Clause 1: COMMUNICATION**

- 1.1. All communications relating to the contract or its performance shall be in writing, in French, English or German, and bear the number of the purchase order.
- 1.2. All formal communication must be by registered mail with acknowledgement of receipt or by equivalent electronic means sent to the electronic mail address of the department concerned referred to in the purchase order. The communication shall be deemed to have been made when it is received by the intended recipient. Mail sent by post shall be deemed to have been received by the contracting authority on the date of its registration by the department concerned referred to in the purchase order.

### **Clause 2: AMENDMENTS**

Any amendments to these general conditions shall be binding only if they are submitted in writing and signed for approval by the procurement officer referred to in the purchase order.

### **Clause 3: EXTENSION OF THE CONTRACT**

Subject to the agreement of the supplier/service provider, this contract may be extended to cover one or more legal entities other than the signatory of the original purchase order on condition that those entities are an integral part of the 'European Schools' international organisation governed by public law.

### **Clause 4: CONFIDENTIALITY**

- 4.1. The contracting authority and the supplier/service provider shall treat as confidential all information and every document, in whatever form and whether transmitted in writing or orally, in connection with the performance of the contract and described in writing as being confidential.
- 4.2. The supplier/service provider must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the contract, a commitment that they will comply with this same obligation of confidentiality.

### **Clause 5: PROCESSING OF PERSONAL DATA**

Any personal data included in the contract shall be processed pursuant to the provisions of Regulation (EC) No 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data, and with due regard for the national legislation applicable to the protection of privacy. Unless indicated otherwise, any personal data will be processed solely for the execution of the object of the contract.

### **Clause 6: PRICES, TAXES AND DUTIES**

The prices are to be understood as including delivery paid and are firm and final. They must be expressed only in euros, excluding VAT.

### **Clause 7: INSPECTION AND RECEPTION**

The supplier/service provider undertakes to deliver for reception only those items which comply with the specifications laid down. The contracting authority reserves the right to inspect or test any service or supply delivered for reception. The contracting authority may require the repair or replacement of non-compliant goods supplied or the fresh provision of services if they are not adequately performed with no increase to the contract price. The contracting authority must exercise its rights after reception:

- a) within a reasonable time after the defect or shortcoming has been or should have been discovered, or
- b) before any significant change takes place in the state of the item, unless such change is inherent to the defect or shortcoming.

### **Clause 8: MATERIALS AND QUALITY OF PERFORMANCE**

All the equipment, materials and items ordered under this contract must be new and of the best quality, bearing in mind their nature, for their intended purpose. The performance of the contractual services must be of the first order. The procurement officer may ask the supplier/service provider in writing to relieve from their duties in the context of work under the contract those employees whom it deems incompetent, negligent or insubordinate or whose presence is for one reason or another undesirable or those whom it would be contrary to the interests of the contracting authority to keep employed in the work in question.

### **Clause 9: GUARANTEE**

- 9.1. Notwithstanding inspection and reception by the contracting authority of supplies delivered or services provided under this contract, and without prejudice to longer guarantee periods offered by the manufacturer or imposed by the specifications, the supplier/service provider warrants, for a period of at least two (2) years from the date of reception, that all supplies delivered and services performed under the contract are free from defects in material or workmanship and comply with the specifications and all the other criteria set out in the contract.
- 9.2. If it is necessary to return, change or replace the goods supplied, the supplier/service provider shall bear the cost of such return. The cost of transport and liability for those goods during transport shall be borne by the supplier/service provider. However, its liability for such transport costs shall be limited to an amount equal to the cost of the return trip by the commercial means of transport usually used between the destination specified in the contract and the supplier/service provider's premises.

**Clause 10: QUANTITATIVE VARIATION**

No quantitative variation shall be accepted for any of the items covered by this contract unless such variation is due to loading, shipping or packaging conditions, or tolerances of the manufacturing process. Where that is the case, variations are permitted only to the extent which may be specified in the contract.

**Clause 11: LABELLING DELIVERIES**

Each package must, as a minimum, bear the number of the contract, the address for delivery and the contact person at the contracting authority, where that information is available.

**Clause 12: PAYMENT AND INVOICING**

12.1. Payment must be effected within thirty (30) calendar days following reception of a valid invoice. The invoice must be sent to the address in the box marked 'Address for invoice'. It must be accompanied by the delivery note - duly dated and signed by the authority to or for which the goods were delivered or the services performed. No payment shall be made for any goods not delivered, work not carried out or services not performed under the contract. The invoice must be submitted in triplicate bearing the following information: number of the purchase order, description of the goods or the services, quantity, unit and price. Where one or several part payments are provided for in the contract, the payment number must be indicated as follows 'part payment number ...' and the date of the order form.

12.2. The costs of the transfer shall be borne in the following way:

- a) costs of dispatch charged by the bank of the contracting authority shall be borne by it;
- b) cost of receipt charged by the bank of the supplier/service provider shall be borne by the supplier/service provider;
- c) costs for repeated transfer caused by one of the parties shall be borne by the party causing repetition of the transfer.

**Clause 13: SUSPENSION OF THE TIME ALLOWED FOR PAYMENT**

The contracting authority may at any time suspend the payment periods referred to in the purchase order informing the supplier/service provider that the invoice cannot be processed, either because it does not comply with the provisions of the contract or because the appropriate documents have not been produced. The contracting authority shall inform the supplier/service provider as soon as possible, in writing, of such suspension, giving reasons. Suspension shall take effect on the date the notification is sent by the contracting authority. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. If the suspension period is longer than two (2) months, the supplier/service provider may ask the contracting authority to give reasons for continuing the suspension. Where the payment periods have been suspended as a result of the rejection of a document referred to in this Clause and the new document produced is also rejected, the contracting authority reserves the right to terminate the contract in accordance with Clause 17(1)(c).

**Clause 14: SUBCONTRACTING**

14.1. The supplier/service provider shall not subcontract without prior written authorisation from the contracting authority nor cause the contract to be de facto performed by third parties.

14.2. Even where the contracting authority authorises the supplier/service provider to conclude subcontracts with third parties, it shall not be released from its contractual obligations and shall bear sole liability for the proper performance of this contract.

14.3. The supplier/service provider shall make sure that the subcontract does not affect rights and guarantees granted to the contracting authority by virtue of this contract, notably by Article 20.

**Clause 15: FORCE MAJEURE**

15.1. 'Force majeure' means any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the contract, which was not attributable to error or negligence on their part and which proves to be inevitable in spite of exercising due diligence. Defaults of service, defects in equipment or material(s) or delays in making them available, unless they stem directly from a relevant case of force majeure, or industrial disputes, strikes and financial difficulties, may not be invoked as force majeure.

15.2. A party faced with force majeure shall formally warn the other party without delay, stating the nature, likely duration and foreseeable effects. Where the supplier/service provider is temporarily or definitively unable to fulfil its contractual obligations owing to force majeure, it shall have the right to remuneration only for the tasks actually executed.

**Clause 16: SUSPENSION OF PERFORMANCE OF THE CONTRACT**

16.1. The supplier/service provider may suspend the performance of the contract or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. It shall inform the contracting authority of such suspension immediately by transmitting all the necessary justifications and explanations together with the date on which the contract is expected to be performed. As soon as the conditions for resuming performance are met, the supplier/service provider shall inform the contracting authority immediately, unless the latter has already terminated the contract.

16.2. The contracting authority may suspend the performance of the contract or any part thereof:

- a) if the contract award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud;
- b) in order to verify whether presumed substantial errors, irregularities or fraud actually occurred;
- c) when the partially delivered goods or partially completed services do not meet the specifications of the order form.

16.3. Suspension shall take effect on the day the supplier/service provider receives formal notification, or at a later date provided in the notification. The contracting authority shall give notice as soon as possible to the supplier/service provider to resume the provision of the suspended services or inform the supplier/service provider that it is proceeding with the termination of the contract. The supplier/service provider shall not be entitled to claim compensation on account of suspension of the contract or of part thereof.

**Clause 17: TERMINATION FOR NON-PERFORMANCE**

17.1. The contracting authority may terminate all or part of the order by notifying the non-performance in writing to the supplier/service provider where the latter:

- a) fails to deliver supplies or perform services within the time-limits laid down in the contract or within the limits of any extensions of the contract; or,
- b) after the award of the contract, finds itself in one of the situations mentioned in Articles 136 to 141 of the Financial Regulation applicable to the budget of the Union in conformity with article 66 of the Financial Regulation of the European Schools; or,
- c) fails to perform the contract in accordance with the specifications or another substantive contractual obligation; or,
- d) fails to remedy such breach within thirty (30) calendar days (or such longer period as may be agreed in writing by the procurement officer) following receipt of notice from the procurement officer of such failure.

The contracting authority may also terminate the contract by written notification of non-performance of the contract where force majeure has been notified in accordance with Clause 15(2) or in the event of suspension of performance of the contract by the supplier/service provider due to force majeure, notified in accordance with Clause 16(1) if resumption of performance is impossible or if a change of contract is likely to call in question the decision to award the contract or give rise to unequal treatment between tenderers.

17.2. Except in the case of force majeure, if the contracting authority terminates all or part of the contract as provided for in Clause 17(1) above, and acquires supplies or services identical to those covered by the contract terminated in accordance with the rules and procedures laid down by the contracting authority, the contracting authority is entitled to claim from the supplier/service provider the reimbursement of any additional costs incurred as a result of these acquisitions. In those circumstances, the contracting authority shall pay the supplier/service provider for any supplies delivered or services performed and received at the contract price minus any additional costs.

17.3. Where the contracting authority intends to terminate the contract, it shall formally notify the supplier/service provider, giving its reasons for termination. It shall invite the supplier/service provider to submit any comments it may have and, in the event of force majeure, to inform it of the measures it has taken to ensure the continuity of fulfilment of its contractual obligations, within a period (30) days from receipt of the notification. In the absence of acceptance of these observations confirmed by written agreement of the contracting authority within thirty (30) days of receipt thereof, the termination procedure shall be continued.

17.4. In the event of termination, the supplier/service provider shall waive any claim for consequential damage, including any loss of anticipated profits for uncompleted work. On receipt of the notification of termination, the supplier/service provider shall take all the appropriate measures to minimise costs, prevent damage, and cancel or reduce its commitments. The contracting authority may claim compensation for any damage suffered in the event of termination. Upon termination, it may engage any other supplier/service provider to perform or complete the tasks and shall be entitled to claim from the supplier/service provider the reimbursement of any additional costs incurred thereby, without prejudice to any other rights or guarantees it may hold under contract.

**Clause 18: LIABILITY**

18.1. The supplier/service provider shall be solely responsible for complying with any legal obligations incumbent on it. The contracting authority shall not be held liable for any damage caused or sustained by the supplier/service provider, including any damage caused by the supplier to third parties during or as a consequence of performance of the contract, except in the event of wilful misconduct or gross negligence on the part of the contracting authority.

18.2. The supplier/service provider shall be liable for any loss or damage suffered by the contracting authority during the performance of the contract, including in the event of subcontracting, and any claim by a third party; however, such liability shall be limited to an amount not exceeding three times the total value of the contract. However, if the damage or loss is attributable to gross negligence or wilful misconduct on the part of the supplier/service provider, its staff or its subcontractors or falls within its objective liability for defective products within the meaning of Directive 85/374/EEC, there shall be no limit to the amount of the liability of the supplier/service provider for the damage or loss.

18.3. The supplier/service provider shall indemnify the contracting authority against any action and costs incurred as a result of a claim. The supplier/service provider shall provide compensation in the event of any action, claim or proceeding brought against the contracting authority by a third party as a result of damage caused by the supplier/service provider during the performance of the contract. The supplier shall assist the contracting authority in any action brought by a third party against the contracting authority in connection with the performance of the contract, including for any alleged breach of intellectual property rights. This type of cost incurred by the supplier/service provider may be borne by the contracting authority.

**Clause 19: APPLICABLE LAW AND DISPUTES**

This contract shall be governed by:

- a) The Luxembourg Convention defining the Statute of the European Schools of 21 June 1994;
- b) International treaty law derived from the Luxembourg Convention defining the Statute of the European Schools of 21 June 1994 and, in particular, the Financial Regulation of the European Schools
- c) The Regulation 2018/1046 of 18 July 2018 applicable to the general budget of the Union

The contract is governed, alternatively, by European Union law and, in the further alternative, by the law of the Member State in which the contracting authority is based.

Where there is a dispute concerning its interpretation or implementation, the following shall apply:

- a) The parties shall first endeavour to reach a friendly settlement with the procurement officer in good faith. This procedure shall take no more than fifteen (15) days from the date on which one party notifies the other of its request to initiate the procedure. Such notification shall be made by registered letter with acknowledgement of receipt or by means of electronic communication.
- b) If no friendly settlement is arrived at following the procedure at (a), the dispute shall be within the exclusive jurisdiction of the courts of the place where the contracting authority concerned has its registered office.

**Clause 20: CHECKS AND AUDITS**

- 20.1. The contracting authority and the European Anti-Fraud Office may check or have an audit on the performance of the contract. It may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf. Such checks and audits may be undertaken during the performance of the contract and during a period of 10 years starting from the payment of the balance. The audit procedure shall be deemed to have commenced on the date of receipt of the relevant letter sent by the contracting authority. Audits are carried out on a confidential basis.
- 20.2. The supplier/service provider must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, under the conditions laid down therein, for a period of 10 years starting from the payment of the balance.
- 20.3. The supplier/service provider shall grant the staff of the contracting authority and outside staff authorised by the contracting authority the appropriate right of access to sites and premises where the contract is performed and to all the information, including information in electronic format, needed to conduct such checks and audits. The supplier/service provider shall ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.
- 20.4. On the basis of the findings made during the audit, a provisional report shall be drawn up. That report shall be sent to the supplier/service provider, who may submit observations within 30 days of receipt. The final report shall be sent to the supplier/service provider within 60 days following the expiry of that time-limit. On the basis of the final audit findings, the contracting authority may recover all or part of the payments made and may take any other measures which they consider necessary.
- 20.5. By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OLAF may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by Union law for the protection of the financial interests of the Union against fraud and other irregularities. Where appropriate, the findings may lead to recovery by the contracting authority.
- 20.6. The Court of Auditors has the same rights as the contracting authority, particularly right of access, for the purpose of checks and audits.

**Clause 21: MISCELLANEOUS**

- 21.1. The supplier/service provider acknowledges having read in full all the provisions, clauses and specifications, as well as the details of the general conditions and any special conditions stipulated. The supplier/service provider fully subscribes to all the provisions of the contract.
- 21.2. The fact that any provision of these general conditions should be deemed void or unenforceable for any reason shall in no way affect the validity and enforceability of the other provisions.

**INSTRUCTIONS TO THE SUPPLIER/service provider**

1. The General Conditions shall apply unless otherwise stated in the contract.
2. Submit your invoices in triplicate with the following information: purchase order/contract number, description of the goods/services, sizes, quantities, price VAT identification number and appropriate VAT declaration appropriate to the country of delivery.
3. Indicate the number of the purchase order on each package.