

## FRAMEWORK CONTRACT FOR SUPPLIES

FRAMEWORK CONTRACT NUMBER – 20xx/EMSA/NEG/9/2024

The European Maritime Safety Agency (hereinafter referred to as "the contracting authority"), with its seat at Praça Europa 4, 1249-206, Lisbon, Portugal, VAT registration no.: 507 685 326, for the purposes of signing this Framework Contract represented by Dominika Łempicka-Fichter, Head of Corporate Services - Department 4,

on the one part, and

[full official name]

[official legal form]

[statutory registration number ID or passport number]

[full official address]

[VAT registration number]

[appointed as the leader of the group by the members of the group that submitted the joint tender who are jointly and severally liable vis-a-vis the contracting authority for the implementation of this contract]

(hereinafter referred to as "the contractor"), represented by [forename, surname and function]

on the other part

HAVE AGREED

to the **special conditions**, the **general conditions for framework contracts for supplies** and the following Annexes:

- Annex I** Tender specifications (reference No EMSA/NEG/9/2024 of [insert date]) [including clarifications, answers to questions and corrigenda issued by the contracting authority during the submission phase]
- Annex II** Contractor's tender (reference No [complete] of [insert date]) [including clarifications provided by the tenderer, during the tender evaluation phase, at the contracting authority's request].
- Annex III** Model order form
- Annex IV** Group members' shares for VAT purpose (if applicable)

which form an integral part of this contract (hereinafter referred to as "the FWC").

This FWC sets out:

1. the procedure by which the contracting authority may order supplies from the contractor;
2. the provisions that apply to any order form which the contracting authority and the contractor may conclude under this FWC; and
3. the obligations of the parties during and after the duration of this FWC.

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

## **I - SPECIAL CONDITIONS**

### **ARTICLE I.1 – ORDER OF PRIORITY OF PROVISIONS**

If there is any conflict between different provisions in this FWC, the following order of precedence shall apply:

- a. Special conditions;
- b. General conditions;
- c. Tender specifications (Annex I);
- d. Contractor's tender (Annex II).

If there is any conflict between the provisions of the specific contracts signed during the FWC implementation and their annexes, the following order of precedence shall apply:

- a. Signed specific contracts;
- b. Requests for specific contracts (if applicable);
- c. Contractor's specific tender/documents submitted for a specific contract (if applicable).

In case of a conflict, the provisions set out in the FWC and its annexes I and II take precedence over those in the specific contracts and their annexes.

### **ARTICLE I.2 SUBJECT MATTER AND SCOPE FO THE CONTRACT**

The subject matter of the FWC is: Supply of personal protective equipment (PPE) and associated services.

The scope of the contract is provision of services by the contractor to the contracting authority in accordance with the terms and requirements set out in Annex I.

### **ARTICLE I.3 ENTRY INTO FORCE AND DURATION OF THE FWC**

**I.3.1** The FWC enters into force on the date on which it is signed by the last party.

**I.3.2** The implementation of the FWC cannot start before its entry into force.

**I.3.3** The FWC is concluded for a period of 48 months with effect from the date of its entry into force.

**I.3.4** The parties must sign any order form before the FWC expires or is terminated. Expiry or termination of the FWC does not automatically terminate the related specific contracts. The FWC continues to apply to ongoing order forms after its expiry or termination. The supplies relating to such order forms must be delivered no later than six months after its expiry or termination.

**I.3.5** The suspension of the implementation of the FWC or a specific contact due to force majeure as provided for in Article II.16 will remain without effect on the duration of the contract.

**I.3.6** If, after the end of the FWC, one party continues to perform its obligations without opposition from the other party, such performance is not and cannot be construed as a renewal of the FWC.

### **ARTICLE I.4 IMPLEMENTATION OF THE FWC**

#### **I.4.1 Type of contract**

The contractor is selected for a single FWC.

#### **I.4.2 Period of provision of the supplies**

The period for the provision of the supplies starts to run from the date indicated in the specific contract.

#### **I.4.3 Implementation of single FWC**

The contracting authority orders supplies by sending the contractor an order form.

Within 10 working days, the contractor must either:

- send the order form back to the contracting authority signed and dated in paper format<sup>1</sup>; or
- send an explanation of why it cannot accept the order.

The contracting authority orders supplies not included in the list in Annex II by sending the contractor a request for supplies.

Within 10 working days, the contractor must either:

- send a completed formal reply to the request for supplies duly signed and dated, or
- send an explanation of why it cannot accept the request for supplies.

If the contractor repeatedly refuses to sign the order forms or to accept a request for supplies, or repeatedly fails to send the order form or a formal reply to a request for supplies back on time, the contractor may be considered in breach of its obligations under this FWC as set out in Article II.17.1 (c).

#### **I.4.4 Delivery**

The supplies must be delivered at Praça Europa 4, 1249-206 Lisbon, Portugal, Incoterms - DDP.

The contractor must notify the contracting authority of the exact date of delivery at least two days in advance. Deliveries may be made on any working day during normal working hours, at the agreed place of delivery.

### **ARTICLE I.5 - PRICES**

#### **I.5.1 Maximum FWC value and maximum prices**

The maximum amount covering all purchases under this FWC, is EUR [*amount in figures and in words*]. However, this does not bind the contracting authority to purchase for the maximum amount.

The maximum prices of the supplies are listed in Annex II.

Order forms for the purchase of supplies shall be established based on the unit prices indicated in Annex II. However, EMSA may request the contractor to propose supplementary supplies to be ordered on the basis of the recent version of the catalogue which has been provided to EMSA or, in case the supplementary supplies

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<sup>1</sup> Not applicable if the contract is signed with QES by the contractor.

are not included in the catalogue, on the basis of a request for supplies and the respective quote provided by the contractor (see section 2.2 of the tender specifications).

### **I.5.2 Price revision index**

Price revision for the supplies listed in Annex II is determined by the formula set out in Article II.19 and using the trend in the harmonised indices of consumer prices – Euro Area (HICP - EA) published at <http://ec.europa.eu/eurostat/web/hicp/data/database> under HICP (2015 = 100) - monthly data (index) (prc\_hicp\_midx).

## **ARTICLE I.6 – PAYMENT ARRANGEMENTS**

For any type of payment, the contractor shall submit the invoices only after the acceptance of the supplies by the contracting authority as per Article II.4.11.

Payments shall be executed only if the contractor has fulfilled all its contractual obligations by the date on which the invoice is submitted. Payment requests may not be made if payments for previous orders have not been executed as a result of default or negligence on the part of the contractor.

### **I.6.1 Pre-financing**

Not applicable.

### **I.6.2 Interim payment**

The contractor may claim an interim payment equal to the delivered part of the total price referred to in the relevant order form in accordance with Article II.20.6.

The contractor must send an invoice for the interim payment via e-PRIOR, unless otherwise agreed with the contracting authority, accompanied by the related delivery note signed by the contracting authority.

The invoice shall include a clear description of the supplies provided and shall make reference to the order form to which it relates.

All invoices shall indicate both the contractor's and the contracting authority's VAT number.

The contracting authority must approve any submitted documents and pay within 30 days from receipt of the invoice.

The contracting authority may suspend the time limit for payment specified above in accordance with Article II.20.7. Once the suspension is lifted, the contracting authority shall give its approval and pay within the remainder of the time-limit indicated above, unless it rejects partially or fully the submitted documents.

### **I.6.3 Payment of the balance**

The contractor may claim the payment of the balance in accordance with Article II.20.6.

The contractor must send an invoice for payment of the balance due under the contract via e-PRIOR, unless otherwise agreed with the contracting authority, accompanied by the related delivery note signed by the contracting authority.

The invoice shall include a clear description of the supplies provided and shall make reference to the order form to which it relates.

All invoices shall indicate both the contractor's and the contracting authority's VAT number.

The contracting authority must approve the submitted documents or supplies and pay within 30 days from receipt of the invoice.

The contracting authority may suspend the time limit for payment specified above in accordance with Article II.20.7. Once the suspension is lifted, the contracting authority shall give its approval and pay within the remainder of the time-limit indicated above, unless it rejects partially or fully the submitted documents.

The invoices regarding leasing, maintenance and rental of products may be submitted per calendar year in advance for the whole year.

#### **I.6.4 Performance guarantee**

Not applicable.

#### **I.6.5 Retention money guarantee**

Not applicable.

#### **I.6.6 VAT on telecommunications, broadcasting and electronic services**

Not applicable.

### **ARTICLE I.7 – BANK ACCOUNT**

Payments shall be made in accordance with Article II.20 to the contractor's (or leader's in the case of a joint tender) bank account denominated in euro identified as follows:

Name of bank: *[complete]*

Full address of branch: *[complete]*

Exact designation of account holder: *[complete]*

IBAN code: *[complete]*

### **ARTICLE I.8 – COMMUNICATION DETAILS**

For the purpose of this FWC, communications must be sent to the following addresses:

The contracting authority:

European Maritime Safety Agency  
Dominika Łempicka-Fichter  
Head of Corporate Services - Department 4  
Praça Europa 4  
1249-206 Lisbon  
Portugal

Email: [emsa\\_contracts@emsa.europa.eu](mailto:emsa_contracts@emsa.europa.eu)

For operational purposes: (Project Officer details)

Contractor (or leader in case of a joint tender):

[Full name]

[Function]

[Company name]

[Full official address]

Email: [complete]

Invoices shall be submitted via e-PRIOR, unless otherwise agreed with the contracting authority.

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

### **I.9.1 Processing of personal data by the contracting authority**

For the purpose of Article II.9.1,

- (a) for personal data processed in the context of the management of the contract, the data controller is the Head of Unit Legal, Finance and Facilities;
- (b) the data protection notice is available on the EMSA website.

### **I.9.2 Processing of personal data by the contractor**

Not applicable.

## **ARTICLE I.10 - TERMINATION FOR CONVENIENCE BY EITHER PARTY**

Either party may terminate the FWC and/or the FWC and order forms for convenience by sending formal notification to the other party with six months written notice.

If the FWC or an order form is terminated for convenience:

- (a) neither party is entitled to compensation;
- (b) the contractor is entitled to payment only for the supplies delivered before termination takes effect.

The second, third and fourth paragraphs of Article II.17.4 apply.

## **ARTICLE I.11 - APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

**I.11.1** The FWC shall be governed by Union law, complemented, where necessary, by the law of Portugal. The application of the United Nations Convention on Contracts for the International Sales of Goods (CISG) is excluded.

**I.11.2** Any dispute between the parties in relation to the validity, interpretation, performance or termination of the FWC which cannot be settled amicably shall be brought before the courts of Lisbon, Portugal.

## ARTICLE I.12 – INTER-INSTITUTIONAL CONTRACT

Not applicable.

## ARTICLE I.13 – E-PROCUREMENT

The execution of the contract between the contracting authority and the contractor may be automated by the use of one or more of the following applications: e-Request, e-Catalogue, e-Ordering and e-Fulfilment and e-Invoicing.

The use of the above applications may be made available by the Contracting Authority during the lifetime of the contract.

## SIGNATURES

For the contractor,

[*Company name*/forename/surname/function]

For the contracting authority,

Dominika Łempicka-Fichter, Head of  
Corporate Services - Department 4

signature: \_\_\_\_\_

Done at:

Date:

signature: \_\_\_\_\_  
Lisbon

In duplicate<sup>2</sup> in English.

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<sup>2</sup> Unless it is signed with QES.



## II - GENERAL CONDITIONS FOR FRAMEWORK CONTRACT FOR SUPPLIES

### ARTICLE II.1 – DEFINITIONS

For the purpose of this FWC and the specific contracts signed to implement it, the following definitions (indicated in *italics* in the text) 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 implementation of the FWC. It may not include information that is publicly available;

**‘Conflict of interest’**: a situation where the impartial and objective implementation of the FWC 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 FWC;

**‘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 supplies, electronic specific contracts, and electronic delivery of the certificate of conformity or 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 FWC. The situation or event must not be attributable to the negligence on the debtor. Breaches or errors of subcontractors, defaults, 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.

**‘Implementation of the FWC’:** the purchase of supplies envisaged in the FWC through the signature and performance of specific contracts;

**‘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;

**‘Order form’:** a simplified form of specific contract by which the contracting authority orders supplies under this FWC;

**‘Performance of a specific contract’:** the execution of tasks and delivery of the purchased supplies by the contractor to the contracting authority;

**‘Personnel’:** persons employed directly or indirectly or contracted by the contractor to implement the FWC;

**‘Professional conflicting interest’:** a situation in which the contractor's previous or ongoing professional activities affect its capacity to implement the FWC or to perform a specific contract to an appropriate quality standard.

**‘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;

**‘Reply to a request for specific contract/ Reply to a request for supplies’:** written commitment, submitted by the contractor in response to a received request for specific contract under a single FWC or a multiple FWC in cascade, on the basis of which the contracting authority may award a specific contract;

**‘Request for specific contract/ Request for supplies’:** document(s) from the contracting authority requesting that the contractors in a multiple FWC with re-opening of competition provide specific tenders. In a single FWC, it means document(s) from the contracting authority ordering supplies from the contractor. In a FWC in cascade, it means document(s) from the contracting authority ordering supplies from the contractor to which the request is sent.

**‘Specific contract’:** a contract implementing the FWC and specifying details of a supply to be provided;

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

## **ARTICLE II.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 II.3 – SEVERABILITY

Each provision of this FWC 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 FWC. This does not affect the legality, validity or enforceability of any other provisions of the FWC, 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 II.11. The FWC must be interpreted as if it had contained the substitute provision as from its entry into force.

## ARTICLE II.4 – DELIVERY OF SUPPLIES

- II.4.1** Signature of the FWC does not guarantee any actual purchase. The contracting authority is bound only by specific contracts implementing the FWC.
- II.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<sup>3</sup>, compliance with data protection obligations resulting from Regulation (EU) 2016/679<sup>4</sup> and Regulation (EU) 2018/1725<sup>5</sup>.
- II.4.3** All periods specified in the FWC are calculated in calendar days, unless otherwise specified.
- II.4.4** 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.
- II.4.5** The contractor is responsible for the *personnel* who perform the contract 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; and
  - (b) their participation in providing the supplies does not result in any employment or contractual relationship with the contracting authority.
- II.4.6** The contractor must ensure that the *personnel* implementing the FWC and any future replacement personnel possess the professional qualifications and experience required to provide the supplies, as the case may be on the basis of the selection criteria set out in the tender specifications.
- II.4.7** 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 supplies; or
  - (b) has caused disruption at the premises of the contracting authority.

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<sup>3</sup> OJ L 94 of 28.03.2014, p. 65

<sup>4</sup> 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, OJ L 119, 4.5.2016, p. 1, [https://eurlex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.119.01.0001.01.ENG](https://eurlex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG)

<sup>5</sup> 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, OJ L 295/39, 21.11.2018, <https://eur-lex.europa.eu/eli/reg/2018/1725/oj>

The contractor bears the cost of replacing its personnel and is responsible for any delay in providing the 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.

**II.4.8** The contractor must record and report to the contracting authority any problem that affects its ability to deliver the supplies. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

**II.4.9** The contractor must immediately inform the contracting authority of any changes in the exclusion situations as declared, according to Article 137 (1) of the Financial Regulation.

#### **II.4.10 Delivery**

(a) Time allowed for delivery

The time allowed for delivery is calculated in accordance with Article I.4.

(b) Date, time and place of delivery

The contracting authority must be notified in writing of the exact date of delivery within the period indicated in Article I.4. All deliveries must be made at the agreed place of delivery during the hours indicated in Article I.4.

Notwithstanding the applicable Incoterm set out in Article I.4.4, the contractor must bear all costs and risks involved in delivering the supplies to the place of delivery.

(c) Consignment note

Each delivery must be accompanied by a consignment note in duplicate, duly signed and dated by the contractor or its carrier, giving the specific contract number and particulars of the supplies delivered. One copy of the consignment note must be countersigned by the contracting authority and returned to the contractor or to its carrier.

#### **II.4.11 Certificate of conformity**

Signature of the consignment note by the contracting authority, as provided for in point (c) of Article II.4.10 is simply an acknowledgment of the fact that the delivery took place and in no way implies conformity of the supplies with the specific contract.

Conformity of the supplies delivered must be evidenced by the signature of a certificate to this effect by the contracting authority no later than one month after the date of delivery, unless otherwise specified in the special conditions or in the tender specifications.

Conformity must be declared only where the conditions laid down in the FWC and in the specific contract are satisfied and the supplies conform to the tender specifications.

If, for reasons attributable to the contractor, the contracting authority is unable to accept the supplies, the contractor must be formally notified at the latest by the deadline for conformity.

#### **II.4.12 Conformity of the supplies delivered with the FWC**

The supplies delivered by the contractor to the contracting authority must be in conformity in quantity, quality, price and packaging with the FWC and the relevant specific contract.

To be in conformity, the supplies delivered must:

- (a) correspond to the description given in the tender specifications and possess the characteristics of the supplies provided by the contractor to the contracting authority as a sample or model;
- (b) be fit for any specific purpose required of them by the contracting authority and made known to the contractor at the time of conclusion of this FWC and accepted by the contractor;
- (c) be fit for the purposes for which supplies of the same type are normally used;
- (d) demonstrate the high-quality standards and performance which are normal in supplies of the same type and which the contracting authority can reasonably expect, given the nature of the supplies and taking into account any public statements on the specific characteristics of the supplies made by the contractor, the producer or its representative, particularly in advertising or on labelling; in accordance with the state of the art in the industry and the provisions of this FWC, in particular the tender specifications and the terms of its tender.
- (e) be packaged according to the requirements laid down in Article II.4.16(a) and according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

#### **II.4.13 Remedy**

The contractor is liable to the contracting authority for any lack of conformity which exists at the time the supplies are verified.

In case of a lack of conformity, without prejudice to Article II.14 on liquidated damages applicable to the total price of the supplies concerned, the contracting authority is entitled:

- (a) either to have the supplies brought into conformity, free of charge, by repair or replacement;
- (b) or to have an appropriate reduction made in the price in accordance with Article II.15.

Any repair or replacement must be completed within a reasonable time and without any significant inconvenience to the contracting authority, taking account of the nature of the supplies and the purpose for which they are required by the contracting authority.

The term 'free of charge' in paragraph (a) refers to the costs incurred to bring the supplies into conformity, particularly the cost of postage, labour and materials.

#### **II.4.14 Assembly**

If required by the tender specifications (Annex I), the contractor must assemble the supplies delivered within a period of one month unless otherwise specified in the special conditions.

Any lack of conformity resulting from incorrect installation of the supplies must be deemed to be equivalent to lack of conformity of the supplies if installation forms part of the FWC and the supplies were installed by the contractor or under its responsibility. This applies equally if the product was to be installed by the contracting authority and was incorrectly installed owing to a shortcoming in the installation instructions.

#### **II.4.15 Services provided to supplies**

If required by the tender specifications, services to supplies must be provided accordingly.

#### **II.4.16 General provisions concerning supplies**

- (a) Packaging

The supplies must be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damage or deterioration. Packaging, pallets, etc., including contents, must not weigh more than 500 kg.

Unless otherwise specified in the special conditions or in the tender specifications (Annex I), pallets must be considered as one-way packaging and must not be returned. Each box must be clearly labelled with the following information:

- Name of the contracting authority and address for delivery;
- name of contractor;
- description of contents;
- date of delivery;
- number and date of contract;
- EC code number of article.

Supplies that are not packaged in accordance with this Article, shall be considered to represent a lack of conformity in the sense of Article II.4.12(e).

(b) Guarantee

The supplies must be guaranteed by the contractor against all defects in manufacture or materials for two years from the date of delivery, unless provision is made for a longer period in the tender specifications.

The contractor must guarantee that any permits and licences required for manufacturing and selling the supplies have been obtained.

The contractor must replace at its own expense, within a reasonable time limit and without any significant inconvenience to the contracting authority, taking account of the nature of the supplies and the purpose for which they are required by the contracting authority, any items which become damaged or defective in the course of normal use during the guarantee period.

The contractor is responsible for any conformity defect which exists at the time of delivery, even if this defect does not appear until a later date.

The contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with its obligations, including failure to provide a guarantee that, for a certain period, supplies used for the purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.

If part of an item is replaced, the replacement part must be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.

If a defect is found to originate in a systematic flaw in design, the contractor must replace or modify all identical parts incorporated in the other supplies that are part of the order, even though they may not have been the cause of any incident. In this case, the guarantee period must be extended as stated above.

**II.4.17** If the contractor fails to deliver the supply in accordance with the contract or if it fails to deliver the supply in accordance with the expected quality levels specified in the tender specifications, the contracting authority may, even if these failings constitute a breach that could trigger Article II.17.1, without prior notice of default to the contractor or judicial intervention being required, 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 II.17 that the substitution would not cover.

## **ARTICLE II.5 COMMUNICATION BETWEEN THE PARTIES**

### **II.5.1 Form and means of communication**

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

Communication between the parties can take place:

- by electronic means, via email, in accordance with the provisions of Article II.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 II.5.3.

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

Communication details to be used for all communication between the parties are indicated in Article I.8.

### **II.5.2 Communication via email**

When communicating via e-mail, the parties shall send their messages to the email addresses indicated in Article I.8.

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

Without prejudice to Article II.18. 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 Article I.8 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 Article I.8 and receives a non-delivery report, it must make every reasonable effort to ensure that the other party receives the communication.

#### **II.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 II.5.3.2 below).



### **II.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 Article I.8.

#### **II.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.

#### **II.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.

### **II.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 specific contracts and 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 II.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.



### **II.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.

### **II.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.

User roles enabling these e-PRIOR authorised persons to sign legally binding documents such as specific tenders or specific contracts are granted only upon submission of supporting documents proving that the authorised person is empowered to act as a legal representative of the contractor.

## **ARTICLE II.6 LIABILITY**

- II.6.1** The contractor shall perform the contract 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 during or as a consequence of implementation of the FWC (including the related costs such as lawyer fees).
- II.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 implementation of the FWC. 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.
- II.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 implementation of the FWC, resulting from a

breach attributable to the contractor, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the relevant specific contract. However, 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.

- II.6.4** If a third party brings any action against the contracting authority in connection with the implementation of the FWC, the contractor must assist the contracting authority 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 implementation of the FWC, Article II.6.1 applies. In that case, the limitations of liability foreseen in Article II.6.3 do not apply.

- II.6.5** If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the contracting authority for the implementation of the FWC.
- II.6.6** The contracting authority is not liable for any loss or damage caused to the contractor during or as a consequence of implementation of the FWC, unless the loss or damage was caused by wilful misconduct or gross negligence of the contracting authority.

## **ARTICLE II.7 CONFLICT OF INTEREST AND PROFESSIONAL CONFLICTING INTERESTS**

- II.7.1** The contractor must take all the necessary measures to prevent any situation of conflict of interest or professional conflicting interest.
- II.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 implementation of the FWC. 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 this situation;
- (c) decide not to award any specific contract to the contractor until the situation is rectified.

- II.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 implementation of the FWC, 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 II.8 CONFIDENTIALITY**

- II.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 implementation of the FWC.
- II.8.2** Each party must:

- (a) not use confidential information or documents for any purpose other than to perform its obligations under the FWC or a specific 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.

**II.8.3** The confidentiality obligation set out in this Article are binding on the contracting authority and the contractor during the implementation of the FWC 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.

**II.8.4** The contractor must obtain from any related person and its personnel, as well as from third parties involved in the implementation of the FWC, 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.

**II.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 implementation of the FC 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.

**II.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.

## **ARTICLE II.9 PROCESSING OF PERSONAL DATA**

### **II.9.1 Processing of personal data by the contracting authority**

Any personal data included in or relating to the FWC, including its implementation, shall be processed in accordance with Regulation (EU) 2018/1725<sup>6</sup>. Such data shall be processed solely for the purposes of the implementation, management and monitoring of the FWC by the data controller.

The contractor or any other person whose personal data is processed by the data controller in relation to this FWC has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) 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.

<sup>6</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council 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, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018R1725>

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

Details concerning the processing of personal data are available in the data protection notice referred to in Article I.9.

## **II.9.2 Processing of personal data by the contractor**

The processing of personal data by the contractor shall meet the requirements of Regulation (EU) 2018/1725 and be processed solely for the purposes set out by the controller.

The contractor shall assist the controller for the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this FWC as laid down in Chapter III (Articles 14-25) of Regulation (EU) 2018/1725.

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

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

The contractor shall grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the FWC. The contractor must ensure that personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article II.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 as set out in Article I.9.2) 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 II.22.2. 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 II.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 Articles I.9.2 and II.9.2 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 II.10 SUBCONTRACTING**

**II.10.1** The contractor must not subcontract and have the FWC implemented by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the contracting authority.

**II.10.2** Even if the contracting authority authorises subcontracting, the contractor remains bound by its contractual obligations and remains entirely responsible for the implementation of the FWC vis-à-vis the contracting authority.

**II.10.3** The contractor must ensure that the subcontract does not affect the rights of the contracting authority under this FWC, particularly those under Articles II.8 and II.22.

- II.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 II.17.1. The contractor bears the costs of such replacement.

## **ARTICLE II.11 AMENDMENTS**

- II.11.1** Any amendment to the FWC or a specific contract must be made in writing before all contractual obligations have been fulfilled. A specific contract does not constitute an amendment to the FWC. 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 the FWC or to a specific contract and does not make these general terms and conditions applicable to the FWC or a specific contract.
- II.11.2** Any amendment must not make changes to the FWC or a specific contract that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contractors.

## **ARTICLE II.12 ASSIGNMENT OF THE CONTRACT TO A THIRD-PARTY**

- II.12.1** The contractor must not assign any of the rights and obligations arising from the FWC or a specific contract.
- II.2.2** By way of exception to the preceding clause, in duly justified exceptional circumstances, rights and / or obligations arising from the FWC and/or a specific contract 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.
- II.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 II.13 FORCE MAJEURE**

- II.13.1** 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.
- II.13.2** A party is not liable for any delay or failure to perform its obligations under the FWC 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 supplies actually delivered and which obtain a certificate of conformity.
- II.13.3** The parties must take all necessary measures to limit any damage due to force majeure.
- II.13.4** Force majeure either suspends the implementation of the FWC as provided for in Article II.16 or leads to the termination of the FWC as provided for in Article II.17. The effects of the suspension of the FWC due to force majeure on the duration is laid down in Article I.3.5.

## ARTICLE II.14 LIQUIDATED DAMAGES FOR DELAY IN DELIVERY

### II.14.1 Delay in delivery

If the contractor fails to perform its contractual obligations within the applicable time limits set out in this FWC or the relevant order form or specific contract, the contracting authority may claim liquidated damages for each day of delay using the following formula:

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

where:

V is the price of the relevant purchase or supply;

d is the duration specified in the FWC or relevant order form or specific contract for delivery of the relevant purchase or supply or, failing that, the period between the date specified in Article I.4.2 and the date of delivery or performance specified in the relevant specific contract, 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 II.15 or a substitution of the contractor under the conditions laid down in Article II.4.17.

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 II.17, nor (c) the contracting authority's rights under Article II.4.17 or (d) any other right or remedy that the contracting authority may have under the FWC or a specific contract.

### II.14.2 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. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, 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.

### II.14.3 Nature of liquidated damages

The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and, in view of all the circumstances including the legitimate interest of the contracting authority, represents a reasonable estimate of fair compensation for the damage that may be incurred by the contracting authority due to failure to provide the supplies within the applicable time limits set out in this FWC or the relevant order form or specific contract.



## **ARTICLE II.15 REDUCTION IN PRICE**

### **II.15.1 Quality standards**

If the contractor fails to deliver the supply in accordance with the FWC or a specific contract ('unperformed obligations') or if it fails to deliver the supply in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the contracting authority may, even if these failings constitute a breach that could trigger Article II.17.1, reduce the price. The price reduction will be directly proportional to the difference, upon the time of the signature of the FWC, between the value of the unperformed obligations or low quality delivery and the value of the agreed supply. This includes in particular cases where the contracting authority cannot approve a document or deliver a certificate of conformity for supply as defined in Article I.6 after the contractor has submitted the required additional information, correction or new supply.

A reduction in price may be imposed together with liquidated damages under the conditions of Article II.14.

Any reduction in price does not affect the contractor's liability or the contracting authority's rights under Article II.17 for damages that the reduction in price would not cover or any other right or remedy that the contracting authority may have under the FWC or a specific contract.

### **II.15.2 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. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the contracting authority, taking into account the relevant observations, 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.

### **II.15.3 Claims and liability**

Any reduction in price does not affect the contractor's actual or potential liability or the contracting authority's rights under Article II.17.

## **ARTICLE II.16 SUSPENSION OF THE IMPLEMENTATION OF THE FWC**

### **II.16.1 Suspension by the contractor**

If the performance of the contract is affected by force majeure, the contractor may suspend the performance of a specific contract.



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 performance of the contract.

The contractor must notify the contracting authority as soon as it is able to resume performance of the specific contract, unless the contracting authority has already terminated the FWC or the specific contract.

The contracting authority is not entitled to compensation for suspension of any part of the FWC or a specific contract, in the event of force majeure.

#### **II.16.2 Suspension by the contracting authority**

The contracting authority may suspend the implementation of the FWC or performance of a specific contract or any part of it:

- (a) in case of force majeure affecting the implementation of the FWC or the performance of a specific contract;
- (b) in order to verify whether the presumed irregularities, fraud or breach of obligations actually occurred;
- (c) if the procedure for awarding the FWC or a specific contract or the implementation of the FWC 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 date of formal notification, or at a later date if the formal notification so provides.

The contracting authority must notify the contractor as soon as the verification is completed whether:

- (a) it is lifting the suspension; or
- (b) it intends to terminate the FWC or a specific contract under Article II.17.1 (f) or (j).

The contractor is not entitled to compensation for suspension of any part of the FWC or a specific contract.

The contracting authority may in addition suspend the time allowed for payments in accordance with Article II.20.7.

### **ARTICLE II.17 TERMINATION OF THE FWC**

#### **II.17.1 Grounds for termination by the contracting authority**

The contracting authority may terminate the FWC or any on-going specific contract in the following circumstances:

- (a) if provision of the supplies under an on-going specific contract has not actually started within 15 days of the scheduled date and the contracting authority considers that the new date proposed, if any, is unacceptable, taking into account Article II.11.2;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for implementation of the FWC;
- (c) if the contractor fails to implement the FWC or to perform the specific contract in accordance with the tender specifications or request for specific contract or is materially in breach of another contractual obligation or repeatedly refuses to sign specific contracts. Termination of three or more specific contracts in these circumstances also constitutes grounds for termination of the FWC;

- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 136(1) of the Financial Regulation;
- (e) if the contractor or any related person is on one of the situations provided for in points (c) to (h) of Article 136(1) or to Article 136(2) of the Financial Regulation.
- (f) if the procedure for awarding the FWC or the implementation of the FWC prove to have been subject to errors, 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 II.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 implementation of the FWC or substantially modify the conditions under which the FWC was initially awarded or a change regarding the exclusion situations listed in Article 136 of the Financial Regulation that calls into question the decision to award the contract or the contractor becomes subject to restrictive measures hindering the implementation of the FWC;
- (j) in the event of force majeure, where either resuming implementation is impossible or the necessary ensuing amendments to the FWC or a specific contract would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the needs of the contracting authority change and it no longer requires new supplies under the FWC; in such cases ongoing specific contracts remain unaffected;
- (l) if the termination of the FWC with one or more of the contractors means that the multiple FWC with reopening of competition no longer has the minimum required level of competition
- (m) if the contractor is in breach of the data protection obligations resulting from Article II.9.2;
- (n) if the contractor does not comply with the applicable data protection obligations resulting from Regulation (EU) 2016/679<sup>7</sup>;
- (o) if it is manifest that, at a later date and before such breach becomes effective, the contractor will materially fail to implement the FWC or to perform the specific contract in accordance with the tender specifications or request for specific contract or will be materially in breach of another contractual obligation or will repeatedly refuse to sign specific contracts, unless the contractor provides the contracting authority with sufficient assurances of its future performance.

### **II.17.2 Grounds for termination by the contractor**

The contractor may terminate the FWC or any on-going specific contract if the contracting authority materially fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to implement the FWC or to perform a specific contract as provided for in the tender specifications.

The contractor may also terminate the FWC or any on-going specific contract in the event of force majeure, where resuming implementation is impossible.

### **II.17.3 Procedure for termination**

A party must formally notify the other party of its intention to terminate the FWC or a specific contract 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 II.17.1(o), the

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<sup>7</sup> 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), OJ L 119, 4.5.2016, <http://data.europa.eu/eli/reg/2016/679/2016-05-04>

assurances it gives to fulfil its contractual obligations in the future. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

If the other party submits observations, the party intending to terminate must formally notify it 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 (o) of Article II.17.1 and in Article II.17.2, 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 II.17.1, 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 delivery of the supplies to a new contractor or internally, without interruption or adverse effect on the quality or continuity of delivery of the supplies. 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.

#### **II.17.4 Effects of termination**

The contractor is liable for damage incurred by the contracting authority as a result of the termination of the FWC or a specific contract including the additional cost of appointing and contracting another contractor to provide or complete the supplies, except if the damage is a result of a termination in accordance with Article II.17.1 (j), (k) or (l) or Article II.17.2. 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 FWC or a specific contract, including loss of anticipated profits, unless the loss was caused by the situation specified in the first subparagraph of Article II.17.2.

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 and any invoice required for supplies that were provided before the date of termination.

In the case of joint tenders, the contracting authority may terminate the FWC or a specific contract with each member of the group separately on the basis of points (d), (e), (g), (m) (n) and (o) of Article II.17.1, under the conditions set out in Article II.11.2.

### **ARTICLE II.18 INVOICES, VALUE ADDED TAX AND E-INVOICING**

#### **II.18.1 Invoices and value added tax**

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

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 and 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 implementation of the FWC 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 service supplied 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 of the specific contract or order form 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 specific contract.

#### **II.18.2 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 II.18.1 and the payment conditions described in the same article fully apply.

#### **ARTICLE II.19 PRICE REVISION**

If a price revision index is provided in Article I.5.2, this Article applies to it.

In that case, prices are fixed and not subject to revision during the first year of the FWC.

At the beginning of the second and every following year of the FWC, each price may be revised upwards or downwards at the request of one of the parties.

A party may request a price revision in writing no later than three months before the anniversary date of entry into force of the FWC. The other party must acknowledge the request within 14 days of receipt.

At the latest at the anniversary date, the contracting authority must communicate the final index for the month in which the request was received, or failing that, the last provisional index available for that month. The contractor establishes the new price on this basis and communicates it as soon as possible to the contracting authority for verification.

The contracting authority purchases on the basis of the prices in force at the date on which the specific contract enters into force.

The price revision is calculated using the following formula:

$$Pr = 0,8 \times Po \times \left( \frac{Ir}{Io} \right) + 0,2 \times Po$$

where: Pr = revised price;

Po = price in the tender;

Io = index for the month in which the FWC enters into force;

Ir = index for the month in which the request to revise prices is received.

## **ARTICLE II.20 PAYMENTS AND GUARANTEES**

### **II.20.1 Date of payment**

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

### **II.20.2 Currency**

Payments are made in euros unless another currency is provided for in Article I.7.

### **II.20.3 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 \(europa.eu\)](https://ec.europa.eu/economy_finance/inforeuro/).

#### **II.20.4 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.

#### **II.20.5 Pre-financing, performance and money retention guarantees**

If, as provided for in Article I.6, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as money retention guarantee, it must fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or a financial institution approved by the contracting authority or, at the request of the contractor and with the agreement of the contracting authority, by a third party; and
- (b) the guarantee shall have the effect of making the bank or financial institution or the third party provide irrevocable collateral security or stand as first-call guarantor of the contractor's obligations without requiring that the contracting authority has recourse against the principal debtor (the contractor).

The contractor bears the cost of providing such guarantee.

Pre-financing guarantees must remain in force until the pre-financing is cleared against interim payments or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee must remain in force for three months after the debit note is sent to the contractor. The contracting authority must release the guarantee within the following month.

Performance guarantees cover compliance with substantial contractual obligations until the contracting authority has given its final approval for the supply. The performance guarantee must not exceed 10 % of the total price of the specific contract. The contracting authority must release the guarantee fully after final certificate of conformity of the supply has been delivered, as provided for in the specific contract.

Retention money guarantees cover full delivery of the supplies in accordance with the specific contract including during the contract liability period and until their final certificate of conformity has been delivered by the contracting authority. The retention money guarantee must not exceed 10 % of the total price of the specific contract. The contracting authority must release the guarantee after the expiry of the contract liability period as provided for in the specific contract.

The contracting authority must not request a retention money guarantee for a specific contract where it has requested a performance guarantee.

#### **II.20.6 Interim payments and payment of the balance**

The contractor must send an invoice for interim payment, as provided for in Article I.6 or in the tender specifications or in the specific contract.

The contractor must send an invoice for payment of the balance within 60 days of the end of the period of provision of the supplies, as provided for in Article I.6, in the tender specifications or in the specific contract.

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 II.21.1.

#### **II.20.7 Suspension of the time allowed for payment**

The contracting authority may suspend the payment periods specified in Article I.6 at any time by notifying the contractor 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 FWC;
- (b) because the contractor has not produced the appropriate supplies or documents; or
- (c) because the contracting authority has observations on the supplies or documents 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 implement the FWC or to perform the specific contract in accordance with the tender specifications or request for specific contract or will be in material breach of another contractual obligation or will repeatedly refuse to sign specific contracts, unless the contractor provides the contracting authority with sufficient assurances of its future performance

The contracting authority must notify the contractor 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 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 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 specific contract in accordance with Article II.17.1(c).

#### **II.20.8 Interest on late payment**

On expiry of the payment periods specified in Article I.6, 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 II.20.7 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 II.20.1.

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.

## **ARTICLE II.21 RECOVERY**

**II.21.1** If an amount is to be recovered under the terms of the FWC, the contractor must repay the contracting authority the amount in question.

### **II.21.2 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 contracting authority 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.

### **II.21.3 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 II.20.8. 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.

### **II.21.4 Recovery rules in the case of a joint tender**

If the contract is signed by a group (joint tender), the members of the group are jointly and severally liable under the conditions set out in Article II.6 (liability). The contracting authority shall send the debit note first claims 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 II.21.2 (a), then the contracting authority may claim the amount still due to 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 II.21.2.

## **ARTICLE II.22 CHECKS AND AUDITS**



- II.22.1** The contracting authority may check or require an audit on the implementation of the FWC. 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 provision of the supplies and up to five years starting from the payment of the balance of the last specific contract issued under this FWC.  
  
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.
- II.22.2** 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 of the last specific contract issued under this FWC.
- II.22.3** 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 FWC is implemented 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.
- II.22.4** 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 II.21 and may take any other measures which it considers necessary.
- II.22.5** 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 also 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 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 performance of the contract and up to five years starting from the payment of the balance of the last specific contract issued under this FWC.
- II.22.6** The Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939<sup>8</sup> ('the EPPO') have the same rights as the contracting authority, particularly right of access, for the purpose of checks, audits and investigations.

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<sup>8</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office

## **ANNEX I**

**Tender specifications** (reference No. EMSA/NEG/9/2024 of *[insert date]*)

## **ANNEX II**

Contractor's tender (reference No [complete] of [insert date])

**ANNEX III**

**FRAMEWORK SUPPLY CONTRACT ORDER FORM**