



## **General conditions of the contract**

The contract consists of a purchase order and these general conditions. If there is any conflict between different provisions in this contract, the provisions set out in the purchase order take precedence over those set out in general conditions.

All documents issued by the contractor (end-user agreements, general terms and conditions, etc.) except its tender are held inapplicable, unless explicitly mentioned in the purchase order. In all circumstances, in the event of contradiction between this contract and documents issued by the contractor, this contract prevails, regardless of any provision to the contrary in the contractor's documents.

### **1. DEFINITIONS**

For the purpose of this contract, the following definitions (indicated in italics in the text) apply:

**'Force Majeure'**: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the contract. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *Force Majeure*, unless they stem directly from a relevant case of *Force Majeure*;

**'Formal Notification'** (or **'Formally Notify'**): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;

**'Fraud'**: any intentional act or omission affecting the financial interests of the European Centre for Disease Prevention and Control (the Centre) relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation;

**'Notification'** (or **'notify'**): form of communication between the parties made in writing including by electronic means;

**'Performance of the contract'**: the execution of tasks and delivery of the purchased services by the contractor to the contracting authority;

**'Personnel'**: persons employed directly or indirectly or contracted by the contractor to perform the contract;

**'Result'**: any intended outcome of the *Performance of the contract*, whatever its form or nature, which is delivered and finally or partially approved by the contracting authority. A *Result* may be further defined in this contract as a deliverable.

## **2. SEVERABILITY**

Each provision of this contract is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the contract. This does not affect the legality, validity or enforceability of any other provisions of the contract, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision.

## **3. PERFORMANCE OF THE CONTRACT**

All periods specified in the contract are calculated in calendar days, unless otherwise specified.

## **4. LIABILITY**

4.1 The contracting authority is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of *Performance of the contract*.

4.2. The contractor is liable for any loss or damage caused to the contracting authority during or as a consequence of *Performance of the contract*, including in the event of subcontracting, but only to an amount not exceeding three times the total amount of the contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors, the contractor is liable for the whole amount of the damage or loss.

4.3 The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of *Performance of the contract*, unless the loss or damage was caused by wilful misconduct or gross negligence of the contracting authority.

## **5. PROCESSING OF PERSONAL DATA**

5.1 Any personal data included in the contract must be processed in accordance with Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

5.2 Such data must be processed by the data controller solely for the purposes of the performance, management and monitoring of the contract. This does not affect its possible

transmission to the bodies entrusted with monitoring or inspection task in application of Union law.

5.3 The contractor has the right to access its personal data and the right to rectify any such data. The contractor should address any queries concerning the processing of its personal data to the data controller.

5.4 The contractor has right of recourse at any time to the European Data Protection Supervisor.

## **6. SUBCONTRACTING**

6.1 The contractor must not subcontract and have the contract performed by third parties without prior written authorisation from the contracting authority.

6.2 Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the performance of this contract.

## **7. FORCE MAJEURE**

7.1 If a party is affected by *Force Majeure*, it must immediately notify the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.

7.2 A party is not liable for any delay or failure to perform its obligations under the contract if that delay or failure is a result of *Force Majeure*. If the contractor is unable to fulfil its contractual obligations owing to *Force Majeure*, it has the right to remuneration only for the services actually provided.

7.3 The parties must take all the necessary measures to limit any damage due to *Force Majeure*.

## **8. INVOICES, VALUE ADDED TAX**

8.1 The contractor must send an invoice in paper format or via electronic format for payment of the balance due under this contract.

8.2 Invoices must contain the contractor's identification data, the amount, the currency and the date, as well as the contract reference.

8.3 Invoices must indicate the place of taxation of the contractor for value added tax (VAT) purposes and must specify separately amounts not including VAT and amounts including VAT.

8.4 The contracting authority is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol on the privileges and immunities of the European Union.

8.5 The contractor must complete the necessary formalities with the relevant authorities to ensure that the services required for *Performance of the contract* are exempt from taxes and duties, including VAT.

## **9. PAYMENTS**

### **9.1 Date of payment**

Payments are deemed to be effected on the date when they are debited to the contracting authority's account.

### **9.2 Currency**

Payments are made in euros or in the currency provided in the purchase order.

### **9.3 Conversion**

The contracting authority makes any conversion between the euro and another currency at the daily euro exchange rate published in the Official Journal of the European Union, or failing that, at the monthly accounting exchange rate, as established by the European Commission and published on the website indicated below, applicable on the day when it issues the payment order.

The contractor makes any conversion between the euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the website indicated below, applicable on the date of the invoice.

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/inforeuro\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm)

### **9.4 Costs of transfer**

The costs of the transfer are borne as follows:

- (a) the contracting authority bears the costs of dispatch charged by its bank;
- (b) the contractor bears the costs of receipt charged by its bank,
- (c) the party causing repetition of the transfer bears the costs for repeated transfer.

### **9.5 Payment of the balance**

The contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 60 days of the end of the period of provision of the services, as provided for in the purchase order or in the tender specifications.

Payment of the invoice and approval of documents does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

### **9.6 Suspension of the time allowed for payment**

The contracting authority may suspend the payment periods specified in the purchase order at any time by notifying the contractor (or leader in the case of joint tender) that its invoice cannot be processed. The reasons the contracting authority may cite for not being able to process an invoice are:

- 9.6.1 because it does not comply with the contract;

9.6.2 because the contractor has not produced the appropriate documents or deliverables;  
or

9.6.3 because the contracting authority has observations on the documents or deliverables submitted with the invoice.

The contracting authority must notify the contractor as soon as possible of any such suspension, giving the reasons for it.

Suspension takes effect on the date the contracting authority sends the *Notification*. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification is carried out. Where the suspension period exceeds two months, the may request the contracting authority to justify the continued suspension.

### **9.7 Interest on late payment**

On expiry of the payment periods specified in the purchase order, the contractor is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in Euros (the reference rate), plus eight points. The reference rate is the rate in force, as published in the C series of the Official Journal of the European Union, on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article 9.6 is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article 9.1.

However, when the calculated interest is EUR 200 or less, it must be paid to the contractor only if it requests it within two months of receiving late payment.

## **10. RECOVERY**

10.1 If an amount is to be recovered under the terms of the contract, the contractor must repay the contracting authority the amount in question.

### **10.2 Recovery procedure**

Before recovery, the contracting authority must *Formally Notify* the contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the contractor to make any observations within 30 days of receipt.

If no observations have been submitted or if, despite the observations submitted, the contracting authority decides to pursue the recovery procedure, it must confirm recovery by *Formally Notifying* a debit note to the contractor, specifying the date of payment. The contractor must pay in accordance with the provisions specified in the debit note.

If the contractor does not pay by the due date, the contracting authority may, after informing the contractor in writing, recover the amounts due:

- (a) by offsetting them against any amounts owed to the contractor by the Centre;
- (b) by taking legal action.

### **10.3 Interest on late payment**

If the contractor does not honour the obligation to pay the amount due by the date set by the contracting authority in the debit note, the amount due bears interest at the rate indicated in Article 9.7. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the contracting authority receives the full amount owed.

Any partial payment is first entered against charges and interest on late payment and then against the principal amount.

## **11. CHECKS AND AUDITS**

11.1 The contracting authority and the European Anti-Fraud Office may check or require an audit on the *Performance of the contract*. This may be carried out either by OLAF's own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during *Performance of the contract* band up to five years starting from the payment of the balance.

The audit procedure is initiated on the date of receipt of the relevant letter sent by the contracting authority. Audits are carried out on a confidential basis.

11.2 The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance.

11.3 The contractor must grant the contracting authority's staff and outside personnel 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 contractor must 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.

11.4 On the basis of the findings made during the audit, a provisional report is drawn up. The contracting authority or its authorised representative must send it to the contractor, who has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of that deadline to submit observations.

On the basis of the final audit findings, the contracting authority may recover all or part of the payments made in accordance with Article 10 and may take any other measures which it considers necessary.

11.5 In accordance with Council Regulation (Euratom, EC) No. 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection 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 the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office, the European Anti-Fraud Office may carry out investigations, including on-the-spot checks and inspections, to establish whether there has been Fraud, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the provision of the services and up to five years starting from the payment of the balance.

11.6 The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/19395 ('the EPPO') have the same rights as the contracting authority, particularly right of access, for the purpose of checks, audits and investigations.