

# GENERAL CONDITIONS TO THE PURCHASE ORDER

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## INTRODUCTION

The Contract consists of a Purchase Order and these General Conditions. If there is any conflict between different provisions in this Contract, the following rules must be applied:

- (a) The provisions set out in the Purchase Order take precedence over those set out in general conditions;
- (b) The provisions set out in the general conditions take precedence over those set out in the tender specifications;
- (c) The provisions set out in the tender specifications take precedence over those set out in the contractor's tender.

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.

Any reference to tender specifications applies also to simplified invitation to tender.

## ARTICLE 1 - DEFINITIONS

For the purpose of this Contract, the following definitions apply:

**'Back office'**: the internal system(s) used by the parties to process electronic invoices;

**'Breach of obligations'**: failure by a party to fulfil one or more of its contractual obligations.

**'Confidential information or document'**: any information or document received by either party from the other or accessed by either party in the context of the performance of the Purchase Order. It may not include information that is publicly available;

**'Conflict of interest'**: a situation where the impartial and objective performance of the Purchase Order by the Contractor is compromised or negatively affected for reasons involving family, emotional life, political or national affinity, economic interest, any other direct or indirect personal interest of the Contractor, its related persons or personnel, or any third party related to the subject matter of the Purchase Order;

**'Creator'**: means any natural person who contributes to the production of the result;

**'EDI message'** (electronic data interchange): a message created and exchanged through the electronic transfer, from computer to computer, of commercial and administrative data using an agreed standard;

**'EUI'**: European Union institution;

**'e-PRIOR'**: the service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done either through web services, with a machine-to-machine connection between the parties' back-office systems (EDI messages), or through a web application (the supplier portal). The Platform may be used to exchange electronic documents (e-documents) such as electronic requests for services, Purchase Order/related electronic documents, electronic acceptance of services/supplies and electronic invoices between the parties.

**‘Force majeure’:** any unforeseeable and unavoidable situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the Purchase Order. The situation or event must not be attributable to the negligence of the debtor. Breaches or negligence of subcontractors, 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’:** an act or omission committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union’s financial interests, and relating to: i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget, ii) the non-disclosure of information in violation of a specific obligation, with the same effect or iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union’s financial interests;

**‘Grave professional misconduct’:** a violation of applicable laws or regulations or ethical standards of the profession to which a Contractor or a related person belongs, including any conduct leading to sexual or other exploitation or abuse, or any wrongful conduct of the Contractor or a related person which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence.

**‘Interoperability network’:** independent third-party platforms enforcing the European standards and Directives on cross-border interoperability in a certain domain;

**‘Irregularity’:** any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union’s budget or a budget managed by the Union;

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

**‘Performance of the Purchase Order’:** the execution of tasks and provision of the ordered services/supplies by the Contractor to the contracting authority;

**‘Personnel’:** persons employed directly or indirectly or contracted by the Contractor or its subcontractors to perform the Purchase Order;

**‘Pre-existing material’:** any material, document, technology or know-how which exists prior to the Contractor using it for the production of a result in the performance of the Purchase Order;

**‘Pre-existing right’:** any industrial and intellectual property right on pre-existing material; it may consist in a right of ownership, a licence right and/or a right of use belonging to the Contractor, the creator, the contracting authority as well as to any other third parties;

**‘Professional conflicting interest’:** a situation in which the Contractor’s previous or ongoing professional activities affect or risk affecting its capacity to implement the Purchase Order in an independent, impartial and objective manner;

**‘Purchases’:** the services or supplies ordered under the Purchase Order;

**‘Related person’:** any natural or legal person who is a member of the administrative, management or supervisory body of the Contractor, or who has powers of representation, decision or control with regard to the Contractor;

**‘Result’:** any intended outcome of the performance of the Purchase Order, whatever its form or nature. A result may be further defined in this Purchase Order as a deliverable. A result may, in addition to newly created materials produced specifically for the contracting authority by the Contractor or at its request, also include pre-existing materials;

**‘Supplier portal’:** the e-PRIOR portal, which allows the Contractor to exchange electronic business documents, such as invoices, through a graphical user interface negligence.

## **ARTICLE 2 - ROLES AND RESPONSIBILITIES IN THE EVENT OF A JOINT TENDER**

In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group is appointed as leader of the group.

## **ARTICLE 3 - SEVERABILITY**

Each provision of this Purchase Order is severable and distinct from the others, unless it is essential to the agreement of the parties. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the Purchase Order. This does not affect the legality, validity or enforceability of any other provisions of this Purchase Order, 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. The replacement of such a provision must be made in accordance with Article 11. The Purchase Order must be interpreted as if it had contained the substitute provision as from its entry into force.

## **ARTICLE 4 - PERFORMANCE OF THE PURCHASE ORDER**

4.1. The Contractor must perform the Purchase Order to the highest quality standards in accordance with the state of the art in the industry and the provisions of this Purchase Order, in particular the tender specifications and the terms of its tender. Timely performance of the Purchase Order is essential for the Contracting Authority. Where the Union has the right to make modifications to the results, they must be delivered in a format and with the necessary information which effectively allow such modifications to be made in a convenient manner.

4.2. The Contractor must comply with the minimum requirements provided for in the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU, compliance with data protection obligations resulting from Regulation (EU) 2016/679 and Regulation (EU) 2018/1725.

4.3. The Contractor must obtain any permit or licence required in the State where the services/supplies are to be provided.

4.4. All periods specified in the Purchase Order are calculated in calendar days, unless otherwise specified.

4.5. The Contractor must not present itself as a representative of the Contracting Authority and must inform third parties that it is not part of the European public service.

4.6. The Contractor is responsible for the personnel who carry out the services and exercises its authority over its personnel without interference by the Contracting authority. The Contractor must inform its personnel that:

(a) they may not accept any direct instructions from the Contracting Authority;

(b) their participation in providing the services/supplies does not result in any employment or contractual relationship with the Contracting Authority.

4.7. The Contractor must ensure that any staff performing the Purchase Order and any future replacement personnel has the professional qualifications and experience required for the execution of the tasks assigned to it, as the case may be on the basis of the selection criteria set out in the tender specifications.

4.8. At the Contracting Authority's reasoned request, the Contractor must replace any member of personnel who:

(a) does not have the expertise required to provide the services/supplies; or

(b) has caused disruption at the premises of the Contracting Authority.

The Contractor bears the cost of replacing its personnel and is responsible for any delay in providing the services/supplies resulting from the replacement of personnel. Before deciding to replace a member of personnel, the contractor should first give him the opportunity to present observations.

4.9. The Contractor must record and report to the contracting authority any problem that affects its ability to perform the Purchase Order. The report must describe the problem, state when it started and what action the Contractor is taking to resolve it.

4.1.0. The Contractor must immediately inform the Contracting Authority of any changes in the exclusion situations as declared, according to Article 139 (1) of the Financial Regulation (Regulation (EU) 2024/2509), and in the event of a change of the legal representative, legal status, ownership or address. Information shall take place via the official communication as per Article 5.

4.11. If the Contractor fails to perform its obligations in accordance with high quality standards, the state of the art in the industry and the provisions of the Purchase Order (in particular the tender specifications and the terms of its tender), the Contracting Authority may even if such failure constitutes a breach that could trigger Article 18.1, decide to have these obligations performed by a third party, at the Contractor's expense. The Contracting Authority shall formally notify the Contractor of its decision to have the Contractor substituted and the grounds for this substitution.

Any such substitution does not affect the Contractor's liability and is without prejudice to the Contracting Authority's other rights and remedies, including but not limited to its right to claim damages under Article 18 that the substitution would not cover.

## **ARTICLE 5 - COMMUNICATION BETWEEN THE PARTIES**

### 5.1. Form and means of communication

Any notifications, communication of information or exchange of documents under the Purchase Order must be made in writing, in the language of the Purchase Order and must clearly identify the Purchase Order number, if applicable.

Communication between the parties can take place:

- by electronic means, via email, in accordance with the provisions of Article 5.2;
- on paper, via mail - by courier service with proof of delivery or by registered post with proof of delivery, in accordance with the provisions of Article 5.3.

The specific rules when formal notifications are considered to have been received are provided in Sections 5.2.2 and 5.3.2 below.

## 5.2. Communication via email

When communicating via e-mail, the parties shall send their messages to the email addresses indicated in the Purchase Order.

### 5.2.1. Date of communications via email for other than formal notifications

Without prejudice to Article 18.1 below and Point 31.3 of Annex I to the FR, notifications via email are considered to have been made and the email is deemed to have been received by the receiving party on the date of dispatch of that e-mail, if it is sent to the email address indicated in the purchase order and does not have characteristics that could reasonably prevent its proper delivery (such as sending extremely voluminous e-mails that can be blocked for their size or emails containing elements that the majority of the spam filters would block). The sending party must be able to prove the date of dispatch. If the sending party sends the email to the email address indicated in the purchase order and receives a non-delivery report, it must make every reasonable effort to ensure that the other party receives the communication.

### 5.2.2. Date of communications via email for formal notifications

Formal notifications by email are considered to have been received on the date of dispatch of a return email expressly or impliedly acknowledging receipt. In case no such email is received by the party who sent the formal notification within 10 days, the formal notification should be re-sent via courier service with proof of delivery or registered post (see Article 5.3.2 below).

## 5.3. Communication via mail

As a rule, mail is used by way of exception for formal notifications and as alternative means of communication when the other means are not available.

When communicating via mail, the parties should send their letters to the postal addresses indicated in the Purchase Order.

### 5.3.1. Date of communications via mail for other than formal notifications

Without prejudice to Article 116 of the Financial Regulation, notifications via mail are considered to have been made at the date of receipt by the receiving party.

A receiving party cannot make use of its own refusal to be informed of the communication in order to render it ineffective.

Invoices sent to the Contracting Authority via mail are deemed to be received on the date when they are registered by the authorised department of the authorizing officer responsible.

### 5.3.2. Date of communications via mail for formal notifications

Formal notifications by courier service with proof of delivery are considered to have been received on the date indicated in the proof of delivery. Formal notifications by registered post with proof of delivery are considered to have been received either on the delivery date registered by the postal service or the deadline for collection at the post office.

## 5.4. Submission of e-documents via e-PRIOR

1. If provided for in the special conditions, the exchange of electronic documents (e-documents) such as invoices between the parties is automated through the use of the e-PRIOR platform. This platform provides two possibilities for such exchanges: either through web services (machine-to-machine connection) or through a web application (the supplier portal).

2. The Contracting Authority takes the necessary measures to implement and maintain electronic systems that enable the supplier portal to be used effectively.

3. In the case of machine-to-machine connection, a direct connection is established between the parties' back offices. In this case, the parties take the measures necessary on their side to implement and maintain electronic systems that enable the machine-to-machine connection to be used effectively. The electronic systems are specified in the interface control document. The Contractor (or leader in the case of a joint tender) must take the necessary technical measures to set up a machine-to-machine connection and at its own cost.

4. If communication via the supplier portal or via the web services (machine-to-machine connection) is hindered by factors beyond the control of one party, it must notify the other immediately and the parties must take the necessary measures to restore this communication.

5. If it is impossible to restore the communication within two working days, one party must notify the other that alternative means of communication specified in Article 5.1 will be used until the supplier portal or the machine-to-machine connection is restored.

6. When a change in the interface control document requires adaptations, the Contractor (or leader in the case of a joint tender) has up to six months from receipt of the notification to implement this change. This period can be shortened by mutual agreement of the parties. This period does not apply to urgent measures required by the security policy of the Contracting Authority to ensure integrity, confidentiality and non-repudiation of information and the availability of e-PRIOR, which must be applied immediately.

#### 5.5. Validity and date of e-documents

1. The parties agree that any e-document, including related attachments exchanged via e-PRIOR:

(a) is considered as equivalent to a paper document;

(b) is deemed to be the original of the document;

(c) is legally binding on the parties once an e-PRIOR authorised person has performed the 'sign' action in e-PRIOR and has full legal effect; and

(d) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.

2. The parties expressly waive any rights to contest the validity of such a document solely on the grounds that communications between the parties occurred through e-PRIOR or that the document has been signed through e-PRIOR. If a direct connection is established between the parties' back offices to allow electronic transfer of documents, the parties agree that an e-document, sent as mentioned in the interface control document, qualifies as an EDI message.

3. If the e-document is dispatched through the supplier portal, it is deemed to have been legally issued or sent when the Contractor (or leader in the case of a joint tender) is able to successfully submit the e-document without any error messages. The generated PDF and XML document for the e-document are considered as a proof of receipt by the Contracting Authority.

4. In the event that an e-document is dispatched using a direct connection established between the parties' back offices, the e-document is deemed to have been legally issued or sent when its status is 'received' as defined in the interface control document.

5. When using the supplier portal, the Contractor (or leader in the case of a joint tender) can download the PDF or XML message for each e-document for one year after submission. After this period, copies of the e-documents are no longer available for automatic download from the supplier portal.

## 5.6. Authorised persons in e-PRIOR

The Contractor submits a request for each person who needs to be assigned the role of 'user' in e-PRIOR. These persons are identified by means of the European Communication Authentication Service (ECAS) and authorised to access and perform actions in e-PRIOR within the permissions of the user roles that the Contracting Authority has assigned to them.

## ARTICLE 6 - LIABILITY

6.1. The Contractor shall perform the Purchase Order at its own risk. The Contractor warrants and holds the Contracting Authority harmless against any action or claim brought by a third party for any damage or loss suffered in relation to the performance of the Purchase Order (including the related costs such as lawyer fees).

6.2. If required by the relevant applicable legislation, the Contractor must take out an insurance policy against risks and damage or loss relating to the performance of the Purchase Order. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the Contractor must provide evidence of insurance coverage to the Contracting Authority.

6.3. Except in case of force majeure, the Contractor is liable for any loss or damage caused to the Contracting Authority during or as a consequence of performance of the Purchase Order, resulting from a breach attributable to the Contractor, including in the event of subcontracting under Article 10, but only up to an amount not exceeding three times the total amount of the Purchase Order. Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor, a related person, its personnel or its subcontractors, or if an injury has been caused to the life or the physical integrity of a person, as well as in the case of an action brought against the Contracting Authority by a third party for breach of its intellectual property rights, the Contractor is liable for the whole amount of the damage or loss.

6.4. If a third party brings any action against the Contracting Authority in connection with the performance of the Purchase Order, including any action for alleged breach of intellectual property rights, the Contractor must assist the Contracting Authority in the legal proceedings, including by intervening in support of the Contracting Authority upon request.

If the Contracting Authority's liability towards the third party is established and that such liability is caused by the Contractor during or as a consequence of the performance of the Purchase Order, Article 6.3 applies. In that case, the limitations of liability foreseen in Article 6.3 do not apply.

6.5. If the Contractor is composed of two or more economic operators they are all jointly and severally liable to the Contracting Authority for the performance of the Purchase Order.

6.6. The Contracting Authority is not liable for any loss or damage caused to the Contractor during or as a consequence of performance of the Purchase Order, unless the loss or damage was caused by wilful misconduct or gross negligence of the Contracting Authority.

## ARTICLE 7 - CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS

7.1. The Contractor must take all necessary measures to prevent any situation of conflict of interest or professional conflicting interest.

7.2. The Contractor must notify the Contracting Authority in writing as soon as possible of any situation that could constitute a conflict of interest or a professional conflicting interest during the performance of the Purchase Order. The Contractor must immediately take action to rectify the situation.

The Contracting Authority may do any of the following:

- (a) verify that the Contractor's action is appropriate;
- (b) require the Contractor to take further action within a specified deadline to rectify the situation;

7.3. The Contractor must pass on all the relevant obligations in writing to:

- (a) its personnel;
- (b) any related person;"
- (c) third parties involved in the performance of the Purchase Order, including subcontractors.

The Contractor must also ensure that the persons referred to above are not placed in a situation which could give rise to conflicts of interest.

## **ARTICLE 8 - CONFIDENTIALITY**

8.1. The Contracting Authority and the Contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally, relating to the performance of the Purchase Order.

8.2. Each party must:

- (a) not use confidential information or documents for any purpose other than to perform its obligations under the Contract without the prior written agreement of the other party;
- (b) ensure the protection of such confidential information or documents with the same level of protection as its own confidential information or documents and in any case with due diligence;
- (c) not disclose, directly or indirectly, confidential information or documents to third parties without the prior written agreement of the other party.

8.3. The confidentiality obligations set out in this Article are binding on the Contracting Authority and the Contractor during the performance of the Purchase Order and for as long as the information or documents remain confidential unless:

- (a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
- (b) the confidential information or documents become public through other means than a breach of the confidentiality obligation;
- (c) the applicable law requires the disclosure of the confidential information or documents.

8.4. The Contractor must obtain from any related person and its personnel, as well as from third parties involved in the performance of the Purchase Order, a written commitment that they will comply with this Article. At the request of the Contracting Authority, the Contractor must provide a document providing evidence of this commitment.

8.5. The Contracting Authority is entitled to make available (any part of) the confidential information or documents to its staff and the staff of other Union institutions, agencies and bodies, as well to other persons and entities working for the Contracting Authority or cooperating with it. This includes other contractors or subcontractors and their personnel, who need to know the same for the performance of a Purchase Order who know they must treat it confidentially and who are bound by confidentiality obligations that are no less restrictive than the Contracting Authority's confidentiality obligations set out in this section.

8.6. The receiving party will, on request from the other party, return all copies and records of the confidential information or documents of the other party and will not retain any copies or records of the confidential information or documents of the other party.

8.7. The Contractor must not grant access to any equipment provided by or delivered to the Contracting Authority during the implementation of the Contract to any third parties, unless priorly authorised by the Contracting Authority in writing.

## **ARTICLE 9 - PROCESSING OF PERSONAL DATA**

### 9.1. Processing of personal data by the Contracting Authority

Any personal data included in or relating to the Purchase Order, 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 Purchase Order by the data controller.

The Contractor or any other person whose personal data is processed by the data controller in relation to this Purchase Order 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 Purchase Order 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.

### 9.2. 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 Purchase Order 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 Purchase Order. 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 8.

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 23.2. 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 10, 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 10 - SUBCONTRACTING**

10.1. The Contractor must not subcontract and have the Purchase Order performed by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the Contracting Authority.

10.2. Even if the Contracting Authority authorises subcontracting, the Contractor remains bound by its contractual obligations to and remains entirely responsible for the performance of Purchase Order vis-à-vis the Contracting Authority.

10.3. The Contractor must ensure that the subcontract does not affect rights of the Contracting Authority under this Contract, particularly those under Articles 8, 13 and 23.

10.4. The Contracting Authority may request the Contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article 18. The Contractor bears the costs of such replacement.

## **ARTICLE 11 - AMENDMENTS**

11.1. Any amendment to the Purchase Order must be made in writing before all contractual obligations have been fulfilled. Any acceptance or payment by the Contracting Authority of an invoice referring to the general terms and conditions of the Contractor does not constitute a valid amendment to Purchase Order and does not make these general terms and conditions applicable to the Purchase Order.

11.2. Any amendment must not make changes to the Purchase Order that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contractors.

## **ARTICLE 12 - ASSIGNMENT OF THE PURCHASE ORDER TO A THIRD PARTY**

12.1. The Contractor must not assign the rights and obligations arising from the Purchase Order.

12.2. By way of exception to the preceding clause, in duly justified exceptional circumstances, rights and / or obligations arising from the Purchase Order may be assigned with the prior written authorisation of the Contracting Authority. This authorisation shall be granted or not at the discretion of the Contracting Authority and upon request by the Contractor. The Contractor's request shall detail the exceptional circumstances on which it is based and provide the identity of the intended assignee. The Contracting Authority may request additional information.

12.3. Any right or obligation assigned by the Contractor without the authorisation mentioned in the preceding clause is not enforceable against the Contracting Authority. Accordingly, the assignor will remain jointly and severally bound with the assignee vis-à-vis the Contracting Authority.

## ARTICLE 13 - INTELLECTUAL PROPERTY RIGHTS

### 13.1. Ownership of the results

The ownership of the results<sup>1</sup> as defined in the tender specifications shall be fully and irrevocably transferred by the contractor to the Union.

### 13.2. Licence or transfer of pre-existing rights

All pre-existing rights incorporated in the results, if any, are licensed to the Union.

## ARTICLE 14 - FORCE MAJEURE

14.1. If a either contracting party is affected faced by with force majeure, it must immediately shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature of the circumstances, their likely duration and foreseeable effects.

14.2. Neither contracting party is not not liable for any delay or failure to perform shall be held in breach of its contractual obligations under the Purchase Order, if that delay or failure is a result of it has been prevented from performing them by force majeure. If Where the Contractor is unable to fulfil its perform his contractual obligations owing to force majeure, it he shall have the right to remuneration only for tasksservices actually executed/supplies provided.

14.3. The contracting parties shall take all necessary measures to limit any reduce damage due to force majeure. to a minimum.

14.4. Force majeure either suspends the performance of the Purchase Order as provided for in Article 17 or leads to the termination of the Purchase Order as provided for in Article 18. The effects of the suspension of the Purchase Order due to force majeure on the duration is laid down in the Purchase Order.

## ARTICLE 15 - LIQUIDATED DAMAGES

### 15.1. Delay in delivery

Without prior notice of default to the Contractor or prior judicial intervention being required, if the Contractor fails to perform its contractual obligations within the applicable time limits set out in this Purchase Order, the Contracting Authority may claim for eachday of delay using the following formula:

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

where

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.

Liquidated damages for delay in delivery may be imposed together with a reduction in price under the conditions laid down in Article 16 or a substitution of the Contractor under the conditions laid down in Article 4.11.

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<sup>1</sup> For the purposes of this contract, the Results shall be considered 'work for hire' (*Obra por encomenda*) as defined under the Portuguese Code of Copyright and Related Rights, ensuring that all associated intellectual property rights are vested in the commissioning party, in accordance with applicable legal provisions.

Any claim for liquidated damages does not affect (a) the Contractor's liability for damages that liquidated damages would not cover, (b) the Contracting Authority's rights under Article 18, nor (c) the Contracting Authority's rights under Article 4.11 or (d) any other right or remedy that the Contracting Authority may have under the Purchase Order.

#### 15.2. Procedure

The Contracting Authority must formally notify the Contractor of its intention to apply liquidated damages for delay in delivery and the corresponding calculated amount.

The Contractor has 30 days following the date of receipt to submit observations. After having received any observations submitted or, failing that, following the expiry of the time limit for submitting observations, the Contracting Authority must notify the Contractor:

(a) of the withdrawal of its intention to apply liquidated damages; or

(b) of its final decision to apply liquidated damages and the corresponding amount.

#### 15.3. Nature of liquidated damages

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and, and, in view of all the circumstances including the legitimate interest of the Contracting Authority for a timely delivery to fulfil its mission of public services, represents a reasonable estimate of fair compensation for the damage that may be incurred by the Contracting Authority due to failure to perform the services/provide the supplies assigned to it within the applicable time limits set out in this Purchase Order.

## **ARTICLE 16 - REDUCTION IN PRICE**

#### 16.1. Quality standards

Without prior notice of default to the Contractor or prior judicial intervention being required, if the Contractor fails to perform the services/provide the supplies in accordance with high quality standards, the state of the art in the industry and the provisions of the Purchase Order (in particular the tender specifications and the terms of its tender), the Contracting Authority may, even if this failure constitutes a breach that could trigger Article 18.1, reduce the price in direct proportion to the difference, upon the time of the signature of the Purchase Order, between the value of the unperformed obligations or low quality delivery and the value of the agreed tasks. This includes, in particular, cases where the Contracting Authority cannot approve a result, report or deliverable, as defined in the purchase order, after the Contractor has submitted the required additional information, correction or new version.

A reduction in price may be imposed together with liquidated damages for delay in delivery under the conditions of Article 15.

Any reduction in price does not affect the Contractor's liability or the Contracting Authority's rights under Article 18 for damages that the reduction in price would not cover or any other right or remedy that the Contracting Authority may have under the Purchase Order.

#### 16.2. Procedure

The Contracting Authority must formally notify the Contractor of its intention to reduce the price and the corresponding calculated amount.

The Contractor has 30 days following the date of receipt to submit observations. After having received any observations submitted or, failing that, following the expiry of the time limit for submitting observations, the Contracting Authority must notify the Contractor:

- (a) of the withdrawal of its intention to reduce the price; or
- (b) of its final decision to reduce the price and the corresponding amount.

## **ARTICLE 17 - SUSPENSION OF THE PERFORMANCE OF THE PURCHASE ORDER**

### 17.1. Suspension by the Contractor

If the performance of the Purchase Order is affected by force majeure, the Contractor may suspend the performance of that Purchase Order.

The Contractor must immediately formally notify the Contracting Authority of the suspension. The notification must include a description of the force majeure and state when the Contractor expects to resume the provision of the services/supplies.

The Contractor must notify the Contracting Authority as soon as it is able to resume performance of the Purchase Order, unless the Contracting Authority has already terminated the Purchase Order.

The Contracting Authority is not entitled to compensation for suspension of any part of the Purchase Order in the event of force majeure.

### 17.2. Suspension by the contracting authority

The Contracting Authority may suspend the performance of the Purchase Order or any part of it; including but not limited to payments:

- (a) in case of force majeure affecting the performance of the Purchase Order;
- (b) in order to verify whether the presumed irregularities, fraud or breach of obligations have actually occurred;
- (c) if the procedure for awarding the Purchase Order or the performance of the Purchase Order proves to have been subject to irregularities, fraud or breach of obligations.

The Contracting Authority must formally notify the Contractor of the suspension and the reasons for it. Suspension takes effect on the of formal notification, or at a later date if the formal the notification so provides. The Contracting Authority must notify the Contractor as soon as the verification is completed whether:

- (a) it is lifting the suspension;
- (b) it intends to terminate the Purchase Order under Article 18 (f) or (j).

The Contractor is entitled to compensation for suspension of any part of the Purchase Order.

The Contracting Authority may in addition suspend the time allowed for payments in accordance with Article 21.

## **ARTICLE 18 - TERMINATION**

### 18.1. Grounds for termination by the contracting authority

The Contracting Authority may terminate the Purchase Order in the following circumstances:

(a) if provision of the services/supplies under the Purchase Order has not actually started within 15 days of the scheduled date and the Contracting Authority considers the new date proposed, if any, unacceptable, taking into account Article 11.2;

(b) if the Contractor is unable to obtain any permit or licence required for performance of the Purchase Order;

(c) if the Contractor does not perform the Purchase Order 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 138 (1) of the Financial Regulation<sup>2</sup>;

(e) if the Contractor or any related person is subject to any of the situations provided for in points (c) to (i) of Article 138(1) or to Article 138(3) of the Financial Regulation.

(f) if the procedure for awarding the Purchase Order or the performance of the Purchase Order 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 as referred to in Article 7 and does not rectify the situation;

(i) if a change to the Contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the performance of the Purchase Order or substantially modify the conditions under which the Purchase Order was initially awarded or a change regarding the exclusion situations listed in Article 138 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 Purchase Order 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 9;

(l) if the Contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679.

(m) if it is manifest that, at a later date and before such breach becomes effective, the Contractor will materially fail to perform the Purchase Order in accordance with the tender specifications or will be materially in breach of another contractual obligation, unless the Contractor provides the Contracting Authority with sufficient assurances of its future performance.

(n) where the Contractor or any related entity or person has violated any provisions on confidentiality included in Article 8.

## 18.2. Grounds for termination by the Contractor

The Contractor may terminate the Purchase Order if the Contracting Authority materially fails to comply with its obligations, in particular the obligation to provide the information needed for the Contractor to perform the Purchase Order as provided for in the tender specifications.

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<sup>2</sup> Regulation (EU, EURATOM) No 2024/2509 on the financial rules applicable to the general budget of the Union.

The Contractor may also terminate the Purchase Order in the event of force majeure, where resuming performance is impossible.

### 18.3. Procedure for termination

A party must formally notify the other party of its intention to terminate the Purchase Order and the grounds for termination.

The other party has 15 days following the date of receipt to submit observations, including the measures it has taken or will take to continue fulfilling its contractual obligations or, in the case of Article 18.1 (m), the assurances it gives to fulfil its contractual obligations in the future.

After having received any observations submitted or, failing that, following the expiry of the time limit for submitting observations, the party intending to terminate must formally notify the other party either of the withdrawal of its intention to terminate or of its final decision to terminate.

In the cases referred to in points (a) to (d), (g) to (i), (k) to (n) of Article 18.1 and in Article 18.2 the date on which the termination takes effect must be specified in the formal notification.

In the cases referred to in points (e), (f) and (j) of Article 18.1, the termination takes effect on the day following the date on which the Contractor receives notification of termination.

In addition, at the request of the Contracting Authority and regardless of the grounds for termination, the Contractor must provide all necessary assistance, including information, documents and files, to allow the Contracting Authority to complete, continue or transfer the services to a new Contractor or internally, without interruption or adverse effect on the quality or continuity of the performance of the Purchase Order. The parties may agree to draw up a transition plan detailing the Contractor's assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The Contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

### 18.4. Effects of termination

The Contractor is liable for damage incurred by the Contracting Authority as a result of the termination of the Purchase Order, including the additional cost of appointing and contracting another Contractor to provide or complete the tasks assigned to it, except if the damage is a result of a termination in accordance with Article 18.1 (j) or Article 18.2. The Contracting Authority may claim compensation for such damage.

The Contractor is not entitled to compensation for any loss resulting from the termination of the Purchase Order, including any loss of anticipated profits, unless the loss was caused by the situation specified in Article 18.2.

The Contractor must take all appropriate measures to minimise costs, prevent damage, and cancel or reduce its commitments.

Within 60 days of the date of termination, the Contractor must submit any report, deliverable or result required for the tasks executed before the date of termination.

In the case of joint tenders, the Contracting Authority may terminate the Purchase Order with each member of the group separately on the basis of points (d), (e), (g), (k), (l) and (m) of Article 18.1, under the conditions set out in Article 11.2.

## ARTICLE 19 - INVOICES, VALUE ADDED TAX AND E-INVOICING

### 19.1. Invoices and value added tax

Invoices must contain the Contractor's identification data, the amount, the currency and the date, as well as the Purchase Order reference.

Invoices must indicate the place of taxation of the Contractor for value added tax (VAT) purposes and must specify separately the taxable amount per rate or exemption, the VAT rate applied and the VAT amount payable.

All invoices shall indicate both the Contractor's and the Contracting Authority's VAT number.

The Contracting authority is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union and Article 151, §1 of the Directive 2006/112/CE.

The Contractor must complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the Purchase Order are exempt from taxes and duties, including VAT.

In case of joint tenders from a group of economic operators without separate legal personality, in order to allow the members of the group to complete the formalities with the relevant authorities to ensure the tax exemption, the Contracting Authority shall issue a VAT exemption certificate for each respective group member of the joint tender, if the transaction is taxable for VAT purposes as an intra-community purchase.

The leader shall include in the annex a description of the task(s) performed by each member of the group, specify its value and sign it. If the repartition of the tasks is not known at the moment of the Purchase Order signature, the group leader shall fill in the annex with the relevant information as soon as the repartition of the tasks is known and submit it to the Contracting Authority at the latest together with the invoices issued by each member of the group. The leader shall also send one copy of the annex to each member whose part of the service supplied is taxable for VAT purposes.

Each member of the group shall issue an invoice to the Contracting Authority on its share/part of the service, as outlined in the above-mentioned annex(es).

The Contracting authority shall pay the amounts corresponding to these invoices to the leader on its bank account.

Payments to the leader will discharge the Contracting Authority from its payment obligation vis à vis the other members of the group.

For the group members (including leaders), if the transaction is taxable for VAT purpose as a local purchase in another Member State, local exemption rules apply.

For invoices sent to the Contracting Authority via email, the reception date must be considered as the date on which the request for payment is registered after reception in the functional mailbox of the Contracting Authority. The functional mailbox in which the payments requests are to be sent, should be provided in the Purchase Order.

### 19.2 E-invoicing

If e-Prior is used, the Contractor submits invoices in electronic format in compliance with Directive 2006/112/EC on VAT.

For avoidance of doubt, the e-invoices must be issued in conformity with the repartition of tasks as per the annex mentioned in Article 18.1 and the payment conditions described in the same Article fully apply.

## ARTICLE 21 - GENERAL PROVISIONS CONCERNING PAYMENTS

### 21.1 Date of payment

The date of payment is deemed to be the date on which the Contracting Authority's account is debited.

### 21.2 Currency

Payments are made in euros, unless another currency is provided for in the purchase order.

### 21.3 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.

[Exchange rate \(InforEuro\) | European Commission \(europa.eu\).](#)

### 21.4 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.

### 21.6 Interim payments and payment of the balance

The Contractor must send an invoice for interim payment, as provided for the purchase order or in the tender specifications.

The Contractor 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 as provided for in Article 22.

### 21.7 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 a joint tender) that its invoice cannot be

processed. The reasons the Contracting Authority may cite for not being able to process an invoice are:

(a) because it does not comply with the Purchase Order;

(b) because the Contractor has not produced the appropriate documents or deliverables; or

(c) because the Contracting Authority has observations on the documents or deliverables submitted with the invoice;

(d) because it is manifest that, at a later date and before such breach becomes effective, the Contractor will materially fail to perform the Purchase Order in accordance with the tender specifications or will be in material breach of another contractual obligation, unless the Contractor provides the Contracting Authority with sufficient assurances of its future performance.

The Contracting Authority must notify the Contractor (or leader in the case of a joint tender) as soon as possible of any such suspension, giving the reasons for it. In cases b) and c) referred above, the Contracting Authority shall notify the Contractor (or leader in the case of a joint tender) the time limits to submit additional information or corrections or a new version of the documents or deliverables if the Contracting Authority requires 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, sufficient assurances or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the Contractor (or leader in the case of a joint tender) may request the Contracting Authority to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, the Contracting Authority reserves the right to terminate the Purchase Order in accordance with Article 18.1 (c).

## 21.8 Interest on late payment

On expiry of the payment periods specified in the purchase order, the Contractor (or leader in the case of a joint tender) 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 21.7. 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 21.1.

However, when the calculated interest is EUR 200 or less, it must be paid to the Contractor (or leader in the case of a joint tender) only if it requests it within two months of receiving late payment.

## **ARTICLE 22 - RECOVERY**

22.1. If an amount is to be recovered under the terms of the Contract, the Contractor must repay the Contracting Authority the amount in question.

### 22.2 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 Union or by the European Atomic Energy Community or by an executive agency when it implements the Union budget;

(b) by calling in a financial guarantee if the Contractor has submitted one to the Contracting Authority;

(c) by taking legal action.

### 22.3. 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 21.8. 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.

### 22.4. Recovery rules in the case of joint tender

If the Purchase Order is signed by a group (joint tender), the members of the group are jointly and severally liable under the conditions set out in Article 6 (liability). The Contracting Authority shall send the debit note first to the leader of the group.

If the leader does not pay by the due date the whole amount and if the amount due cannot be offset or can only be offset partially in accordance with Article 22.2 (a), the Contracting Authority may claim the amount still due from any other member or members of the group by respectively notifying them with a debit note in conformity with the provisions laid down in Article 22.2.

## **ARTICLE 23 - CHECKS AND AUDITS**

23.1. The Contracting Authority may check or require an audit on the performance of the Purchase Order. This may be carried out by any outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the performance of the Purchase Order and 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.

23.2. 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.

23.3. 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 Purchase

Order 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.

23.4. 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, which 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 the 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 22 and may take any other measures which it considers necessary.

23.5. 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 of 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, irregularities or any other illegal activity under the Purchase Order 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/ supplies and up to five years starting from the payment of the balance.

23.6. The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939 ('the EPPO') and, for the processing of personal data, the European Data Protection Supervisor, have the same rights as the Contracting Authority, particularly right of access, for the purpose of checks, audits and investigations.