

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

## **COUNCIL OF EUROPE GENERAL CONDITIONS<sup>1</sup>**

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<sup>1</sup> To be accepted when participating in a call for tender.

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These General Conditions are supplemented by all documents included in the call for tender file, which constitute an integral part thereof.

## **I. Definitions**

“Contract” shall mean any contract, framework contract or framework agreement concluded between the Council of Europe and the Provider.

"Provider" shall mean a natural or legal person executing works and/or supplying goods and/or providing services to the Council of Europe under the Contract.

## **II. Precedence**

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

## **III. Order of priority of documents**

In the event of inconsistencies between the various contractual documents, the following order of priority shall apply:

- The Contract;
- The Special Conditions (if any);
- The Supplementary General Conditions (if any);
- The present General Conditions;
- Other specific contractual documents prepared by the Council of Europe (if any);
- The Provider’s offer.

## **IV. General Obligation to provide advice**

The Provider shall provide to the Council all necessary advice, warnings and recommendations, particularly in terms of quality of deliverables, security and compliance with professional standards. The Provider also undertakes to inform the Council as soon as they become aware, during the execution of the Contract, of any initiatives and/or adopted laws and regulations, policies, strategies or action plans or any other development related to the object of the Contract.

## **V. Communications between the Parties**

1. Electronic communication is deemed to have been received by the receiving party on the day of successful dispatch of that communication, provided that it is sent to the address provided by the receiving party for that purpose. Dispatch shall be deemed unsuccessful if the sending party receives a message of non-delivery. In this case, the sending party shall immediately send again such communication to any other addresses provided by the receiving party. In case of unsuccessful dispatch, the sending party shall not be held in breach of its obligation to send such communication within a specified deadline, provided the communication is dispatched by another means of communication without further delay.

2. Mail sent to the Council using the postal services is considered to have been received by the Council on the date on which it is registered by the Council.

3. Formal notifications made by registered mail with return receipt or equivalent, or by equivalent electronic means, shall be considered to have been received by the receiving party on the date of receipt indicated on the return receipt or equivalent.

## **VI. Loyalty**

In the performance of the present Contract, the Provider shall not seek or accept instructions from any government or any authority external to the Council. The 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.

## **VII. Confidentiality**

The 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 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 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 Provider's notice as a result of dealings with the Council. Nor shall the 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.

Moreover, authorised representatives of the Council of Europe who, in performing their duties, are informed of means of production or any other information pertaining to the Provider, shall be subject to the obligation of confidentiality.

## **VIII. Health and social insurance of Providers and/or their employees**

The Provider shall undertake all measures required under national law to arrange for health and social insurance during the entire Contract. The Provider acknowledges and accepts in this regard that the Council shall not assume any responsibility for any health or social risks concerning illness, maternity or accident which might occur during the performance of work under the Contract.

## **IX. Provider's status**

Nothing in this Contract shall be interpreted as giving the Provider and/or their employees the status of Council of Europe employees and the Staff Regulations and the rules concerning temporary staff shall, therefore, not be applicable to them.

## **X. Changes in the Provider's situation or standing**

The Provider shall inform the Council without delay of any changes in their address or legal domicile or in the address or legal domicile of any person who may represent them.

The Provider shall also inform the Council without delay:

- if they are involved in a merger, takeover or change of ownership or there is a change in their legal status; where the Providers are a consortium or similar entity, if there is a change in membership or partnership;

- if they have been sentenced by final judgment on one or more of the following charges: participation in a criminal organisation, corruption, fraud, money laundering, terrorist financing, terrorist offences or offences linked to terrorist activities, child labour or trafficking in human beings;
- if they are 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 are subject to a procedure of the same kind;
- if they have received a judgment with res judicata force, finding an offence that affects their professional integrity or serious professional misconduct;
- If they do not comply with their obligations as regards payment of social security contributions, taxes and dues, according to the statutory provisions of their country of incorporation, establishment or residence;
- If they are an entity created to circumvent tax, social or other legal obligations (empty shell company), have ever created or are in the process of creation of such an entity;
- If they have been involved in mismanagement of the Council of Europe funds or public funds;
- If they are or appear to be in a situation of conflict of interest;
- if they are - or their owner(s) or senior manager(s) -, in the case of legal entities, included in the lists of persons or entities subject to the [restrictive measures applied by the European Union](#) (in the case of calls for tenders financed by European funds only);
- if they are retired Council of Europe staff members or are staff members having benefitted from an early departure scheme;
- if they are currently employed, or were employed on the date of the launch of the procurement procedure, by the Council of Europe.

#### **XI. Price - Time-limit for the validity of offers**

The price shall be stated in Euros without tax.

The time-limit for the validity of offers shall be 180 days starting from the expiry date set for sending the offers.

#### **XII. Payment conditions**

The Council of Europe's payment terms are 60 days net from the date (of receipt) of the invoice or the date of execution of the contract, whichever is the latest.

#### **XIII. Language of documents**

Unless provided otherwise, all documents delivered by the Provider must be drafted in one of the Council of Europe's official languages, which are English and French.

#### **XIV. Disclosure of the terms of the contract**

The Provider is informed and gives an authorisation of disclosure of all relevant terms of the Contract, including identity, for the sole 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 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, the nature and purpose of the Contract, name and locality of the Provider and amount of the Contract.

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

#### **XV. Use of the Council of Europe's name**

The Provider shall not use the Council's name or logos without prior authorisation.

#### **XVI. Fiscal obligations of the Provider**

The Provider undertakes to observe any applicable law and to comply with their fiscal obligations in conformity with the legislation of the Provider's country of fiscal residence.

#### **XVII. Amendments**

The provisions of this Contract cannot be modified without the written agreement of both parties. This agreement may take the form of an exchange of emails. Any modification shall not affect elements of the Contract which may distort the initial conditions of the procurement procedure that resulted in the conclusion of this Contract.

#### **XVIII. Transfer of contract**

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

#### **XIX. Sub-contracting**

The Provider may sub-contract the performance of certain parts of the Contract, subject to the Council's prior approval. The Provider may not sub-contract the performance of the entire Contract. The approval shall be requested by submitting a description of the nature of the parts of the Contract performance to be sub-contracted together with the name and the address of the suggested sub-contractor.

In the event of sub-contracting the Provider remains personally responsible for the performance of the entire Contract. The Council shall not assume any responsibility for any risk whatsoever that may be incurred by the Provider's sub-contractors.

#### **XX. Internal Regulations**

The Provider and/or their staff must abide by the Council of Europe's Rule n° 1292 on the protection of human dignity, Rule n° 1294 on managing alcohol-related risks on Council of Europe premises and Rule n°1267 prohibiting smoking in all Council of Europe buildings.

Moreover, the Provider undertakes to comply with the applicable principles, rules and values of the Council, including – but not limited to – those laid down in the [Policy on Respect and Dignity in the Council of Europe](#) and the [Code of Conduct](#).

## **XXI. Security and access to the Council of Europe**

If the performance of the contract requires access to the Council of Europe's premises or information system by the Provider's employees, the Service Provider undertakes to carry out a background check on the employees assigned to the Council of Europe in order to prevent and control risks to the security of the Council of Europe's staff, property and information. The Provider undertakes to provide only employees whose background does not demonstrate incompatibility with the performance of duties within the Council of Europe.

## **XXII. Data protection**

Without prejudice to the other provisions of the Contract, the Parties undertake, in the execution of this Contract, to comply at all times with the legislation applicable to each of them concerning the processing of personal data.

Where the Provider, pursuant to their obligations under this Contract, processes personal data on behalf of the Council, they shall:

1. Process personal data only in accordance with written instructions from the Council;
2. Process personal data only to the extent and in such manner as is necessary for the execution of the Contract, or as otherwise notified by the Council;
3. Implement appropriate technological measures to protect personal data against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction, or damage while having regard to the nature of the personal data which is to be protected;
4. Take reasonable steps to ensure the reliability of the Provider's employees having access to the personal data and to ensure that they have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality and thus agree to comply with the data protection obligations set out in this Contract;
5. Obtain written consent from the Council prior to any transfer of possession or responsibility for the personal data to any subcontractors. If the Council chooses to authorise subcontracting, the same data protection obligations as set out in this Contract shall be imposed on the subcontractor by way of a contract. Providers shall remain fully liable to the Council for the performance of that subcontractor's obligations.
6. Notify the Council within five working days if they receive:
  - a. a request from a data subject to have access (including rectification, deletion and objection) to that person's personal data; or
  - b. a complaint or request related to the Council's obligations to comply with the data protection requirements.
7. Provide the Council with full assistance in relation to any such request or complaint and assist the Council to fulfil its obligation to respond to the requests for rectification, deletion and objection, to provide information on data processing to data subjects and to notify personal data breaches;

8. Allow for and contribute to checks and audits, including inspections, conducted or mandated by the Council or by any authorised third auditing person. The Provider shall immediately inform the Council of any audit not conducted or mandated by the Council;
9. Not process nor transfer personal data outside the jurisdiction of a Council of Europe Member State without the prior authorisation of the Council and provided that an adequate level of protection is guaranteed by law or by ad hoc or approved standardised safeguards (such as binding corporate rules) in the jurisdiction of the recipient;
10. Make available to the Council all information necessary to demonstrate compliance with the obligations under the Contract in connection with the processing of personal data and the rights of data subjects;
11. Upon the Council's request, delete or return to the Council all personal data and any existing copies, unless the applicable law requires storage of the personal data.

### **XXIII. Case of force majeure**

In the event of a force majeure, the parties shall be released from the application of the Contract without any financial compensation. Force majeure is defined as unforeseeable circumstances beyond the control of either of the parties, including but not limited to the following: major weather problems, earthquake, strikes affecting air travel, attacks, a state of war, health risks.

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.

### **XXIV. Disputes**

Any dispute between the Council and the 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 – appendix 1) by an Arbitration Board. Such a Board shall be 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.

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.

The Board or, where appropriate, the arbitrator referred to herein shall determine the procedure to be followed. 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.

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



## Appendix 1

### **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