

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

GENERAL CONDITIONS – INTELLECTUAL SERVICES

Published by:

Council of Europe, Avenue de l'Europe F-67075 Strasbourg Cedex

Tel. +33 (0)3 88 41 20 00 - Fax. +33 (0)3 88 41 20 00

TABLE OF CONTENTS

ARTICLE 1 – LEGAL STATUS OF THE COUNCIL OF EUROPE AND OF THE SERVICE PROVIDER.....	3
ARTICLE 2 – APPLICATION OF THE GENERAL CONDITIONS.....	3
ARTICLE 3 – PRECEDENCE CLAUSE	3
ARTICLE 4 – DEFINITIONS AND INTERPRETATION	4
ARTICLE 5 – INTELLECTUAL PROPERTY RIGHTS.....	4
ARTICLE 6 – WARRANTIES.....	5
ARTICLE 7 – LOYALTY OF THE SERVICE PROVIDER	5
ARTICLE 8 – CONFIDENTIALITY.....	5
ARTICLE 9 – DISCLOSURE OF THE TERMS OF THE CONTRACT	5
ARTICLE 10 – USE OF THE COUNCIL OF EUROPE'S NAME.....	5
ARTICLE 11 – FISCAL OBLIGATIONS OF THE SERVICE PROVIDER	6
ARTICLE 12 – PRICE/FEE	6
ARTICLE 13 – AMENDMENTS TO THE CONTRACT.....	6
ARTICLE 14 – CHANGES IN THE SERVICE PROVIDER’S SITUATION OR STANDING	6
ARTICLE 15– TRANSFER OF CONTRACT.....	7
ARTICLE 16 – SUB-CONTRACTING	7
ARTICLE 17 – ACCEPTANCE	7
ARTICLE 18 – TERMINATION FOR BREACH OF THE CONTRACT	7
ARTICLE 19 – CASE OF FORCE MAJEURE	7
ARTICLE 20 – DISPUTES.....	8
APPENDIX TO THE GENERAL CONDITIONS.....	9

ARTICLE 1 – LEGAL STATUS OF THE COUNCIL OF EUROPE AND OF THE SERVICE PROVIDER

a) Pursuant, *inter alia*, to the Statute of the Council of Europe and to the General Agreement on Privileges and Immunities of the Council of Europe, the Council of Europe has legal personality. The Council of Europe enjoys such privileges and immunities as are necessary for the fulfilment of its functions. Nothing in the Contract shall be interpreted as a waiver of the Privileges and Immunities of the Council of Europe.

b) The Service Provider's personnel or any person acting on its behalf shall, while on the premises of the Council of Europe, comply with the Council of Europe Rules and those generally applicable relating to safety, public security and order¹ as well as other rules indicated in the Special conditions.²

c) The Service Provider guarantees that its personnel or any person acting on its behalf fully respect the terms of the Contract.

d) The Service Provider shall have the legal status of an independent service provider *vis-à-vis* the Council of Europe, and nothing contained in or relating to the Contract shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered in any respect to be employees or agents of the other Party and each Party shall be solely responsible for all claims arising out of or relating to its relationship with such persons or entities.

ARTICLE 2 – APPLICATION OF THE GENERAL CONDITIONS

The provisions of these General Conditions shall apply to all contracts for the supply of intellectual services entered into by the Council of Europe. They may, however, be supplemented or modified by special conditions.

ARTICLE 3 – PRECEDENCE CLAUSE

Any general purchasing terms and conditions of the Service Provider shall never prevail over these General conditions. Any provision proffered by the Service Provider in its documents (general conditions or correspondence) conflicting with the clauses of these General Conditions shall be deemed void, except for any clauses which may be more favourable to the Council.

¹ Rule No. 1292 of 3 September 2010 on the protection of human dignity at the Council of Europe; Rule 1294 of 7 May 2010 on managing alcohol-related risks on Council of Europe premises; Rule No. 1267 of 20 January 2007 prohibiting smoking inside all Council of Europe buildings.

² Another regulation that may be included in respect of texts for publications is Instruction No. 33 of 1 June 1994 on the use of non-sexist language at the Council of Europe.

ARTICLE 4 – DEFINITIONS AND INTERPRETATION

For the purposes of these General Conditions:

- a) "Contract" shall mean the present General Conditions as well as any other documents mentioned as contractual documents in the Act of Engagement;
- b) "Council" shall mean the Council of Europe;
- c) "Service Provider" shall mean the legal or physical person selected by the Council for the provision of intellectual services;
- d) References to any gender include both genders. References to a person include any physical or legal persons.

ARTICLE 5 – INTELLECTUAL PROPERTY RIGHTS

- a) The Service Provider shall assign all intellectual property rights³ over the deliverables as described in the technical specifications to the Council on an exclusive basis and without any temporal and geographical limitations. Such rights shall include in particular the right to use, reproduce, represent, publish, adapt, translate and distribute – or to have used, reproduced, represented, published, adapted, translated and distributed - in any language, in any form and on any kind of support, including on a CD-ROM or the internet, the deliverables, or any part thereof. The Council reserves the right to exercise the above-mentioned rights for any purpose falling within its activities.
- b) The Council may, on prior application by the Service Provider, authorise the Service Provider to use the deliverables. When giving the Service Provider such authorisation, the Council will inform the Service Provider of any conditions to which such use may be subject.
- c) The Service Provider guarantees that use by the Council of the deliverables supplied under the contract will not infringe the rights of third parties. In the event of any dispute or litigation involving an alleged violation of a third party's intellectual property rights, the Service Provider shall at his own cost endeavour so far as is possible to settle the dispute or litigation and shall, if requested by the Council and for so long as that request is not revoked, be responsible for conducting the defence in respect of all proceedings. However, under no circumstances may the Service Provider institute judicial proceedings in the name of the Council. The Service Provider shall keep the Council fully informed of the progress of such dispute or litigation and shall bear all expenses, costs and compensation payable to any third party pursuant to a court order, arbitration award or negotiated settlement. In the event that any claim by a third party relating to the alleged violation of its intellectual property rights results in the Council suffering damage or loss, the Council shall be entitled to full compensation from the Service Provider for such damage or loss.

³ The term « intellectual property law » refers to both copyright law which protects roughly speaking literary, artistic and scientific work and industrial property rights law which protects roughly speaking inventions. Industrial property includes *inter alia* patents, trademarks, service marks, names and designations.

ARTICLE 6 – WARRANTIES

The Service Provider guarantees that the deliverables conform to the technical specifications.

ARTICLE 7 – LOYALTY OF THE SERVICE PROVIDER

In the performance of the present contract, the Service Provider will not seek or accept instructions from any government or any authority external to the Council. The Service Provider undertakes to comply with the Council's directives for the completion of the work, to observe absolute discretion regarding all service matters and to refrain from any word or act that may be construed as committing the Council.

ARTICLE 8 – CONFIDENTIALITY

The Service Provider shall observe the utmost discretion in all matters concerning the contract, and particularly any service matters or data that have been or are to be recorded that come to the Service Provider's attention in the performance of the contract. Unless obliged to do so under the terms of the contract, or expressly authorised to do so by the Secretary General of the Council of Europe, the Service Provider shall refrain at all times from communicating to any person, legal entity, government or authority external to the Council any information which has not been made public and which has come to the Service Provider's notice as a result of dealings with the Council. Nor shall the Service Provider seek to gain private benefit from such information. Neither the expiry of the contract nor its termination by the Council shall lift these obligations.

ARTICLE 9 – DISCLOSURE OF THE TERMS OF THE CONTRACT

a) The Service Provider is informed and gives an authorisation of disclosure of all relevant terms of the contract, including identity and price, for the purposes of internal and external audit and to the Committee of Ministers and to the Parliamentary Assembly of the Council with a view to these latter discharging their statutory functions, as well as for the purpose of meeting the publication and transparency requirements of the Council of Europe or its donors. The Service Provider authorises the publication, in any form and medium, including the websites of the Council of Europe or its donors, of the title of the contract/projects, the nature and purpose of the contract/projects, name and locality of the Service Provider and amount of the contract/project.

b) Whenever appropriate, specific confidentiality measures shall be taken by the Council to preserve the vital interests of the Service Provider.

ARTICLE 10 – USE OF THE COUNCIL OF EUROPE'S NAME

The Service Provider shall not use the Council's name, or logo or the European emblem without prior authorisation of the Secretary General of the Council of Europe.

ARTICLE 11 – FISCAL OBLIGATIONS OF THE SERVICE PROVIDER

The Service Provider undertakes to observe any applicable law and to comply with his fiscal obligations in conformity with the legislation of the Service Provider's country of fiscal residence, in submitting an invoice to the Council in conformity with the applicable legislation, or a request of payment in the case of Service providers who are not subject to VAT.

ARTICLE 12 – PRICE/FEE

The prices/fees shall be stated in euros.

ARTICLE 13 – AMENDMENTS TO THE CONTRACT

The provisions of the contract cannot be modified without the written agreement of both parties.

ARTICLE 14 – CHANGES IN THE SERVICE PROVIDER'S SITUATION OR STANDING

a) The Service Provider shall inform the Council without delay of any changes in his address or legal domicile or in the address or legal domicile of the person who may represent him.

b) The Service Provider shall inform also inform the Council without delay:

- i. if he becomes insolvent, the subject of insolvency proceedings, goes into liquidation, ceases trading or finds himself in any similar situation under the laws of the country in which he is domiciled;
- ii. if he becomes the subject of a request for the opening of insolvency proceedings, (or himself makes such a request) or of any similar proceedings under the laws of the country in which he is domiciled;
- iii. if he is convicted of an offence that puts his professional reliability in question;
- iv. if he is involved in a merger, takeover or change of ownership or there is a change in his legal status;
- v. where the Service Provider is a consortium or similar entity, if there is a change in membership or partnership.
- vi. if he is sentenced by final judgment on one or more of the following charges: participation in a criminal organisation, corruption, fraud, money laundering;
- vii. if he is in a situation of bankruptcy, liquidation, termination of activity, insolvency or arrangement with creditors or any like situation arising from a procedure of the same kind, or is subject to a procedure of the same kind;
- viii. if he has received a judgment with res judicata force, finding an offence that affects his professional integrity or serious professional misconduct;

- ix. does not comply with his obligations as regards payment of social security contributions, taxes and dues, according to the statutory provisions of my country of legal domicile;

ARTICLE 15– TRANSFER OF CONTRACT

The contract may not be transferred, in full or in part, for money or free of charge, without the Council's prior authorisation in writing.

ARTICLE 16 – SUB-CONTRACTING

The Service Provider may not subcontract all or part of the services without the Council's prior authorisation in writing.

ARTICLE 17 – ACCEPTANCE

The provision of deliverables shall be the subject of a written acceptance procedure. If acceptance is refused, the Council shall inform the Service Provider accordingly, giving reasons, and may set at least one further date for the provision of the deliverables. If acceptance is refused again, the Council may terminate the Contract in whole or in part without previous notice and without paying any financial compensation.

ARTICLE 18 – TERMINATION FOR BREACH OF THE CONTRACT

a) Where the Service Provider is in breach of, or fails to fulfil, contractual obligations, the Council shall be entitled to terminate the Contract without prejudice to any claims for damages it may have. Unless otherwise provided for in the Contract, such right for termination may be exercised by the Council without previous notice.

b) The Council may also terminate at any time, subject to four weeks' written notice, contracts involving recurring services on the part of the Service Provider.

c) In each case the Service Provider shall be entitled to claim the agreed amount of remuneration for the deliverables accepted. He shall also be entitled to all costs already incurred at the time of notice or payable on the basis of obligations reasonably entered into in view of the performance of his contractual duties, against which he must, however, set off expenditure avoided as a result of the Council's decision to terminate and income deriving from his ability to use labour for other work, or income which might thus have been gained but which he has wilfully or negligently omitted to obtain.

ARTICLE 19 – CASE OF FORCE MAJEURE

a) In the event of a force majeure, the parties shall be released from the application of this contract without any financial compensation. Force majeure is defined as including the following: major weather problems, earthquake, strikes affecting air travel, attacks, a state of war, health risks or events that would require the Council to cancel the contract.

b) In the event of such circumstances each party shall be required to notify the other party accordingly in writing, within a period of 5 days.

ARTICLE 20 – DISPUTES

In accordance with the provisions of Article 21 of the General Agreement on privileges and immunities of the Council of Europe, all disputes between the Council and the Service Provider as regards the application of this contract shall be submitted, if a mutual agreement cannot be reached between the parties, to arbitration as laid down in Rule No 481 of the Secretary General (Annex).

French law shall be applicable to the arbitration procedure.

* * *

APPENDIX TO THE GENERAL CONDITIONS

Rule No. 481 of 27 February 1976 laying down the arbitration procedure for disputes between the Council and private persons concerning goods provided, services rendered or purchases of immovable property on behalf of the Council

The Secretary General of the Council of Europe,

Having regard to the Statute of the Council of Europe, of 5 May 1949, and in particular its Articles 11 and 40,

Having regard to the General Agreement on Privileges and Immunities of the Council of Europe signed on 2 September 1949, and in particular its Articles 1, 3, 4 and 21, as well as the Special Agreement relating to the seat of the Council of Europe signed on 2 September 1949,

Considering that it is appropriate to determine the arbitration procedures for any disputes between the Council and private persons regarding supplies furnished, services rendered or immovable property purchased on behalf of the Council,

Having regard to the decision of the Committee of Ministers of the Council of Europe at the 253rd meeting of the Deputies,

DECIDES:

Article 1

Any dispute relating to the execution or application of a contract covered by Article 21 of the General Agreement on Privileges and Immunities of the Council of Europe shall be submitted, failing a friendly settlement between the parties, for decision to an Arbitration Board composed of two arbitrators each selected by one of the parties, and of a presiding arbitrator, appointed by the other two arbitrators; in the event of no presiding arbitrator being appointed under the above conditions within a period of six months, the President of the Tribunal de Grande Instance of Strasbourg shall make the appointment.

Article 2

However, the parties may submit the dispute for decision to a single arbitrator selected by them by common agreement or, failing such agreement, by the President of the Tribunal de Grande Instance of Strasbourg.

Article 3

The Board referred to in Article 1 or, where appropriate, the arbitrator referred to in Article 2 shall determine the procedure to be followed.

Article 4

If the parties do not agree upon the law applicable the Board or, where appropriate, the arbitrator shall decide *ex aequo et bono* having regard to the general principles of law and to commercial usage.

Article 5

The arbitral decision shall be binding upon the parties and there shall be no appeal from it.

Strasbourg, 27 February 1976
Georg KAHN-ACKERMANN
Secretary General