# *SPECIAL CONDITIONS*

**CONTENTS**

These conditions amplify and supplement, if necessary, the general conditions governing the contract. Unless the special conditions provide otherwise, those general conditions remain fully applicable. The numbering of the articles of the special conditions is not consecutive but follows the numbering of the articles of the general conditions. In exceptional cases, and with the authorisation of the appropriate Commission departments, other clauses may be added to cover specific situations.

**Article 2 Language of the contract**

2.1 The language used shall be English.

**Article 4 Communications**

4.1 For the Contracting Authority – the Project Manager

|  |  |
| --- | --- |
| Name: |  |
| Adress: |  |
| Telephone: |  |
| e-mail: |  |

For the Contractor

|  |  |
| --- | --- |
| Name: |  |
| Adress: |  |
| Telephone: |  |
| e-mail: |  |

**Article 9 General obligations**

9.9 With respect to Articles 9.7 and 9.9 of the General Conditions, in relation to the specific safety, security, confidentially and secrecy requirements of the Contracting Authority and its staff, the Contractor shall (i) limit visibility to the financial contribution of the European Union to the absolute minimum and essential, as directed by the Contracting Authority and (ii) not use the contract’s reference for marketing or tendering purposes without prior approval of the Contracting Authority.

**Article 10 Origin**

## 10.1 No rule (of limitation) of origin shall apply for any goods purchased.

**Article 11 Performance guarantee**

11.1 No performance guarantee is required.

**Article 12 Liabilities and insurance**

12.1(a) By way of derogation from Article 12.1(a), paragraph 2, of the general conditions, compensation for damage to the supplies resulting from the contractor's liability in respect of the contracting authority is capped at an amount equal to the value of the Order Form from which the Contractor’s liability directly or indirectly arises out of.

**Article 16 Tax and customs arrangements**

16.1 Exemption of taxes:The Kingdom of The Netherlands and the Republic of Kosovo have agreed in Article 17.2 of their Agreement of 15-02-2016 concerning the Hosting of the Kosovo Relocated Specialist Judicial Institution in The Netherlands (of which The Kosovo Specialist Chambers is part) to fully exonerate the following taxes:

a) import and export taxes and duties;

b) value added tax paid on goods and services supplied on a recurring basis or involving considerable expenditure;

*Special note for contracts with natural or legal persons based in The Netherlands: If the Contractor, through the Contracting Authority, will receive an EU VAT Exemption Certificate for this Contract (duly certified by the Tax Authorities of The Netherlands in accordance with Directive 2006/112/EC Article 151 and Directive 2008/118/EC Article 13), then the Contractor shall issue all invoices against this Contract exclusive of VAT. If no such Exemption Certificate is issued, then all invoices against this Contract should be inclusive of VAT.*

**or**

*Special note for contracts with natural or legal persons based outside of The Netherlands, but within the European Union: The Contracting Authority will request an EU VAT Exemption Certificate for this Contract (to be duly certified by the Tax Authorities of The Netherlands in accordance with Directive 2006/112/EC Article 151 and Directive 2008/118/EC Article 13), which shall be issued to the Contractor. The Contractor shall issue all invoices against this Contract exclusive of VAT.*

**Article 18 Commencement order**

18.1This Framework Contract shall enter into force on date of its signature by both parties. It shall be implemented by means of Order forms placed in the manner described in Article 1 of the Framework Contract Agreement. The implementation period of the tasks shall be indicated and defined in the Order forms. These Order forms shall be signed by both parties before the Framework Contract expires.

**Article 19 Period of implementation of the tasks**

19.1This Framework Contract is concluded for a period of 24 months with effect from the date on which it enters into force.

The Framework Contract shall be renewed automatically 2 times for 12 months each, unless one of the parties receives formal notification to the contrary at least 3 months before the end of the ongoing duration. Renewal does not change or postpone any existing obligations.

The tacit renewal as stipulated above shall be further conditioned by the extension of the mandate of the Kosovo Specialist Chambers and the signing of a grant agreement between the European Commission and the Kosovo Specialist Chambers covering the contractual period within its maximum extension.

In case of non-renewal of the Kosovo Specialist Chambers’ mandate or lack of signing of a grant agreement with the European Commission, the provisions of Article 23 (‘Suspension’) shall apply without obligation by the Contracting Authority to respect the above notice.

Order Forms already signed and accepted by the Contractor shall not be affected by the automatic termination of the Framework Contract and the supplies ordered shall be regularly paid by the Contracting Authority in accordance with the Article 26 of the Special Conditions.

**Article 23 Suspension**

23.8 Continuation of this contract beyond 14 June 2023, as well as beyond the same calendar day 14 June of the two years thereafter in case of any contract renewals, will be subject to the condition of the prior adoption of a financing decision and the prior conclusion of a financing agreement, which does not modify the elements of the procurement procedure under which the contract was awarded (this will be the case, for instance, if the budget initially foreseen is different or if the timeframe, the nature or the condition of the implementation are altered). If the precedent condition is not met, the contract shall be suspended with immediate effect and should the period of suspension exceed 180 days, in accordance with General Condition 23.7, the contract will automatically terminate.

**Article 26 General principles for payments**

26.1 Payments shall be made in euros and are subject to the timely and satisfactory receipt of the supplies for which an Order Form is placed,

Pre-financing is not applicable to this contract.

26.2 In addition to Article 26.2 of the General Conditions of Contract, in case of bank charges for bank transfers, if and when such are charged by the banks(s), the costs of the transfer shall be borne in the following way:

a) cost of dispatch, charged by the bank of the Contracting Authority, shall be borne by the Contracting Authority;

b) cost of receipt, charged by the bank of the Contractor, shall be borne by the Contractor;

c) all costs of a repeated transfer, if and when the need for repayment is caused by one of the parties, shall be borne by the party causing repetition of the transfer.

26.5 In order to obtain payments, the contractor must forward to the contracting authority:

a) **An admissible original invoice per received Order Form (as payment is per Order Form only) clearly detailing the type, quantity and cost of the supplies being charged;**

b) **A Copy of the written “Certificate of Provisional Acceptance” for the related Order Form as issued by the Contracting Authority to the Contractor -** Invoice(s) can be issued to the Contracting Authority for each Order Form only after the supplies covered by the Order Form have been successfully and timely delivered and a written ‘Certificate of Provisional Acceptance’ has been issued by the Contracting Authority.

26.9Prices are fixed and not subject to revision during the first and second year of the Framework Contract.

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

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

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 based on the prices in force at the date on which the Order Form is placed.

The price revision is calculated using the following formula:

Pr = Po x ( )

Where: Pr = revised price;

Po = price in the tender;

Io = index of the month in which the Framework Contract enters into force;

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

**Article 29 Delivery**

The Contractor bears the ultimate responsibility for loss or damage to the supplies to be purchased under this contract until final delivery to the KSC premises.

All supplies to be purchased under this contract must be delivered under the DDP[[1]](#footnote-1) Incoterms regime.

**Article 32 Warranty obligations**

Any and all products to be purchased under this contract must be new, unused and they all must be covered by the standard manufacturer's warranty. The warranty period shall commence from the date of the provisional acceptance of these products by the Contracting Authority.

The Contractor shall be responsible for any and all defects in these products that may exist at the time of their receipt by the Contracting Authority or that may arise during the warranty period. If during the warranty period the Contractor receives notice of a defect in any product, the Contractor shall either repair or replace free of charge the faulty product within 30 calendar days of being notified of the defect.

The warranty shall cover any and all costs arising out of or in any way connected with the repair or replacement of a defective product, including any shipping charges associated with the transportation of such repaired or replaced product to and from the location where it was originally delivered, unless otherwise agreed by the Contractor and the Contracting Authority.

**Article 36 Termination by the Contracting Authority**

36.1. The Contracting Authority may, at any time by providing a 2-week notice, subject to Article 36.9, terminate the contract, except as provided for under Article 36.2.

**Article 40 Settlement of disputes**

40.4 Any dispute arising out of or relating to this Contract which cannot be settled otherwise shall be settled finally by arbitration in accordance with the Permanent Court of Arbitration (“PCA”) Arbitration Rules 2012 at the request of either Party. The Parties hereby agree that the arbitral proceedings shall be limited to one arbitrator and the legal seat of the arbitration be in The Hague. Article 9.7 (confidentiality of information or documents) of the General Conditions of Contract shall extend to the settlement of disputes proceedings.

**Article 41 Applicable Law**

41.1 This Contract shall be governed by the substantive law of The Netherlands. Nothing in or relating to this Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the Kosovo Specialist Chambers.

**Article 44 Data Protection**

Processing of personal data related to this tender procedure, launched by the Kosovo Specialist Chambers, takes place in accordance with European Union (EU) standards and rules on personal data protection applied by the Kosovo Specialist Chambers (KSC) and, in particular, with Articles I.3 and I.4 of the General Conditions of the Grant Contract concluded between the EU and the KSC, the latter being the contracting authority for this procedure.

The tender procedure and the resulting contract relate to the implementation of an external action funded by the EU represented by the European Commission.

Your reply to the invitation to tender involves the transfer of personal data to the contracting authority. They will be processed for the purposes of the management and administration of the procurement procedure, and of the resulting contract in implementation of the Grant Contract concluded by the KSC and the Commission, without prejudice to possible transmission to the European Commission and to the bodies in charge of monitoring or inspection tasks in application of EU law.

Details concerning the processing of your personal data by the contracting authority are available on the privacy statement at <https://www.scp-ks.org/en/privacy-notice>

The controller for the processing of personal data carried out within the contracting authority is the Kosovo Specialist Chambers.

To the extent that the contract covers an action financed by the European Union, the contracting authority may share communications related to the implementation of the contract, with the European Commission. These exchanges shall be made to the Commission, solely for the purpose of allowing the latter to exercise its rights and obligations under the applicable legislative framework and under the financing agreement, being the Grant Contract [in particular, its Articles I.3 and I.4 of the General Conditions] concluded between the EU and the Kosovo Specialist Chambers (the latter being the contracting authority for this contract).

These exchanges may involve transfers of personal data (such as names, contact details, signatures and CVs) of natural persons involved in the implementation of the contract (such as contractors, staff, experts, trainees, subcontractors, insurers, guarantors, auditors and legal counsels).

In cases where the contractor is processing personal data in the context of the implementation of the contract, he/she shall accordingly inform the data subjects of the possible transmission of their data to the Kosovo Specialist Chambers.

When personal data is transmitted by the contracting authority (the KSC) to the European Commission, the latter processes them in accordance with 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[[2]](#footnote-2)[1] and as detailed in the specific privacy statement published at ePRAG: <http://ec.europa.eu/europeaid/prag/annexes.do?chapterTitleCode=A>

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1. DDP (Delivered Duty Paid) – Incoterms 2020 International Chamber of Commerce – <http://www.iccwbo.org/incoterms/> [↑](#footnote-ref-1)
2. [1] OJ L 205 of 21.11.2018, p. 39 [↑](#footnote-ref-2)