

# Decrees, orders, circulars

## GENERAL LEGISLATION

### MINISTRY OF THE ECONOMY, FINANCE, AND RECOVERY

#### Order of 30 March 2021 approving the general terms & conditions of industrial public contracts.

NOR: ECOM2106873A

**Parties concerned:** public purchasers and holders of public contracts.

**Subject:** approval of the general terms & conditions of industrial public contracts.

**Entry into force:** this order becomes effective on 1 April 2021. It shall apply to public contracts for which a consultation is initiated or a notice of a competitive public tender is sent for publication as of that date. However, until 1 October 2021, public purchasers may refer to the general terms & conditions applicable to industrial public contracts as they stood prior to this order.

**Notice:** Pursuant to Article R.2112-2 of the Public Procurement Code, this order approves the new general terms & conditions applicable to industrial public contracts. This document establishes the administrative terms of performance applying to this category of public contracts. Its use is not mandatory. It applies only to public contracts that expressly refer to it. It is possible to refer to it while derogating from some of its provisions in the contract's specific documents. This order repeals and replaces the order of 16 September 2009 approving the general terms & conditions applicable to industrial public contracts.

**References:** This order can be consulted on the Légifrance website (<https://www.legifrance.gouv.fr>).

The Ministry of Ecological Transition, The Ministry of the Economy, Finance, and Recovery, The Ministry of Overseas Territories, The Ministry of Territorial Cohesion and Relations with Local Authorities, and The Minister Delegate to the Ministry of the Economy, Finance and Recovery, responsible for Industry,

Having regard to the Public Procurement Code, in particular Article R.2112-2.

Order:

**Art. 1.** – Hereby approved are the general terms & conditions for industrial public contracts, the legal text of which is annexed to this order.

These general terms & conditions shall apply only to the contracts referred to therein.

**Art. 2.** – The Order of 16 September 2009 approving the general terms & conditions for industrial public contracts is repealed as of 1 October 2021.

**Art. 3.** – The provisions of this Order shall enter into force on 1 April 2021. They shall apply to contracts for which a consultation was initiated or a notice of a competitive is sent for publication as of that date.

Nevertheless, public contracts referring to the general terms & conditions for industrial public contracts, for which a consultation is initiated or a notice of a competitive tender is sent for publication between 1 April 2021 and 30 September 2021, shall be deemed to refer to the general terms & conditions in their wording prior to this Order, unless they expressly refer to this Order.

Public contracts referring to the general terms & conditions for industrial public contracts, for which a consultation is initiated or a public notice of a competitive tender is sent for publication before 1 April 2021, shall continue to be subject to the provisions of the general terms & conditions in their wording prior to this Order.

**Art. 4.** – The provisions of this Order shall apply in the Wallis and Futuna Islands, French Polynesia, New Caledonia, and the French Southern and Antarctic Territories.

For the purposes of application, in these same territorial authorities, of the general terms & conditions for industrial public contracts, the legal text of which is annexed to this Order, the references to the Commercial Code shall be replaced, where necessary, by references to locally applicable provisions having the same purpose and enabling the same effects.

**Art. 5.** – This Order will be published in the *Official Journal* of the French Republic.

Done on 30 March 2021.

*The Minister for the Economy,  
Finance, and Recovery* BRUNO  
LE MAIRE

*The Minister for Ecological Transition,*  
BARBARA POMPILI

*The Minister for Overseas  
Territories,*  
SÉBASTIEN LECORNU

*The Minister for Territorial Cohesion and Relations  
with Territorial Communities,*  
JACQUELINE GOURAULT

*The Minister Delegate to the Minister of the  
Economy, Finance and Recovery, responsible for  
Industry,*  
AGNÈS PANNIER-RUNACHER

## APPENDIX

### GENERAL TERMS & CONDITIONS APPLICABLE TO INDUSTRIAL PUBLIC CONTRACTS

#### Preamble

It is up to the purchaser wishing to refer to a set of general terms & conditions (GT&C) to choose the one best suited to the services covered by their contract, and to make express reference to these GT&C in the specific documents of their contract.

This GT&C applies to industrial public contracts having one or more of the following characteristics: the services are performed according to the specifications of the public buyer, their prices are determined on the basis of a quotation, provision is made for supervision of the manufacture at the contractor's premises. An industrial contract is one for the supply of equipment or prototypes specifically designed and built to meet the buyer's specifications.

This GT&C is not suitable for industrial contracts of private buyers.

In principle, each contract may only refer to a single GT&C. However, by way of derogation from this principle, in the case of a global contract within the meaning of Article L.2171-1 of the Public Procurement Code, the buyer may refer to several GT&C. In such cases, they must ensure that the various provisions to which they refer are fully consistent with each other.

In the event certain ancillary services are to be covered by provisions contained in a GT&C other than the one designated in the contract, the latter shall reproduce in the Special Terms & Conditions or any other document serving as such, the provisions retained, without reference to the GT&C from which they originate.

An industrial contract may include a significant amount of research that may give rise to intellectual property rights. The boundary between the application scope of GT&C-IM and that of GT&C-IP (intellectual services) can therefore be difficult to understand, particularly if several contracts follow one another on the same project. Industrial design, up to and including the mock-up or laboratory prototype, is generally considered to be covered by the GT&C-PI, while the industrial prototype and development are covered by the GT&C-MI.

Chapter 9 of this GT&C ("Special Provisions for Repair and Alteration Contracts") is only applicable if the contract expressly refers to it. A general reference to GT&C-MI is insufficient.

The comments in this GT&C are not binding.

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## CHAPTER 1

### GENERAL INFORMATION

#### Article 1

##### *Scope*

1.1. The provisions of this GT&C shall apply to contracts expressly referred to herein.

1.2. These contracts may provide for derogations from some of these provisions.

Such derogations shall be set out in the Special Terms & Conditions (ST&C), or other equivalent document, and shall specify which Articles of this GT&C they derogate from.

The last Article of the ST&C, or of any other document serving as such, shall contain a summary list of the Articles of this GT&C from which derogations are to be made.

#### Article 2

##### *Definitions*

Within the meaning of this document:

- The "buyer" is the contracting authority/entity that concludes the contract with the contractor;
- The "contractor" is the economic operator who concludes the contract with the buyer. In the case of a consortium of economic operators, "contractor" refers to the consortium identified by its representative;
- "Notification" is the process of informing the contracting parties of information or a decision by any material or dematerialised means. This will be by means of a buyer profile or any other means of electronic communication, enabling the date and, where appropriate, the time of its receipt to be determined with certainty;
- Depending on the subject matter of the contract, "services" refers to the supply of equipment or prototypes or services, specially designed and built to meet the buyer's needs. The services covered by the contract may include a study component;
- The "service order" is the buyer's decision specifying the procedures for performing the services stipulated in the contract;
- The "means of production" are the tools, material, installations, intangible elements, buildings, and land necessary for performing the services covered by the contract and made available by the buyer;
- "Acceptance" is the decision, taken after verifications, by which the buyer recognises the conformity of the services with the terms of the contract. Acceptance is equivalent to a confirmation of the service rendered and constitutes the starting point for the guarantee periods;
- "Deferment" is the buyer's decision that the services could be accepted subject to corrections made by the contractor;
- "Reduction" is the buyer's decision to lower the amount of the services to be paid to the contractor, if the services do not fully meet the requirements of the contract, but can be accepted as they stand;
- "Rejection" is the buyer's decision that the services cannot be accepted, even after deferment or with a price reduction;
- The "Special Terms & Conditions" ("ST&C") is a contractual document setting out the administrative clauses specific to the contract. These clauses may also be set out in any other specific document of the contract having the same subject matter, such as a special specifications document (SSD);
- The "special technical specifications" (STS) is a contractual document establishing the technical specifications necessary for the contract's performance. These clauses may also be set out in any other specific document of the contract having the same subject matter, such as a special specifications document (SSD).

#### Article 3

##### *General obligations of the parties*

##### **3.1. Format of notifications and information:**

3.1.1. The notification of decisions, observations, and information giving rise to a time limit shall be made by any material or dematerialised means enabling the date and, where appropriate, the time of its delivery to be determined with certainty.

This notification may be made via the buyer profile or to the postal or electronic address of the parties mentioned in the specific documents of the contract. Failing that, it will be sent to their registered office, unless these documents require them to have an address for service in another location.

In the event of a consortium, notification is made to the representative for the whole consortium.

3.1.2. The date and, where appropriate, the time of delivery mentioned on a receipt shall be considered as the notification date.

If the notification is made via the buyer profile parties are deemed to have received this notification on the date of the document's first consultation thus addressed to them. This will be certified by the acknowledgement of receipt issued by the computer application, or, if the document is not consulted within eight days of the date on which it is made available on the buyer profile, upon expiry of that period.

### **3.2. Methods of calculating the time limits for performing the services:**

3.2.1. Any time limit mentioned in the contract shall begin to run at 00.00 hours on the day following that on which the event from which the time limit is to be calculated occurred. Nevertheless, if the time limit is specified in hours, it shall begin to run from the hour following that in which the event serving as the starting point for the time limit occurred.

The applicable dates and times are those used in the specific contract documents for deliveries or performance.

3.2.2. If the period is fixed in days, it shall be understood to be in calendar days, expiring at midnight on the last day of the deadline.

#### *Comments:*

*The time zone used is that of the location of the delivery or performance of the service.  
A deadline set in calendar days includes Saturdays, Sundays, and public holidays.*

3.2.3. If the time limit is set in months, it shall be counted from the date of the month to the date of the month. If there is no corresponding date in the month in which the period ends, it shall expire on the last day of that month at midnight.

3.2.4. If the last day of the deadline is a Saturday, Sunday, or public holiday, the time-limit shall be extended until the end of the first working day thereafter at midnight.

3.2.5. If the deadline is set in working days, it does not include Saturdays, Sundays, and public holidays.

3.2.6. The deadline for the contract holder does not include the time needed for the buyer to carry out verifications and make a decision in accordance with Chapter 5.

### **3.3. Buyer's representative:**

As soon as the contract is awarded, the buyer shall designate one or more individuals as their representative(s) for the purposes of the contract's performance. Other individuals may be authorised by the buyer during the contract's performance.

These representatives are deemed to have sufficient powers to take the necessary decisions binding on the buyer, as soon as their name is notified to the contractor within the time limits required or laid down by the contract.

### **3.4. Representation of the contractor and information obligations relating to the contract holder:**

#### **3.4.1. Representation of the contractor:**

As soon as the contract is awarded, the contractor shall designate one or more individuals as their representative(s) for the purposes of the contract's performance. Other individuals may be authorised by the contractor during the contract's performance.

These representatives are deemed to have sufficient powers to take the necessary decisions binding on the contractor, as soon as their name is notified to the buyer within the time limits required or laid down by the contract.

#### **3.4.2. Notification of changes in the legal or economic situation of the contractor:**

The contractor is obliged to notify the buyer without delay of changes occurring during the performance of the contract. These include:

- The persons with authority to bind the contractor;
- The legal form under which the contractor carries out their activity;
- The company name or denomination;
- The address or registered office of the company;
- Bank details;
- The information provided for the acceptance of a subcontractor and the approval of payment conditions.

As a general rule, the contractor is obliged to notify the buyer without delay of any significant changes in the operation of the company that may affect the contract's performance.

#### *Comments:*

*The ST&C or any other document in lieu of the ST&C may include sections on the distribution of capital, on the persons or groups controlling the company, or on the consortium to which it belongs. These include, in particular, for certain defence or security contracts affected by restrictive provisions on the involvement of foreign companies or companies owned by foreign groups.*

#### **3.4.3. Provision of services by a named person:**

If the contract stipulates that all or part of the services must be performed by a named person and that person is no longer able to perform this work, the contractor must:

- Inform the buyer without delay and take all necessary steps to ensure the continued provision of the services;

- Propose to the buyer a replacement with at least equivalent skills. The name and *curriculum vitae* of the replacement must be communicated to the buyer within thirty days of the date on which the notice mentioned in the previous paragraph is sent.

The replacement proposed by the contractor is deemed to be accepted by the buyer, if the latter does not reject the replacement within a period of thirty days from the receipt of the communication mentioned in the previous paragraph. If the buyer rejects the replacement, the contractor is allowed a deadline of 30 days to propose another.

The buyer's decision to reject the substitute shall be substantiated.

The buyer's information, advice, proposal, and decisions are notified in the manner laid down in Article 3.1.

If the contractor fails to propose a replacement or if the buyer rejects the replacements, the contract may be terminated under the conditions stipulated in Article 44.

### **3.5. Consortium of economic operators:**

3.5.1. The member of the consortium of economic operators, designated in the contract as the authorised representative, will act on behalf of all the members of the consortium vis-à-vis the buyer for the purposes of performing the contract.

3.5.2. Where a joint consortium is formed, the representative shall be jointly and severally liable, if the specific contract documents so provide, for the contractual obligations of each of the other members of the consortium towards the buyer until the date on which the obligations of the latter cease.

3.5.3. In the case of a joint and several consortiums, each of the members is financially committed for the entire contract, obliging them to make up for any default by other members of the consortium.

3.5.4. If the consortium's representative fails to act, the members of the consortium must appoint a replacement. Failing this, and at the end of a period of eight days from the formal notice by the buyer to do so, the co-contractor executing the largest financial share remaining to be carried out at the date of this change becomes the consortium's new representative.

### **3.6. Subcontracting:**

3.6.1. The contractor who intends to subcontract part of the work shall ask the buyer to accept each subcontractor and to approve their terms of payment.

3.6.2. As soon as the special act confirming acceptance of the subcontractor and approval of the latter's terms of payment is signed, the buyer shall send the contractor and each of the subcontractors concerned the copy of the special act to which they are entitled. Upon receipt of this notification, the contractor shall inform the buyer of the name of the individual authorised to represent the subcontractor.

3.6.3. The contractor is obliged to forward the subcontract and any amendments to the agreement to the buyer if the latter so requests. If the contractor fails to produce the subcontract document by the end of a period of fifteen days from receipt of a formal notice to do so by the buyer, the contractor shall incur a penalty equal to 1/3,000 of the pretax amount excluding of the contract or of the tranche concerned, possibly modified, or, failing this, of the amount of the purchase order concerned. This penalty applies for each day of delay.

### **3.7. Purchase orders:**

3.7.1. Purchase orders are notified by the buyer to the contractor.

3.7.2. If the contractor considers the provisions of a notified purchase order to be objectionable, the contractor must notify the buyer within 15 days of the purchase order's reception date, under penalty of foreclosure.

3.7.3. The contractor shall comply with the notified purchase orders, whether or not any comments have been made by the contractor.

3.7.4. In the case of a consortium of economic operators, the purchase orders are addressed to the representative of the consortium, who alone is entitled to make comments to the buyer.

3.7.5. If, at the end of executing a framework agreement with purchase orders awarded to a single contractor, the total of the buyer's orders has not reached the minimum set by the framework agreement, in terms of value or quantity, the contractor shall be entitled to compensation equal to the net margin that the contractor would have made on the services still to be performed in order to reach that minimum. It is the contractor's responsibility to provide the buyer with evidence, in particular accounting records, enabling this net margin to be determined.

The contractor is also entitled to compensation for any costs and investments incurred in connection with the framework agreement that were strictly necessary for its execution and that were not taken into account in the amount of the services paid. It is the contractor's responsibility to provide the buyer with all the evidence necessary to determine this part of the compensation within 15 days of the end of the framework agreement.

### **3.8. Service orders:**

3.8.1. Service orders are notified by the buyer to the contractor.

3.8.2. If the contractor considers the provisions of a notified service order to be objectionable, the contractor must notify the buyer within 15 days of the service order's reception date, under penalty of foreclosure.

3.8.3. Subject to Article 23.4, the contractor shall comply with the notified service orders, whether or not any comments have been made by the contractor.

Nevertheless, unless the contract stipulates that the services may be ordered to begin more than six months after its notification, the contractor may refuse to execute this service order if it is notified more than six months after the contract is notified. The contractor then has a period of fifteen days from the date on which the refusal decision is sent to the buyer to propose a new start date for the services. At the end of this period, if no other date is proposed, the contractor must perform the services on the date requested. If the buyer refuses the proposal, the contractor may request the contract be terminated, under the conditions indicated in Article 43.2. This termination cannot be refused.

3.8.4. In the case of a consortium of economic operators, the service orders are addressed to the representative of the consortium, who alone is entitled to make comments to the buyer.

## Article 4

### *Contractual documents*

#### **4.1. Order of priority:**

In the event of any contradiction between the stipulations of the contractual documents, they shall prevail in the following order of priority:

- The contract document and any financial annexes;
- The special terms & conditions (ST&C) or any other document in lieu thereof and any annexes thereto;
- The special technical specifications (STS) or any other document in lieu thereof and any annexes thereto;
- These general terms & conditions (GT&C);
- The general technical specifications (GTS) applicable to the services covered by the contract, if the latter refers to them;
- The contractor's technical offer;
- The special subcontracting agreements and any amendments thereto, subsequent to the notification of the contract.

#### **4.2. Documents to be submitted to the contractor. Assignment or pledging of receivables:**

4.2.1. The contract notification includes a copy, delivered free of charge by the buyer to the contractor, of the contract document and the other contract documents, with the exception of the GT&C, the GTS and, more generally, of any document that is the subject of an official publication.

4.2.2. The buyer shall also provide the contractor, at the latter's request and free of charge, with the single copy or the certificate of transferability necessary for the assignment or pledging of the contract.

## Article 5

### *Confidentiality - Protection of personal data - Security measures*

#### **5.1. Confidentiality requirement:**

5.1.1. The contractor and the buyer who, during the contract's performance, become aware of information or receive documents or elements of any kind that are confidential in nature, are obliged to take all necessary measures to prevent disclosure of such information, documents, or elements to a third-party who has no need to know them. A party may not claim confidentiality of information, documents, or material that they themselves made public.

5.1.2. Confidential Information denotes any information of any kind, including methodology, documentation, information, or know-how, in any form whatsoever, including oral, written, magnetic, or electronic, on any medium owned or held by the buyer that is communicated to the contractor or otherwise obtained by the contractor in the course of dealings with the buyer. The contractor and their staff, where applicable their subcontractors, may only use this information for the performance of the services provided for under the contract.

5.1.3. The contractor must inform their subcontractors of the confidentiality obligations and security measures that are imposed on them in the performance of the contract. The contractor must ensure that their subcontractors comply with these obligations.

5.1.4. This obligation of confidentiality does not cover information, documents, or items:

- That were in the public domain at the time of its disclosure or which the buyer made public during the performance of the contract;
- Identified as being of a non-confidential nature and relating to the performance of the contract;
- That were communicated to the contractor by a third-party legally entitled to disseminate such information, documents, or items, as evidenced by documents existing prior to their disclosure.

#### **5.2. Personal data protection:**

5.2.1 Each party to the contract is required to comply with the European and French rules applicable to the processing of personal data that may be used for the purposes of executing the contract. In this respect, it is strictly forbidden to transmit any data to third parties, including to entities established outside the European Union that do not strictly comply with the regulations in force.

5.2.2. In the event changes occur in the regulations on the protection of personal data during the performance of the contract, the amendments necessary to comply with the new rules shall give rise to the signing of an amendment by the parties to the contract or, in the absence of agreement between the parties, to a unilateral amendment by the buyer.

5.2.3. If the contractor carries out personal data processing on behalf of the buyer, in order for this to comply with the requirements of the regulations, guaranteeing in particular the protection of the rights of the identified or identifiable individuals concerned, the specific contract documents shall specify in particular:

- The purpose, description, and duration of the processing in strict compliance with the buyer's documented instructions;
- The buyer's obligations and those of the contractor towards the latter, in particular obligation to inform the buyer of any difficulty in complying with the regulations, of any plan to use a third-party for processing, and of any request for disclosure of data that may be sent to the buyer. This also includes the measures adopted to oppose the processing if it is contrary to French and European regulations;
- The arrangements for taking into account the right to information and other rights of data subjects, the exercise of which must be guaranteed;
- The security measures implemented to guarantee the data's integrity, confidentiality, and availability, as well as the conditions for notifying personal data breaches;
- The duration and modalities of data retention and the disposition of the data at the end of the contract's execution.

The specific contract documents also specify the penalties applicable to the contractor in the event of non-compliance with the regulations.

In the event of failure by the contractor or subcontractor to comply with their legal and contractual obligations relating to the protection of personal data, the contract may be terminated for fault in application of Article 44.

*Comments:*

*The buyer is considered the "data controller" within the meaning of the General Data Protection Regulation (GDPR) as the public authority determining the purposes and means of data processing.*

*The contractor is considered to be the "data sub-processor" within the meaning of the GDPR as the person processing personal data on behalf of the buyer.*

*The contract subcontractor is considered to be a further "sub-processor" within the meaning of the GDPR as a party that the contractor may call upon to carry out specific processing activities.*

*To draft the specific contract documents, buyers are invited to consult the French National Commission for Data Protection and Civil Liberties (CNIL) Guide du sous-traitant available on its website at: <https://www.cnil.fr/>*

### 5.3. Security measures:

If the services are to be provided in a location where security measures are in force, in particular in areas where there are laws or regulations protecting the secrecy of national defence, these special provisions shall be indicated by the buyer in the specific contract documents. The contractor undertakes to comply with them.

Consequently, the contractor may not claim an extension of the completion deadline, nor compensation, nor a price supplement, unless the following two conditions are met:

- The information was only made available to the contractor after the submission of the tender;
- The contractor may demonstrate that the imposed obligations require additional time for fulfilling the contract or make it more difficult or more expensive for the contractor to complete it.

*Comments: A protected area is a zone created by order of the relevant ministries where unauthorised entry is prohibited, punishable under Articles 413-7 and 413-1 to 413-8 of the Penal Code.*

### 5.4. Information concerning subcontractors:

The contractor shall inform the subcontractors of their obligation to comply with the requirements set out in this Article 5. The contractor remains responsible for compliance with these obligations.

## Article 6

### *Labour protection and working conditions*

6.1. The obligations incumbent on the contractor are those provided for by the legislation, regulations, and collective agreements pertaining to labour protection and working conditions in the country where the workforce is employed.

The contractor is also obliged to abide by the provisions of the eight fundamental agreements of the International Labour Organisation, if these are not included in the laws and regulations of the country where the labour force is employed. The contractor must be able to demonstrate compliance with these obligations during the course of the contract and during the guarantee period of the services, upon simple request by the buyer. The procedures for applying this legislation are set out in the ST&C or any other document serving as such.

**Comments:**

Seconded employees, as defined in Article L. 1261-3 of the Labour Code, carrying out a temporary professional activity in France, are subject to the provisions of Article L. 1262-4 of the Labour Code as well as those of the second paragraph of Article L. 512-1 of the Social Security Code.

The eight fundamental agreements of the International Labour Organisation (ILO), ratified by France, are:

- The Forced Labour Convention (C29, 1930);
- The Freedom of Association and Protection of the Right to Organise Convention (C87, 1948);
- The Right to Organise and Collective Bargaining Convention (C98, 1949);
- The Equal Remuneration Convention (C100, 1951);
- The Abolition of Forced Labour Convention (C105, 1957);
- The Discrimination (Employment and Occupation) Convention, (C111, 1958);
- The Minimum Age Convention (C138, 1973);
- The Worst Forms of Child Labour Convention (C182, 1999).

6.2. In the event of changes in the regulations on labour protection and working conditions during the performance of the contract, any changes requested by the buyer in order to comply with the new rules shall give rise to the signing of an amendment by the parties to the contract or, in the absence of agreement between the parties, to a unilateral amendment by the buyer.

6.3. Due to the particular conditions of executing the contract, the contractor may ask the buyer to transmit, together with their opinion, to the competent authority, the requests for derogations provided for by the laws and regulations mentioned above.

6.4. The contractor shall inform the subcontractors of their obligation to comply with the requirements set out in this Article. The contractor remains responsible for compliance with these obligations.

## **Article 7**

### *Protection of the environment, safety, and health*

7.1. The contractor shall ensure that the services provided comply with the legislative and regulatory requirements in force in terms of the environment, safety, personal health, and the preservation of the surroundings. The contractor must be able to demonstrate compliance with these obligations during the course of the contract and during the guarantee period of the services, upon simple request by the buyer.

7.2. In the event of changes in the regulations in these areas during the performance of the contract, any changes requested by the buyer in order to comply with the new rules shall give rise to the signing of an amendment by the parties to the contract or, in the absence of agreement between the parties, to a unilateral amendment by the buyer.

## **Article 8**

### *Contracts for military equipment*

If the contractor in respect of a contract for the supply of military equipment does not hold a manufacturing licence or sales authorisation for the material in question, the contract notification to that contractor shall be deemed to constitute a manufacturing licence or sales authorisation for that material.

Throughout the entire period of performance of the contract, the contractor is subject to all the obligations imposed on licensees.

No later than one month after notification of the contract, the contractor shall submit to the competent authority a file containing the documents required for any application for a manufacturing licence or authorisation to sell the material covered by the contract.

In the event of non-performance within this period, the contractor shall be liable to penalties calculated at the rate of 1/2,000 of the amount of the contract, pretax, per day of delay.

## **Article 9**

### *Compensation for damage*

9.1. Damage of any kind caused to the buyer's personnel or property by the contractor as a result of executing the contract shall be borne by the contractor.

Damage of any kind caused to the contractor's personnel or property by the buyer as a result of the performance of the contract shall be borne by the buyer.

9.2. For as long as the supplies remain the property of the contractor, the latter is, except for the fault of the buyer, solely responsible for any damages suffered by these supplies due to any cause other than exposure to artificial radioactivity or duly recognised natural disasters. This stipulation does not apply in the event additional equipment supplied by the buyer is included in the contractor's material, causing damage to the latter.

9.3. The contractor guarantees the buyer against damage caused by the material supplied or by the actions of the contractor's employees negatively affecting the premises where this material is used, including recourse by neighbours.

**Comments:**

In the event of a risk out of proportion to the value of the contract, the buyer may provide in the specific contract documents for a possible ceiling on guarantees depending on the subject and characteristics of the contract.

## Article 10

### *Insurance*

10.1. The contractor must take out insurance enabling to guarantee the contractor's liability towards the buyer and towards third parties who may be victims of accidents or damage caused by the provision of the services

10.2. Within a period of fifteen days from the awarding of the contract and before any work begins, the contractor must prove having taken out these insurance agreements, by means of a certificate establishing the extent of the liability covered.

At any time during the course of the contract, the contractor must be able to produce this certificate, at the request of the buyer within fifteen days of receiving the enquiry.

## CHAPTER 2

### PRICES AND SETTLEMENT

## Article 11

### *Price*

#### 11.1. General rules:

11.1.1. Prices are deemed to be firm.

11.1.2. Where applicable, firm prices are discounted in accordance with the conditions laid down by the legislation in force on the date on which the candidate set their price in the tender. This date corresponds to the submission date of the contractor's tender. If the award procedure gave rise to a negotiation or a competitive dialogue, the date to be taken into account is the submission date of the contractor's final offer.

The prices of each optional tranche are discounted under the same conditions.

The discount coefficient is rounded up to the higher thousandth.

#### *Comments:*

*The public procurement code requires certain contracts to provide for price discounting.*

11.1.3. The prices are deemed to include all taxes or other charges compulsorily imposed on the services. These shall include the costs of packaging, storage, packing, insurance, and transport to the place of delivery, the costs for applying Article 19.4, as well as all other expenses necessary for providing the services, and the risk and profit margins.

However, the costs incurred by the failure of the contractor to apply for the administrative transport title or by a delay in submitting this application shall be borne by the contractor.

The handling and transport costs, which would arise from the postponement or rejection of the services, shall be borne by the contractor.

#### 11.2. Determining settlement prices:

11.2.1. If the contract stipulates that the price to be paid results from applying a statutory provision, a scale, a tariff, a rate, a market price, an index, or any other element established outside the contract, without specifying a date, the factor to be taken into consideration is the one in force:

- On the delivery date or the completion of the service, if these are carried out within the deadline set by the buyer or if the buyer has not set a deadline;
- On the deadline set by the buyer for the delivery or completion of the service, if the deadline is exceeded.

11.2.2. If the contract provides for a price adjustment, prices shall be reviewed on the date or at the intervals specified in the specific contract documents.

However, if the contract involves the purchase of agricultural raw material and foodstuffs or requires the use of a significant proportion of supplies, in particular raw material, the price of which is directly affected by fluctuations in world prices, prices shall be reviewed at least every three months from the contract notification date. Price revision conditions are set out in the specific contract documents.

The prices to be paid are those applicable on the delivery or completion date of the services.

11.2.3. If the prices are adjustable, the revision coefficient is rounded up to the nearest thousandth.

#### *Comments:*

*The public procurement code requires certain contracts to include a price revision formula.*

11.2.4. Unless otherwise stipulated in the specific contract documents, the initial price is set on the date the contractor submitted the tender. If the award procedure gave rise to a negotiation or a competitive dialogue, the date to be taken into account is the submission date of the contractor's final offer.

## Article 12

### *Details of payment terms*

#### **12.1. Advances:**

This Article includes two alternative options, A and B.

The specific contract documents shall specify which option is chosen; otherwise option A shall apply.

##### **Option A**

A.12.1. The contractor or subcontractor eligible for direct payment is entitled to an advance payment calculated in accordance with the public procurement code if the contract complies with the conditions mentioned in Article R.2191-3 or if the defence or security contract complies with the conditions mentioned in Article R.2391-1.

If the contractor or subcontractor is a small or medium-sized enterprise within the meaning of the Public Procurement Code, the rate of the advance payment referred to in Article R.2191-10 is set at 20% or at a higher rate established by the specific contract documents.

If the contractor or subcontractor is not a small or medium-sized company within the meaning of the Public Procurement Code, the rate of the advance payment is set by the specific documents of the contract. Failing this, it is the minimum rate provided for in Article R.2191-7 of the Public Procurement Code for contracts or in Article R.2391-4 for defence or security contracts.

The advance is paid and reimbursed in accordance with the provisions of the Public Procurement Code.

##### **Option B**

##### **B.12.1. °**

If, in application of the Public Procurement Code, the contractor or subcontractor entitled to direct payment receives an advance payment, the rate of the advance payment corresponds to the minimum rates provided for in Article R.2191-7 of the Public Procurement Code for contracts or Article R.2391-4 for defence or security contracts, or to a higher rate provided for in the specific contract documents.

The advance is paid and reimbursed in accordance with the provisions of the Public Procurement Code.

#### **12.2. Instalments:**

If the contract only sets the frequency of instalments, the amount of each of them is determined by the buyer on the basis of the description of the services provided and the amount produced by the contractor. Each instalment is subject to a payment request.

#### **12.3. Information on the payment request:**

12.3.1. When the contractor submits a payment request to the buyer, it must be accompanied by the documents necessary to justify the payment as provided for in the specific contract documents.

12.3.2. The payment request shall be dated. It shall mention the contract references. Thus, depending on the case:

- The pretax amount of the services accepted, established in accordance with the stipulations of the contract and, where appropriate, less any price reductions established in accordance with the stipulations of Article 34.3;
- The breakdown of the flat-rate prices and the details of the unit prices, if these details are provided for in the specific contract documents or if, with regard to the requirements of the contract, the services were provided incompletely or not in accordance with the contract;
- Where payment is to be made at the end of certain stages of the contract's performance, the amount corresponding to the period in question;
- Details of the calculations, with supporting evidence, of the application of price discounting or revision coefficients;
- In the case of a joint consortium, for each member of the consortium, the amount of services provided by the latter;
- Where subcontracting is involved, the nature of the services performed by the subcontractor, their total pretax amount, their amount inclusive of all taxes and, where applicable, the price variations established pretax and inclusive of all taxes;
- Where applicable, the allowances, premiums, and deductions other than the guarantee deduction, established in accordance with the stipulations of the contract.

12.3.3. The payment request shall specify the elements subject to tax, distinguishing them according to the applicable rate.

12.3.4. Unit prices may be broken down to take into consideration the services being performed.

12.3.5. The flat-rate prices may be divided up if the service or part of the service to which the price relates has not been completed. A proportion of the price, equal to the percentage of completion of the service, is in this case determined by applying, if the buyer so requests, the price breakdown mentioned in Article 12.3.1.

12.3.6. The contractor shall draw up the payment request in accordance with the template or in accordance with the procedures laid down in the specific documents of the contract.

12.3.7. In the event of services provided at the expense and risk of the defaulting contractor, the additional costs borne by the buyer are deducted from the amounts owed to the contractor for the services accepted. °

This additional cost corresponds to the difference between the price the buyer should have paid to the contractor for the services and the price actually paid to perform them in place of the defaulting contractor.

#### **12.4. Calculating the amount owed by the buyer for the services provided:**

12.4.1. The amount due may be established on the basis of comparative findings, if the ST&C or any other document in lieu thereof so provides.

12.4.2. If the contract provides for the payment of instalments upon completion of certain stages of the services and indicates the proportion of the price to be paid upon completion of each stage, the request for payment shall include:

- For each portion of the contract performed, the corresponding percentage;
- For each portion of the contract undertaken, after agreement by the buyer, a fraction of the corresponding percentage, equal to the percentage of performance of the services of the portion in question.

#### **12.5. Submission of the payment request:**

12.5.1. The submission of a payment request shall occur:

- Either on the dates stipulated in the contract;
- Or after the services are accepted, in accordance with the provisions of the contract;
- Or at the beginning of each month for services provided during the previous month, if the services are provided on a continuous basis. The contractor then submits a monthly payment request to the buyer, setting out the total amount, as of the end of the previous month, for the amounts to which the contractor is entitled since the beginning of the contract;
- Or on the dates stipulated for the payment of instalments.

12.5.2. The payment request may indicate the supplies that, pursuant to the contract stipulations or by mutual agreement between the parties, are paid for, even though they remain in storage with the contractor.

#### **12.6. Acceptance of the payment request by the buyer:**

The buyer accepts or corrects the payment request. It is completed, if necessary, by indicating in particular the advances to be reimbursed, the premiums and the price reductions imposed.

The buyer decides on the amount to be paid. If this amount is different from the one appearing in the payment request, the contractor is notified of the amount thus decided.

#### **12.7. Payment in full and final partial payments:**

12.7.1. The payment request is submitted to the buyer after the acceptance decision.

The payment request may also give rise to a final partial payment of the services performed. This will apply if the specific contract documents provide for payments on completion of certain parts of the services provided for in the contract.

12.7.2. If, after having been given formal notice to do so, the contractor does not submit a payment request within forty-five days of acceptance of the services, the buyer may proceed to payment automatically on the basis of a statement of account drawn up by the latter. The contractor shall be notified of this statement.

12.7.3. In the event of a dispute over the amount due, the buyer shall pay the amounts acknowledged. After the dispute has been resolved, the buyer shall, if necessary, pay a supplement, plus interest on arrears, if applicable.

#### **12.8. Electronic invoicing:**

12.8.1. If the contractor or subcontractor entitled to direct payment is required, pursuant to the Public Procurement Code, to transmit payment requests in electronic form, they shall submit them in accordance with the procedures laid down in that same code. The practical arrangements for execution are provided for in the contract's specific documents.

The payment request may be refused by the buyer if it does not comply with the obligations for electronic invoicing on the part of the contractor and subcontractors eligible for direct payment. Beforehand, the buyer must have informed the contractor and the subcontractors entitled to direct payment, under the conditions set out in Article 3.1, of the obligation to submit invoices in electronic form and must have called upon them to comply.

12.8.2. If a third-party to the contractor is authorised to receive payment requests, they must, in order to carry out this task, integrate and comply with the invoicing portal used by the buyer if this portal so enables. The practical arrangements for authorising third parties to access secure ministerial tools are set out in the specific contract documents.

### **Article 13**

#### *Payment in the event of a consortium of economic operators or subcontracting*

#### **13.1. Consortium of economic operators:**

13.1.1. In the case of a collective consortium, each member of the consortium shall directly receive the amounts relating to the performance of their own services.

13.1.2. In the case of a joint consortium, payment is made to a single account. This is opened in the name of the members of the consortium or of the authorised representative, unless the contract provides for the distribution of payments between the members of the consortium and indicates the terms of this distribution.

13.1.3. Regardless of the consortium's form, the authorised representative alone is entitled to submit the payment request to the buyer. In the case of a collective consortium, the request for payment submitted by the authorised representative is divided into as many parts as there are members of the consortium to be paid separately. Each part shall contain the information necessary for the payment of the member of the consortium concerned.

13.1.4. Only the authorised representative is entitled to make or pass on claims by members of the consortium.

### **13.2. Subcontractors:**

Services performed by subcontractors, whose payment conditions were approved by the buyer, shall be paid under the financial conditions stipulated by the contract or by a special agreement.

## **CHAPTER 3**

### **DEADLINES**

### **Article 14**

#### *Execution deadlines*

#### *Comments:*

*All deadlines specified in the contract for a lot, instalment, purchase order, or individual service order benefit from the rules set out below.*

#### **14.1. Start of the execution deadline:**

14.1.1. Unless otherwise stipulated in the specific contract documents, the execution deadline of the contract starts from its notification date.

14.1.2. The execution deadline of the purchase order starts from the date of its notification unless the purchase order provides for a different date.

14.1.3. The execution deadline for an optional tranche begins on the notification date of the decision to award it, unless the decision provides for a different date.

#### **14.2. Expiration of the execution deadline:**

14.2.1. If the services are to be delivered or performed on the buyer's premises, the expiration date of the deadline shall be the delivery or completion date of the services.

14.2.2. If the contract provides for acceptance at the service provider's premises, the expiration date of the deadline shall be the acceptance date.

14.2.3. In the case of studies, the expiration date of the deadline is the date the studies are submitted to the buyer for verification.

14.2.4. If the services are not completed by the final date of validity of the contract or purchase order, the period for performance of the services shall expire on the final date of validity of the contract or purchase order.

#### **14.3. Extension of the execution deadline:**

14.3.1. If the contractor is unable to meet the execution deadlines for reasons attributable to the buyer or due to a *force majeure* event, the buyer shall extend the execution deadline. The extended deadline has the same effect as the contractual deadline.

14.3.2. In order to benefit from this extension, the contractor shall notify the buyer of the causes preventing the contract from being performed within the contractual deadline. To this end, the contractor shall have a period of fifteen days from the date on which these causes became apparent. Otherwise, the contractor shall have a period running until the end of the contract, if the contract expires within a period of less than fifteen days. By the same request, the contractor shall indicate to the buyer the duration of the requested extension.

14.3.3. The buyer shall have a period of fifteen days from the date of receipt of the contractor's request to notify the contractor of the decision, provided the contract does not expire before the end of this period.

The request for an extension cannot be refused if the delay is due to the service provider's intervention under a requisition order.

Provided the purpose of the contract does not concern a situation of extreme urgency resulting from unforeseeable circumstances, the request for an extension may not be refused if the delay is due to the intervention of the service provider under another contract awarded as a result of extreme urgency resulting from unforeseeable circumstances.

The execution deadline of the contract is extended by the time required to carry out the services requested or for the needs of the contract awarded as a matter of extreme urgency.

14.3.4. No request for an extension of the execution deadline may be submitted after the expiration of the contractual deadline for the performance of the service.

## Article 15

### *Penalties*

15.1. Subject to the provisions of Articles 14.3 and 30.5, in the event of delays in the contractor's performance, the buyer shall apply penalties.

If the buyer intends to apply default penalties, the buyer shall give the contractor written notice to submit comments within 15 days. This notice specifies the amount of the penalties that may be applied, the delays concerned, and the period of time allowed for the contractor to submit observations.

If the contractor fails to reply within this period or if the buyer considers the observations made by the contractor pursuant to the first subparagraph do not enable to demonstrate that the delay is not attributable to the contractor or to subcontractors, the default penalties shall apply. They shall be calculated as from the day following the day on which the contractual deadline for the performance of the services expired.

This penalty is calculated in accordance with the following formula:

$$P = V * R / 3,000$$

where:

P = the penalty amount;

V = the value of the services on which the penalty is calculated. This value is equal to the base price, excluding price variations and excluding the application of VAT, of the portion of the services in default, or of all the services if the failure to perform one portion renders the whole unusable;

R = the number of days late.

15.2. The total amount of the default penalties may not exceed 10% of the total pretax amount of the contract, of the tranche in question, or of the purchase order.

15.3. The contractor shall be exempt from penalties whose total amount does not exceed €1,000 for the entire contract.

## Article 16

### *Premiums*

16.1. If the specific contract documents provide for the payment of bonus premiums, they shall specify the conditions for their award and the calculation and payment procedures.

16.2. The contract may provide for early completion bonuses, either for all the services or for certain parts of the services subject to specific deadlines or deadlines set in the contract and calculated in accordance with Article 3.2. Saturdays, Sundays, public holidays, and non-working days are not deducted for the calculation of the premiums.

16.3. Once the amount of the bonuses is determined, they are paid inclusive of all taxes without the contractor being required to request them. They are taken into account and revised in accordance with the payment and revision rules applied to the settlement of the corresponding service provided. There is no ceiling on the amount of premiums.

In the case of a consortium of economic operators for which payment is made into separate accounts, the premiums shall be distributed among the members of the consortium in accordance with the instructions provided by the authorised representative.

## CHAPTER 4

### IMPLEMENTATION

## Article 17

### *Sustainable development*

#### **17.1. Social inclusion clause:**

If the specific contract documents provide for the contractor to carry out an inclusion measure enabling people experiencing social and/or professional difficulties to access or regain employment, it must be implemented in accordance with the conditions stipulated in this article. They shall specify at least:

- The scope of the action to be carried out;
- The contact details of the facilitator, if applicable;
- The profiles of the public eligible for the inclusion clause;
- The number of hours of inclusion to be paid by the contractor.

The inclusion action defined in the specific contract documents is implemented under the conditions set out in this article.

#### 17.1.1. Eligible public:

Those targeted by the work inclusion action fall into one of the following categories.

##### 17.1.1.1. Persons recruited and assisted within a structure recognised by the government:

- a) Persons receiving support in the adapted or protected sector, such as employees of adapted companies, adapted temporary work companies, or users of establishments and services providing assistance through work (ESAT);
- b) Persons receiving support in the structures for integration through economic activity (IAE) mentioned in Article L.5132-4 of the Labour Code;
  - That is to say: made available by an intermediary association (AI) or a temporary work integration company (ETTI);
  - Employees of an inclusion enterprise (EI) or an inclusion workshop (ACI);
- c) Individuals employed by an approved neighbourhood or area management company;
- d) People receiving support from special schemes, in particular the Public Defence Integration Establishments (EPIDE) and the Second Chance Schools (E2C);
- e) People following a path to integration within consortia of employers for inclusion and qualification (GEIQ);
- f) Incarcerated persons employed in the prison employment service of the Agency for Community Work and Professional Integration (ATIGIP) or assigned to a job with a prison administration.

##### 17.1.1.2. People meeting the criteria of being alienated from the labour market:

- a) Long-term jobseekers, with more than twelve months of unemployment status, without activity or in partial activity, for less than six months during the last twelve months;
- b) Beneficiaries of the active solidarity income (RSA) who are looking for work;
- c) Persons recognised as disabled workers within the meaning of Article L.5212-13 of the Labour Code who are oriented towards the mainstream labour market and jobseekers on the list of beneficiaries of the employment obligation;
- d) Beneficiaries of the specific solidarity allowance (ASS), the disabled adult allowance (AAH), the integration allowance (AI), the widow's allowance, or the disability allowance;
- e) Young people under 26 years of age who are looking for work:
  - Without qualifications (below level 3, i.e. less than CAP/BEP) and who have been out of the school system for at least six months;
  - Graduates, with proof of a six-month period of inactivity since leaving the school system or higher education;
- f) Senior jobseekers over 50 years of age;
- g) Young people undergoing further monitoring such as PACEA, SMA, SMV, or coming out of the Youth Guarantee scheme;
- h) Inhabitants of priority neighbourhoods for urban policy that are far removed from employment opportunities;
- i) People with refugee status or beneficiaries of complementary protection;
- j) People experiencing particular difficulties on the basis of a reasoned proposal from the Employment Office, employment centres, local plans for insertion and employment (PLIE), local missions, Cap Emploi or departmental centres for disabled people (MDPH).

The public's eligibility must be established prior to implementing the scheme and carrying out the hours of integration.

##### 17.1.2. Implementation methods for the contractor's work integration action:

The contractor commits to carrying out an inclusion action, at least up to the level of the hourly inclusion objectives set in the specific contract documents. All the actions implemented must take place during the contract's execution period.

If training constitutes part of the employment agreement (professionalization agreement, apprenticeship agreement, etc.), the training hours are counted as inclusion hours.

##### 17.1.3. Aggregation of inclusion hours:

If, within the same employment catchment area, the contractor is awarded one or more other contracts containing a social inclusion clause, the contractor may ask the buyer to aggregate the hours of inclusion, in order to promote the inclusion of people who are distanced from employment. This must be defined in the specific contract documents.

The professional inclusion measure may be implemented by the contractor in one or more of the following ways:

- By direct recruitment on an open-ended contract (CDI), on a fixed-term contract (CDD) by the contractor, or on a work-study contract (professionalization contract or apprenticeship contract).

The hours worked by the persons under inclusion through direct recruitment are counted during the execution of the contract from the hiring date and for a maximum period of two years;

- By making employees available for inclusion through the use of an intermediary association (AI), or a temporary work integration enterprise (ETTI), or an adapted temporary work enterprise (ETTA), or a consortium of employers for inclusion and qualification (GEIQ), or a temporary work enterprise (ETT);
- Through subcontracting or a consortium of economic operators with an inclusion enterprise (EI), an integration workshop (ACI) or an adapted enterprise (EA), an establishment and service of assistance through work (ESAT), an integration enterprise through self-employment (EITI), or a self-employed disabled person (TIH).

In the case of a consortium of economic operators, the leader of the consortium is the buyer's sole contact for monitoring the implementation of the inclusion clause. This task may also be entrusted, where appropriate, to a facilitator identified in the specific contract documents.

At the end of the contract, the contractor undertakes to study all possibilities for the future employment of people working in inclusion.

#### 17.1.4. Involvement of a facilitator:

In order to assist with the implementation of the inclusion process, the contractor may benefit from the support of a facilitator whose contact details are specified in the specific contract documents.

##### 17.1.4.1. Within the contract's framework, the facilitator's mission is, in particular:

- To assist the contractor in defining the recruitment needs (nature of the post, skills, etc.) and to propose the most appropriate methods for implementing the inclusion clause (direct recruitment, provision of services, etc.);
- To identify those likely to meet the contractor's needs;
- To organise the follow-up of the target groups;
- To measure and communicate with the buyer and the contractor on the contract's performance.

17.1.4.2. The contractor appoints an operational representative to monitor the professional inclusion actions, who will be the main contact for the buyer and the facilitator.

The contractor sends the buyer, and if necessary the facilitator, once the buyer provides the facilitator's contact details, all useful information enabling the execution of the social inclusion clause to be controlled and monitored.

This information, as well as the frequency of its provision, is specified in the specific contract documents.

17.1.4.3. At the buyer's initiative, a meeting to discuss the inclusion measure is organised with the contractor and, where appropriate, the facilitator.

It is implemented after notification of the contract according to a timeframe specified in the specific contract documents.

Throughout the period of the contract's execution, the buyer may organise meetings with the contractor and, where appropriate, the facilitator, to monitor the inclusion clause.

#### Comments:

*Useful information detailed in the specific contract documents by the contractor includes: date of recruitment, type of employment contract, position held, proof of eligibility of persons recruited, quarterly certificate of inclusion hours sent to the facilitator, and summary of invoices, etc.*

17.1.4.4. The contractor shall notify the buyer of any difficulty in meeting the commitment. In such cases, the buyer, and where appropriate the facilitator, shall study with the contractor the means to be implemented to achieve the inclusion objectives.

In the event of economic difficulties, established on the basis of evidence, the contractor may ask the buyer to suspend or cancel the social inclusion clause.

In the event of economic difficulties resulting in partial activity, the initiation of redundancy proceedings for economic reasons, or the opening of receivership proceedings, the buyer shall cancel the social inclusion clause. This cancellation is subject to the communication of a copy of the documents relating to these difficulties, sent to the labour inspectorate (Direccte) or the judge.

17.1.4.5. The execution of the inclusion measure to which the contractor is committed is monitored throughout the provision of the services:

- The contractor, or where applicable the facilitator, draws up an annual report throughout the duration of the contract on the basis of those sent to the buyer;
- The contractor, or where appropriate the facilitator, shall draw up a final report within one month prior to the end of the contract and send it to the buyer.

These reports shall cover the quantitative and qualitative aspects of the inclusion measure.

#### 17.1.5. Penalties for non-compliance with the social inclusion clause:

The contractor is subject to a fixed penalty, the amount of which is set out in the specific contract documents, after a formal notice remains unheeded. If the contractor informs the buyer of difficulties in implementing this Article 17, the penalty shall not apply to that portion of the originally intended hours of inclusion for which the buyer or facilitator failed to find a way for the contractor to undertake it.

In the event of an unjustified absence from a meeting to review the implementation of the social inclusion clause, the contractor will be charged a fixed penalty, the amount of which is set out in the specific contract documents, after unsuccessful attempts to justify the absence.

In the event of a failure to provide, or partial provision of, or a delay in providing, documents and certificates enabling the execution of the work inclusion measure to be monitored, in particular proof of eligibility of the public, proof of the tasks assigned, and hours worked, the contractor will be charged a fixed penalty for each failure, the amount of which will be determined in the specific contract documents, after having been given formal notice to remedy the situation.

##### Comments:

Recourse to subcontracting does not exonerate the contractor from fulfilling the inclusion clause obligations. If the contractor is able to share part of the inclusion effort, the contractor still remains ultimately responsible for the proper implementation of the inclusion clauses and their proper reporting. Penalties shall be borne by the contractor. It is up to the latter to include in the subcontracting agreement the stipulations enabling the subcontractor to be held responsible.

#### 17.2. General environmental clause:

17.2.1. The specific contract documents stipulate the contractor's environmental obligations during the contract's performance. These obligations must be verifiable on the basis of objective methods and be subject to proper monitoring.

##### Comments:

The specific contract documents may in particular take into account, over the entire life cycle of the products or services procured, depending on the nature of the purchase:

- The reduction of resource extraction;
- The products' composition, in particular their ecological, polluting, or toxic nature;
- Actions in favour of re-use, re-conditioning, incorporating recycled materials, and recycling;
- Energy savings and developing renewable energies;
- The prevention of waste production and its routing to recovery channels;
- Environmental practices applied to the way in which services are provided, including policies to reduce greenhouse gas emissions and improve air quality;
- Reducing the impact on biodiversity;
- Awareness of environmental issues related to the contract's performance.

17.2.2. The contractor ensures that the subcontractors comply with the environmental obligations set out in the contract.

17.2.3. In the event of non-compliance with the obligations set out in this 17.2, the contractor will be charged a penalty for each, after formal notice remains unsuccessful, the amount of which is set out in the specific contract documents.

### Article 18

#### *Technical documentation made available to the contractor*

18.1. If the technical documentation provided to the contractor includes, in addition to the technical specifications provided for in the individual contract documents, documents, samples, or models, and if these differ from the technical specifications, the technical specifications provided for in the individual contract documents shall prevail.

The contractor is obliged to check the technical documentation made available and to inform the buyer, as soon as they become aware, of any errors, omissions, or contradictions normally detectable by a skilled person.

If the errors, omissions, or contradictions mentioned in the previous paragraph result in prolonging the performance period of the services provided for by the contract, the performance period of the contract may be extended under the conditions set out in Article 14.3.

18.2. Technical documentation made available to the contractor is included in the price.

### Article 19

#### *Resources made available to the contractor*

19.1. The provisions of this article shall apply if the buyer provides the contractor with the means necessary for the performance of the service. For example:

- a) Means of production;
- b) Material to be repaired, modified, transformed, or used for studies or tests;
- c) Supplies, i.e. finished or semi-finished products or raw material.

19.2. If these resources are the buyer's property, they are made available to the contractor free of charge for the performance of the contract.

19.3. A report involving both parties shall be drawn up to check the condition of these resources at the time they are made available to the contractor. This report shall be signed by both parties. It shall indicate the value of the resources.

The effective provision date is that of the joint report.

19.4. The contractor is responsible for the safekeeping, conservation, maintenance, and use of the entrusted means of production, material, or supplies, as soon as they are effectively placed at their disposal. The contractor may only use them for the purposes set out in the contract.

To this end, the contractor must:

- Keep a permanent inventory of them;
- Identify the supplies belonging to the buyer;
- Affix to machines and tools means enabling the owner to be identified.

19.5. If any of these resources are damaged, destroyed, or lost, the contractor is obliged to repair or replace them, or to reimburse the residual value as of the date of the loss or damage.

19.6. The contractor shall ensure the routine and normal maintenance of the buildings placed at their disposal.

19.7. The contractor shall ensure that the premises made available are restored to their original condition.

19.8. Upon completion or termination of the contract, or at the end of the period specified in the contract, the resources made available shall be returned to the buyer.

19.9. A report by both parties shall be drawn up when these resources are returned to the buyer. Where applicable, the costs relating to this restitution shall be borne by the contractor.

19.10. If the contractor fails to comply with the requirements of 4, 5, 6, 7, and 8 of this Article, the buyer may suspend payments owed under the contract, up to the amount of the estimated loss, until such time as these requirements have been met.

Independently of the sanctions mentioned above, the contract may be terminated, under the conditions of Article 44, in the event of a failure to present, misuse, or abuse of the resources made available to the contractor.

## Article 20

### *Insurance of the resources made available to the contractor*

20.1. Prior to making them available and for as long as they remain at the contractor's disposal, the contractor is obliged to insure at their own expense all the means of production owned by the buyer.

20.2. Within a period of fifteen days from the awarding of the contract and before any work begins, the contractor must prove having taken out these insurance agreements, by means of a certificate establishing the extent of the liability covered.

At any time during the course of the contract, the contractor must be able to produce this certificate, at the request of the buyer within fifteen days of receiving the enquiry.

20.3. If the contractor fails to comply with these requirements, the buyer may take out the necessary insurance policy(ies) on the contractor's behalf, five days after a formal notice remains without effect.

The amount of the insurance premiums is then deducted from the amounts payable to the contractor under the contract.

## Article 21

### *Place of execution*

21.1. The contractor must inform the buyer, upon request, of the location where the services are to be performed. The buyer may follow the progress of the work on site. Access to the performance location is reserved for the buyer's representatives only.

Those designated for this purpose shall have free access only to the areas concerned by the services provided for in the contract, in compliance with the safety instructions for the site. They are bound by the confidentiality obligations set out in Article 5.1.

#### *Comments:*

*For ethical reasons, the buyer shall under no circumstances appoint a competitor of the contractor to inspect the contractor under this article.*

21.2. If the contractor hinders the buyer's right of inspection during the contract's performance, the penalties provided for in Article 44 shall apply.

## Article 22

### *Monitoring the service performance*

22.1. The contractor shall ensure the buyer has unrestricted access to all places of performance specified in the individual contract documents.

The contractor shall be responsible for any interference with the proper conduct of the inspection. At any place where the services are provided, including at subcontractors.

22.2. The contractor undertakes to make available to the buyer, at no additional cost, the means necessary for accomplishing its mission. In particular:

- The offices necessary for the supervisory personnel;
- The personnel, material, and premises necessary for the testing and verification operations provided for by the contract.

22.3. The execution files are placed at the disposal of the buyer by the contractor. The buyer may obtain any information and carry out any checks deemed necessary to ensure that the technical clauses of the contract are respected.

The contractor must inform the buyer in good time of all operations the latter stated a wish to attend. Failing this, the buyer may either have them repeated or refuse the services subject to these operations, outside their inspection.

The buyer must be immediately notified of any events that may alter the planned course of operations.

22.4. The supervision process of remains the responsibility of the contractor. This does not limit the buyer's right to refuse services that are found to be defective at the time of the inspection.

22.5. The buyer's employees and persons authorised by the buyer who, by virtue of their duties, have knowledge of the means of production or any other information relating to the contractor, are subject to the obligation of confidentiality mentioned in Article 5.1.

Their travel expenses and remuneration, incurred in the context of these monitoring operations, shall be borne in full by the buyer.

*Comments:*

*For ethical reasons, the buyer ensures that no competitor of the contractor shall be appointed to audit the contractor for the purposes of this Article.*

## Article 23

### *Additional and amending services*

23.1. During the contract's performance, the buyer may, in the form of a service order, request the contractor to provide additional or amending services after consultation with the latter or accept the proposed changes.

The contractor shall not modify the technical specifications without the buyer's prior authorisation.

23.2. If the contract does not specify a price for the additional or amending services requested by the buyer, the service order referred to in Article 23.1 shall provisionally establish the new prices for the additional or amending services.

*Comments:*

*These modifications may not change the contract's subject matter or substantially modify the technical characteristics of the tender submitted by the contractor at the time of the tendering procedure.*

23.3. These provisional prices, enabling the contractor to be fairly remunerated, shall be adopted by the buyer after consultation with the contractor. They shall be used for settling the instalments until the definitive price is fixed. The contractor is deemed to have agreed to the provisional prices if, within thirty days of the service order notifying these prices, the contractor has not submitted any observations to the buyer indicating, with all the necessary justifications, the prices proposed. In the event of any disagreement, the buyer shall provisionally pay the relevant amounts.

If the buyer and the contractor agree on the final prices, these shall be the subject of an amendment, except if the prices became final due to the failure of the contractor to respond in accordance with the previous paragraph.

23.4. The contractor is not obliged to comply with a service order mentioned in Article 23.2 if such service order was not subject to any financial valuation.

However, such a refusal to provide services by the contractor is only admissible if it is notified in writing, along with the necessary justification, to the buyer within fifteen days of the service order notification.

## Article 24

### *Cancellation of services in the event of unforeseeable circumstances*

24.1. If the contract's continued performance is temporarily rendered impossible due to a circumstance that could not have been foreseen by diligent parties in its nature or scope, or due to the enactment by a public authority of measures restricting, prohibiting, or significantly modifying the exercise of certain activities as a result of such a circumstance, the suspension of all or part of the services shall be pronounced by the buyer. If the contractor requests the suspension, the buyer shall decide on the merits of this request as soon as possible.

24.2. Within a timeframe appropriate to the circumstances that may not exceed fifteen days from the decision to suspend the services, the parties shall come to an agreement on the procedures for determining the services performed. If necessary, they may agree to maintain part of the contractual obligations remaining for the contractor during the suspension. Within a reasonable period of time, the parties shall also agree on the arrangements for resuming the contract's performance. If necessary, they will discuss the changes to be made to the contract and the methods for distributing the additional costs directly caused by these events.

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In the absence of agreement between the parties, the contractor is obliged, at the end of the interruption, to resume the provision of services under the conditions laid down by the contract. The disagreement shall be settled under the conditions mentioned in Article 48.

## **Article 25**

### *Review clause*

In the event of circumstances that diligent parties could not foresee in their nature or extent, significantly altering the conditions of the contract's performance, the parties shall examine in good faith the consequences, in particular those of a financial nature, of such circumstances.

Where appropriate, the parties shall agree, by means of an amendment, on the terms & conditions for covering all or part of the additional costs directly incurred as a result of this circumstance on the basis of supporting documents provided by the contractor. Account shall be taken, in particular, of:

- Additional costs linked to changes in the provision of services;
- The consequences linked to the extension of the contract's performance deadlines.

The contractor is obliged to request, in a timely manner, that mutual observations be made to enable the buyer to assess the additional resources actually employed.

Price increases taken into account in the indices used for revising the contract prices shall be excluded from this assessment.

The additional costs borne by the buyer may be subject to an advance payment under the conditions stipulated in the specific contract documents or in the amendment concluded pursuant to this article.

## **Article 26**

### *Termination of the service performance*

If the services are divided into several technical phases to be performed separately, the buyer may decide, at the end of each of these phases, either on their own initiative or at the request of the contractor, not to continue with the performance of the services. This will apply if the following two conditions are met:

- The specific contract documents shall expressly provide for this possibility;
- Each of these technical phases is identified and priced.

The decision to stop the performance of the services does not give rise to any compensation.

Stopping the performance of the services entails terminating the contract.

## **Article 27**

### *Fitting out of premises intended for installing the material*

If the performance of the services must take place in premises belonging to the buyer, the latter shall fit out, at their own expense, the premises intended for the material's installation. If necessary, after consultation with the contractor, the buyer shall provide for their maintenance and connection to utilities.

The buyer shall inform the contractor of the availability of the premises. This information must be provided at least fifteen days prior to the material's delivery.

These arrangements must be completed prior to the date set for installing the material required for the performance of the services.

## **Article 28**

### *Installation*

28.1. If the specific contract documents provide for the contractor to install material, the contractor is required to:

- Provide the buyer with a complete set of plans and schedules for the installation before starting;
- Draw the buyer's attention, as soon as becoming aware of them, to the characteristics of the land, works, and equipment made available that would prevent the material from being installed correctly.

28.2. Installation shall not be considered completed until the material and tools used in the assembly are removed and the buildings, land, and equipment accommodating the installation are restored to their original condition.

## Article 29

### *Storage, packaging, transport, and waste management*

#### **29.1. Storage:**

29.1.1. If the specific contract documents require the contractor to store material on the contractor's premises, the contractor shall assume the custodial liability for the material for a period specified in the specific contract documents from the time of its acceptance.

29.1.2. If the goods are stored on the buyer's premises, the buyer assumes the custodial liability until the admission decision is made.

#### **29.2. Packaging:**

29.2.1. The packaging must be of a quality appropriate to the conditions and methods of transport provided for in the specific contract documents. This is the contractor's responsibility.

If this does not breach the health and hygiene rules, the contractor shall use reusable, recycled, recyclable, or reused containers. The contractor shall also ensure, as far as possible, to reduce the quantities, in volume and weight.

29.2.2. Unless otherwise stipulated in the specific documents of the contract, if this is not likely to contravene health and hygiene rules, the packaging remains the contractor's property. The latter collects them for recycling or reuse.

#### **29.3. Transport:**

The contractor is responsible for the transport up to the place of delivery. Packaging, loading, stowing, and unloading are carried out under the responsibility of the contractor.

#### **29.4. Waste management:**

The recovery or elimination of the waste created during the provision of the services is the responsibility of the contractor throughout the contract's duration.

The contractor ensures that the collection, transport, storage, sorting, and evacuation of the waste created by the services covered by the contract are carried out towards the sites likely to receive them, in accordance with the regulations in force.

At the request of the buyer, the contractor is required to produce all proof of traceability of the treatment of waste resulting from the service provided. The contractor must show that the waste management complies with the regulatory requirements, particularly with regard to hazardous waste.

In the event of failure to produce evidence of the traceability of the waste, the contractor will be charged a penalty, after formal notice remains unsuccessful, the amount of which is set out in the specific contract documents.

## Article 30

### *Delivery*

30.1. The contractor shall endeavour to limit the environmental impact of the deliveries and transport of the products offered. The planning of the transport of these goods must enable, if compatible with the needs of the buyer, to avoid traffic during peak hours. The contractor shall favour grouped transport of the goods covered by the contract in order to reduce the number of delivery vehicle journeys. The contractor shall prefer the most environmentally friendly modes of transport, in particular low-emission vehicles, soft modes of transport, or alternatives to road transport.

30.2. All deliveries made by the contractor shall be accompanied by a delivery slip or a bill, drawn up separately for each recipient. They shall include in particular:

- The date of dispatch;
- The reference to the order or contract;
- The identification of the contractor;
- The identification of the supplies being delivered and, where applicable, their breakdown by package;
- The number of the production batches, where this is required by the labelling regulations.

Each package must be clearly marked with its order number, as shown on the delivery slip. It shall contain an inventory of its contents.

30.3. The delivery is recorded by the issuance of a receipt to the contractor or by signing the delivery slip, of which each party keeps a copy. If delivery is impossible, this must be mentioned on one of these documents.

30.4. If the layout of the designated premises for the execution of the deliveries causes exceptional handling difficulties not provided for in the contract documents, the resulting additional delivery costs shall be paid for separately. Modifications are subject to an amendment.

30.5. A delivery deferment may be granted by the buyer if, apart from the cases provided for extending the deadline in Article 14.3, a cause not of the contractor's making prevents the delivery within the contractual deadline.

30.6. The delivery deferral suspends the application of penalties for delay for a period equal to its duration.

The formalities for granting the delivery deferment are the same as those for extending the deadline mentioned in Article 14.3.

No delivery deferral may be requested by the contractor for events occurring after the expiry of the contract performance deadline, which may have already been extended.

### **Article 31**

#### *Maintenance of the means of production*

If the specific contract documents stipulate the contractor's obligation to maintain in a proper state of repair all or part of the means of production used for the performance of the contract for a specified period of time after completion of the services, the following provisions shall apply:

- a) The buyer may, at any time, subject to prior notice, reduce this period for all or part of the resources in question;
- b) The contractor may not use these resources for the performance of other services without the buyer's permission.

The contractor may not use these resources for the performance of other services without the buyer's permission. In the event of the transfer of these goods, the buyer has a preferential right to an equal price.

## **CHAPTER 5**

### **VERIFICATION OF THE SERVICE PERFORMANCE AND GUARANTEE**

### **Article 32**

#### *Verification operations*

#### **32.1. Type of operations:**

The purpose of the quantitative and qualitative verification operations is to enable the buyer to check in particular whether the contractor:

- Implemented the means defined in the contract, in accordance with the requirements set out therein;
- Performed the services defined in the contract as their responsibility, in accordance with the contractual stipulations.

The material and objects required for the tests shall be collected by the buyer from the deliveries made under the contract.

#### **32.2. Verification costs:**

32.2.1. Irrespective of the inspection results, the buyer shall bear the costs of the verification. This applies to operations which, in accordance with the contract's provisions, are to be carried out on the buyer's own premises. In other instances, the contractor shall bear the costs.

However, if one of the parties agrees to have the testing carried out on their own premises that, in accordance with the specific contract documents, should have been carried out on the other party's premises, the corresponding costs shall be borne by the latter.

32.2.2. The contractor shall notify the buyer of the date on which the services may be submitted for inspection.

#### **32.3. The contractor's presence:**

The buyer shall notify the contractor of the days and times scheduled for the verifications, in order to enable the contractor to be present or represented.

The absence of the duly notified contractor or representative, shall not prevent the verification operations from being carried out or from being deemed valid.

### **Article 33**

#### *Deadlines and reports of findings*

33.1. The time limits for the buyer to report a finding are as follows:

- To start the checks in the factory that give rise to the right to payment in full or final partial settlement, the deadline is seven days from receipt by the buyer of the presentation notice sent by the contractor or from the presentation date set out in that notice, if this is later;
- The buyer shall have 30 days to carry out the factory checks and to notify their decision;
- The buyer shall have seven days from the arrival of the goods at the place of delivery specified in the contract documents to carry out the verification operations and to notify their decision. If a technical test is required after delivery, this deadline is thirty days from the arrival of the services at their destination.

33.2. The observations made by the buyer are recorded in a report mentioning, if applicable, the contractor's reservations.

## Article 34

### *Acceptance, deferment, price reduction, and rejection*

Upon completion of the controls, the buyer shall decide whether to accept, defer, reduce, or reject in accordance with the conditions laid down in this Article.

If the buyer does not notify their decision within the deadlines for notification laid down in Article 33.1, the services shall be deemed accepted.

In the case of a contract comprising separate services to be performed, each service shall be subject to separate checks and decisions.

#### **34.1 Acceptance:**

The buyer shall accept the services, if they comply with the provisions of the contract. Acceptance takes effect on the notification date to the contractor of the acceptance decision. In the event of tacit acceptance, the effective date is the expiration date of the deadlines for establishing acceptance as provided for in Article 33.1.

#### **34.2. Deferment:**

34.2.1. If the buyer considers that the services can only be accepted subject to certain adjustments, the buyer may decide to postpone acceptance of the services by a justified decision. This decision calls on the contractor to resubmit the finalised services to the buyer within a period of fifteen days.

The contractor must make the acceptance known within ten days of the notification of the deferment decision. In the event of the contractor's refusal or silence during this period, the buyer has the choice of accepting the services with a price reduction or rejecting them, under the conditions set out in 3 and 4 of this Article. The buyer has a period of fifteen days from the notification of the contractor's refusal or from the expiry of the ten-day period mentioned above.

If the buyer remains silent after this period of fifteen days, this shall be deemed to be a decision to reject the services

34.2.2. If the contractor resubmits the finalized services after the decision to defer the services, the buyer again has the entire period provided for verifying the services, as of their resubmission by the contractor.

34.2.3. If the verification operations are carried out on the buyer's premises, the contractor shall have a period of 15 days, starting from the notification of the deferment decision, to remove the goods subject to the deferment decision.

After this period, the verified services may be removed or destroyed by the buyer at the contractor's expense.

Deferments, the keeping of which on the buyer's premises presents an unacceptable danger or inconvenience, may be immediately removed or destroyed, at the contractor's expense, after being informed.

#### **34.3. Price reduction:**

If the buyer considers that the services, without being entirely compliant with the contractual provisions, can nevertheless pronounce acceptance as they are, the buyer may accept them with a price reduction proportional to the extent of the imperfections noted. This decision must be substantiated. It can only be notified to the contractor after the latter has been given the opportunity to present their observations.

If the contractor does not submit observations within fifteen days of the acceptance decision with a price reduction, the contractor is deemed to have accepted it. If the contractor submits observations within this period, the buyer then has fifteen days to notify the contractor of a new decision.

In the absence of such notification, the buyer is deemed to have accepted the contractor's observations and the acceptance is deemed to be without price reduction.

#### **34.4. Rejection:**

34.4.1. If the buyer considers that the services are not in conformity with the stipulations of the contract and cannot be accepted as they stand, the buyer shall decide to reject them wholly or partially.

The rejection decision must be substantiated. It can only be taken after the contractor is given the opportunity to present their observations.

34.4.2. In the event of rejection, the contractor is obliged to re-perform the services provided for under the contract.

34.4.3. The contractor is entitled to a period of thirty days from the notification of the rejection decision to remove the rejected services. Once this period expires, they may be destroyed or removed by the buyer, at the contractor's expense.

Rejected services, the keeping of which on the buyer's premises presents an unacceptable danger or inconvenience, may be immediately removed or destroyed, at the contractor's expense, after being informed.

**34.5. Poor quality or defective supplies or material:**

If the poor quality or defectiveness of the supplies or material supplied by the buyer forming part of the services is the cause of the non-compliance of the services with the contractual provisions, the buyer may not take a decision to defer, accept with price reduction, or reject:

- If, within a period of fifteen days from the date on which the contractor had the opportunity to ascertain them, the contractor informed the buyer of the defects in the supplies, material, or equipment delivered, with the exception of hidden defects that cannot be detected with the means at the contractor's disposal;
- And that the buyer decided that the supplies, material, or equipment should nevertheless be used and notified the contractor of this decision.

**Article 35***Transfer of ownership*

The acceptance of the deliverables results in the transfer of ownership.

If the services are handed over to the buyer after their acceptance, the contractor assumes the obligations of the depositary until their actual handover.

**Article 36***Guarantees*

36.1. The services are subject to a minimum guarantee of one year. The starting point of the warranty period is the notification date of the acceptance decision.

36.2. If the contractor is responsible for repairing a defect, they must be notified without delay by a service order.

If the deadlines available to the contractor for carrying out repairs are not stipulated in the specific contract documents, they shall be determined by service order, after consulting the contractor.

The contractor must execute the service order immediately, even if the contractor has reservations about the application of the technical guarantee or about the deadlines in the case where these are set by service order.

Exceeding the deadline for repairs shall be penalised in accordance with Article 15. The basis for calculating the penalty shall be the pretax value of the service, the use of which is conditional on the performance of the repairs.

The time limit for the guarantee shall be extended by the deadline for the loss of use.

36.3. The guarantee covers the services provided, as well as all its components and sub-assemblies:

The contractor takes over the defective services, ensuring at their own expense all the services necessary to ensure they comply with the technical clauses of the contract.

This guarantee covers the costs of personnel travel, packaging, packing, and transport of the services, required for the repair or replacement. This applies whether these operations are carried out at the place of use of the service or whether the contractor arranges for the supply to be returned to the contractor's premises for this purpose.

36.4. If, upon expiry of the guarantee period, the contractor has not carried out the prescribed repairs, this period is extended until the repairs are carried out in full.

**36.5. Special cases:**

If the defective services are not repairable, the contractor shall replace the defective services or reimburse the buyer for the replacement value of the service.

If the buyer considers the contractor's involvement in remedying anomalies to be of such a nature as to hinder the proper functioning of the service, the buyer may, after informing the contractor, perform some of the services provided for in the contract directly. These are carried out at the contractor's expense, giving rise to the payment of an indemnity representing the costs of restoration by the buyer. The contractor is then released from any liability, except for the consequences of the information or instructions that the contractor may have to provide. The contractor is informed, in writing, of the end date of the buyer's intervention.

**36.6. Extension of the guarantee deadline:**

After acceptance of the repaired services, the guarantee deadline is extended by a period equal to the duration of the unavailability of the service in question. This timeframe runs from the notification date of the unavailability report to the contractor until the notification date of the decision taken following the verifications after repair.

**36.7. Limits to the guarantee obligation:**

With regard to spare parts not manufactured by the contractor entrusted to the latter by the buyer for the repair of a defective service, the contractor's guarantee is limited to the correct assembly and the normal execution of their obligations as a custodian.

The contractor is exempt from a guarantee obligation if the damage is caused by:

- Modifications or repairs carried out on the service by the buyer or a third party, without the prior agreement of the contractor;

- The buyer's fault in the use, maintenance, or storage of the service;
- A *force majeure* event.

**Comments:**

*The foregoing provisions shall not prevent the specific documents of the contract from defining particular guarantees for certain categories of services. In such case, the contract shall specify the terms, conditions, and effects of these guarantees on the parties' respective obligations.*

**CHAPTER 6****USE OF THE DELIVERABLES****Article 37***Defining deliverables*

Within the meaning of this chapter:

37.1. The deliverables refer to all items, regardless of their form, nature, or medium that are produced within the framework of the services of the contract, such as, in particular, intellectual works, including software and its documentation, databases, trademarks, designs, domain names, and other distinctive signs, inventions, whether patentable or not within the meaning of the intellectual property code, data, and information, and more generally all elements protected or not by intellectual property rights or by any other means of protection, such as know-how, business secrets, the right to the image or voice of persons, or the right to the image of goods.

The deliverables include the elements carried out by the contractor from the time of the call for tenders or any written consultation with the buyer with a view towards submitting a tender that are directly related to the subject of this contract.

**Comments:**

*The deliverables cover anything developed under the contract, i.e. all that is delivered under the contract except for prior knowledge (standard or non-standard - defined 37.2 and 37.3). This may involve software configuration, specific developments, a new logo, customised training, or a new process resulting from an R&D service, etc. The notions of intellectual work, trademark, patent, and designs, etc., are defined by the intellectual property code.*

*A logo proposed by the tenderer in their bid can be considered as a deliverable, as long as it was designed to meet the buyer's needs and the contract is awarded to that tenderer.*

37.2. Prior knowledge refers to all elements, regardless of their form, nature, and medium, that are incorporated in the deliverables and/or are used within the framework of the contract, that belong to the buyer, the contractor or third parties, or that are licensed to them. However, they were produced in an external context and independently of the contract, such as in particular intellectual works, including software and its documentation, databases, trademarks, domain names and other distinctive signs, drawings or models, inventions, whether or not patentable within the meaning of the intellectual property code, data, and information. More generally, they include all elements that may or may not be protected by intellectual property rights or by any other form of protection, such as know-how, business secrets, the right to the image or voice of persons, or the right to the image of goods.

**Comments:**

*Prior knowledge may be used to meet the buyer's needs. An example is pre-existing source code used to implement a feature without having to redevelop everything.*

37.3. Standard prior knowledge refers to pre-existing content that is designed to be provided to multiple clients to perform the same function, such as standard software and other content that is offered under a standard licence.

**Comments:**

*This may include standard or off-the-shelf software packages under so-called "proprietary" or free licenses, as well as access to databases, and pictures from image banks, etc.).*

**Article 38***General regime governing prior knowledge and standard prior knowledge*

Signature of the contract does not entail the transfer of intellectual property rights or rights of any other kind in the prior knowledge and standard prior knowledge.

The buyer and the contractor shall each retain the intellectual property rights or rights of any kind in the prior knowledge. They retain their own rights, including exploitation rights, to the prior knowledge and standard prior knowledge incorporated in the deliverables, including their know-how.

If the contractor intends to rely on prior knowledge or standard prior knowledge, the contractor undertakes to identify it in the tender or in any event as the contract is executed, before any integration and/or use of prior knowledge or standard prior knowledge not provided for in the tender.

The contractor shall specify all the necessary details for the use of the prior knowledge and standard prior knowledge by the buyer. For standard prior knowledge, the contractor shall also specify:

- Information about the licensor;
- The terms & conditions of the licence;
- For proprietary software prior knowledge, the conditions for corrective, adaptive, and upgradeable maintenance;
- For standard software under a proprietary licence that would be difficult to replace, the measures, if any, put in place to preserve the buyer's rights, e.g. sequestration of source codes.

In the absence of any express designation as prior knowledge, standard or otherwise, in the tender or during performance, any item delivered in performance of the contract shall be deemed to be a deliverable. In this case, the contractor may choose to replace the item in question at their own expense so that it is compatible with the deliverables regime.

The contractor, as a professional, is solely responsible for analysing and respecting the legal regime of prior knowledge and standard prior knowledge that the contractor incorporates into the contract.

*Comments:*

*In the specific contract documents, the appropriateness of including a clause providing for supplying source codes of standard proprietary software must be assessed on a case-by-case basis, according to the software potentially used in the context of the contract. The technical possibility for the contractor to provide the source codes may indeed depend on the conditions imposed by the publisher of the software in question. The buyer is therefore encouraged to adapt the requirements of the contract documents to the technical offer available on the open market.*

## Article 39

### *Specific provisions relating to prior knowledge and standard prior knowledge*

#### **39.1. Prior knowledge (non-standard) on the part of the contractor, third parties, and the buyer:**

If the contractor incorporates prior knowledge into the deliverables or provides prior knowledge as part of the performance of the contract or if prior knowledge, without being incorporated into the deliverables, is strictly necessary for implementing the deliverables, the contractor authorises the buyer to use the prior knowledge for the same rights, duration, territory, and purposes of use as those provided for in the regime applicable to the deliverables. The buyer shall not be entitled to use the prior knowledge independently of the use of the deliverables, unless it is placed under a usage regime that enables this.

In the case of software, the right to transfer such software to any third-party and to distribute them under an open licence provided for the benefit of the buyer in respect of the deliverables shall not apply to prior knowledge, unless otherwise provided for in the contract or unless it is placed under a regime of use that enables it.

If the contract provides for an exclusive transfer of the deliverables to the buyer, the exclusivity does not apply to prior knowledge. This will be the case unless there are express stipulations in the contract documents.

The authorisation to use prior knowledge is included in the contract price.

During the contract's performance, without the buyer's prior agreement, the contractor may not use or incorporate prior knowledge necessary for the achievement of the contract's purpose that would be of such a nature as to limit or render more costly the exercise of the rights relating to the deliverables.

The contractor may only use the buyer's prior knowledge within the framework of executing the contract. The contractor undertakes not to divulge any confidential information relating to this prior knowledge.

#### **39.2. Standard prior knowledge:**

If, during the performance of the contract, the contractor intends to use standard prior knowledge not listed in their tender, they must obtain the buyer's prior consent.

The rights to use standard prior knowledge apply under the terms of their licence, as accepted by the buyer.

The price of this licence shall be included in the contract price for the uses provided for under the contract and for the contract's duration.

*Comments:*

*The use of standard prior knowledge implies the acceptance of its licence. The contractor must ensure that only standard prior knowledge compatible with the buyer's needs is used in the contract, e.g. the number of users.*

*The rights of adaptation, modification, development, as well as possible transfer of rights to third parties of this standard prior knowledge apply under the conditions of their license as accepted by the buyer.*

## Article 40

### *Deliverables regime*

#### **40.1. Purposes and needs for using the deliverables:**

40.1.1. Under this article, the contractor grants the buyer the necessary rights to use or have used the deliverables, as is or modified, permanently or temporarily, in whole or in part, by any means and in any form, for the needs and purposes of use expressed in the specific documents of the contract and in any case for the needs of use arising from the purpose of the services ordered within the framework of the contract.

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The buyer's use requirements include the right to:

- Publish and use the deliverables consisting of preparatory documents, such as plans, preliminary studies, and specifications, for the implementation of the requirements they meet;
- Evaluate or have evaluated by any third-party at any time the deliverables;
- To be able to carry out public archiving procedures;
- Enable any department within the same legal entity as the buyer to use the deliverables under the same conditions and for the same;
- Ensure or have ensured by any third-party the evolution of all deliverables, including carrying out or having carried out by any third-party, the corrective, preventive, adaptive, and developmental maintenance of deliverables consisting of software;
- Transfer the rights to the deliverables to any third-party beneficiary of a transfer of know-how from the buyer.

For deliverables that are software, the requirements for use also include the possibility of passing on any rights to any third-party for any reason and under any conditions, as well as the possibility of distributing them under an open-source licence.

40.1.2. The confidentiality regime governing the deliverables is defined, where applicable, in the specific contract documents.

## 40.2. Buyer's rights:

### 40.2.1. Deliverables protected by literary and artistic property rights:

The contractor assigns to the buyer the economic rights to the copyright or rights related to copyright relating to the deliverables, for the purposes and needs of use mentioned in this article as they apply to the contract.

This transfer of rights covers the deliverables, as from their delivery, under the suspensive condition of the reception of the services, for the whole world and for the legal duration of the copyright or the rights related to copyright.

With due respect for moral rights, these rights include all economic rights of reproduction, representation, and distribution. In particular, they encompass the rights to use, incorporate, integrate, adapt, modify, arrange, correct, and translate the deliverables in all languages, in whole or in part, as is or modified for the purposes and needs of use mentioned in this article, as applicable to the contract.

#### Comments:

*Exercising the economic rights that are the subject of the assignment for the needs arising from the purpose of the contract must respect the author's moral rights.*

*Article L.121-1 of the Intellectual Property Code states that "the author retains the right to respect for their name, their status, and their work. This right belongs to the person. It is perpetual, non-transferable, and not subject to statutory limitations (...)"*

*In application of this article, the author has a particular right to:*

- (i) *Have their name and status respected. This "right to authorship" is reflected in the obligation to affix the name and status of the author to their work and to any reproduction thereof, e.g. affixing the name of the architect to the building they designed;*
- (ii) *Respect for one's work. This right authorises the author to have any alteration or distortion of the original work sanctioned. Adaptation, arrangement, or modification are likely to infringe on the integrity of the work and to engage the buyer's liability. The assessment of possible infringements of the right to respect of the work is made on a case-by-case basis by the judges of the court of first instance according to the nature of the works and the uses made.*

*Prior to any adaptations, modifications, or arrangements of the work not specifically authorised in the specific contract documents that are likely to alter or distort the work, it is recommended that the contractor or the authors be informed of the planned changes.*

With respect to the author's moral rights, the right of reproduction includes in particular the right to reproduce the deliverables, for any use whatsoever, by any process known or unknown, including those that are not foreseeable. This includes on any current or future medium and without limitation of number such as paper, electronic, digital, analogue, magnetic, optical, or videographic, for any purpose, including in a network without limitation of number, in whole or in part, as is or modified, by any process and on any medium.

With due respect for moral rights, the right of representation and distribution includes in particular the right of communication to the public and of making the deliverables available to the public, in whole or in part, directly or indirectly, as is or modified. This includes by all means, modes, and processes, known or unknown, in any form, and to the public in general or to categories of the public in particular, in such a way that each person can access them from the place and at the time they individually choose.

The rights relating to the deliverables in the form of software also include those to evaluate, observe, test, duplicate, load, display, store, execute, modify, arrange, decompile, assemble, and transcribe all or part of the deliverables. They are entitled to carry out preventive, corrective, adaptive and evolutionary maintenance, to create new versions or new developments, to translate it into any language, to transcribe it into any programming language, to configure it, to interface it with any software, database, computer product, to reuse its algorithms for any purpose, to integrate all or part of it into existing or future works, and to carry out all acts for the purposes of interoperability with other independently created systems.

This assignment is granted to the buyer on a non-exclusive basis, in order to grant the contractor the right to use the deliverables in accordance with Article 40.3.

Given their nature, the following deliverables are the subject of an exclusive assignment:

1. Deliverables whose purpose is to differentiate the identity of the buyer and/or their services or products from other entities, services, or products, such as names, logos, slogans, and graphic charters. The transfer includes for these deliverables the right for the buyer to proceed with any registration or reservation as a trademark, domain name, social network accounts, and more generally as a distinctive sign, and/or as a design, regardless of the territories and classes of registration. The transfer includes the right to distribute or market directly or indirectly to any public, without limit of number, any product or service containing the deliverables and more generally to use them as a trademark and/or distinctive sign;

2. Deliverables whose purpose is to promote the buyer, their products and services, and more generally their public service missions, such as promotional or communication campaigns;

3. The deliverables classified as confidential.

The contractor is prohibited from registering or reserving, in particular as a trademark or distinctive sign, including domain names or social network accounts, the deliverables mentioned in 1. and 2..

More generally, the contractor shall refrain from registering or reserving any trademark or distinctive symbols, including domain names or social network accounts, that could lead to a risk of confusion with the buyer, their services or products. The contractor shall refrain from registering or reserving any industrial property right or title, in France or abroad, on the deliverables mentioned in 1. and 2. that could limit or make more onerous the exercise of the buyer's rights.

The price of this transfer is included in the total amount of the contract.

*Comments:*

*The non-exclusive assignment enables the contractor to use the deliverables for the contractor's own purposes, including commercial use. In view of their particular characteristics, deliverables whose purpose is to identify the buyer, promote its products or services, and those that cannot be reused due to their confidentiality are assigned on an exclusive basis.*

*The price takes into account the scope of the assignment in terms of duration and territory, etc., whether it is exclusive or not, and the extent of the uses applicable to the contract.*

#### 40.2.2. Deliverables protected by an industrial property right pertaining to inventions and technical knowledge:

The contractor shall inform the buyer of any deliverables that are identified as being reasonably susceptible to industrial property rights protection for inventions and technical knowledge.

The contractor grants the buyer a non-exclusive licence to use the intellectual property rights relating to these deliverables. This licence covers the purposes and needs of use mentioned in this article as they apply to the contract, including being able to use the deliverables to continue research.

This licence shall cover the deliverables from the time of their delivery, subject to the suspensive condition of acceptance of the services, for the whole world and for the duration of the copyright.

The price of this licence is included in the total amount of the contract.

The contractor shall carry out all the formalities required to ensure that the exploitation licence is enforceable against third parties, in all the territories where the rights are granted. The cost of these formalities is included in the total amount of the contract.

In the event the deliverables constitute, in whole or in part, new know-how, the contractor grants the buyer a licence to this know-how. This licence is for the purposes and needs of use mentioned in this article, as applicable to the contract, subject to the confidentiality thereof.

*Comments:*

*Given the specific nature of the services giving rise to deliverables likely to be protected by industrial property rights pertaining to inventions and technical knowledge within the meaning of the Intellectual Property Code, and/or likely to be covered by know-how, it is recommended that the specific contract documents provide for the terms of allocating rights that may depart from the default arrangements proposed. This may well be the case, if the service is intended to improve the buyer's own technical innovation, and the buyer may wish to hold the patent on the deliverables, for example.*

#### 40.2.3. Data protection:

The data integrated or generated within the framework of this contract is confidential. It belongs exclusively to the buyer.

The contractor may access the data within the framework of carrying out the present contract for the sole purpose of its execution.

The contractor undertakes not to make any use of the data, either directly or indirectly, outside the scope of the present contract, without the prior and express authorisation of the buyer.

### 40.3. Contractor's rights:

#### 40.3.1. The contractor retains ownership of its know-how and methods used to produce the deliverables.

The contractor is authorised by the buyer to make use, including for commercial purposes, of the deliverables created within the framework of the contract that are not subject to exclusive transfer to the buyer, for the same rights as those provided for in Article 40.2.1, subject to the confidentiality of the information incorporated in the deliverables by virtue of Article 5. For the prior knowledge made available to the contractor by the buyer to carry out the contract, the contractor shall request the buyer's consent.

The contractor pays the buyer a royalty, in the event of the commercial exploitation of all or part of the deliverables, alone or incorporated in products or services, or in the event of total or partial concession of the exploitation rights concerning the deliverables.

The specific contract documents shall determine how the royalty is to be calculated.

*Comments:*

*Whenever the contractor can commercially exploit a deliverable the development of which was financed by the buyer, the latter may stipulate, if relevant, a royalty that takes this participation into account.*

40.3.2. The contractor undertakes to ensure that any use of the deliverables does not infringe on the buyer's rights or image.

The contractor may use the deliverables subject to observance of the confidentiality obligations set out in Article 5.1 and the confidentiality regime for the deliverables, completed where appropriate by the specific contract documents, and subject to the prior consent of the buyer if the deliverables include prior knowledge made available by the buyer for the performance of the contract.

The use of the deliverables should mention that they were financed by the buyer.

#### **40.4. Common stipulations:**

##### **40.4.1. Exercising rights:**

To enable the buyer to exercise the rights granted under the contract, the contractor shall spontaneously deliver, as and when the services are performed, all the elements necessary for the rights to be exercised, as well as their updates or changes during the course of the contract. For example:

###### **40.4.1.1 For software:**

- The executable codes;
- Documentation, framework documents, and project monitoring in digital format such as magnetic, optical, or electronic storage media;
- The source codes and associated documentation of the deliverables, prior knowledge, and standard prior knowledge if this standard prior knowledge is placed under a licence such as an open-source licence, or it is provided at the same time as the deliverable code in the form of one or more electronic media containing the generating code; as well as all the information necessary for any subsequent service intended to ensure maintenance, including the ongoing maintenance of these elements.

40.4.1.2 For other works such as graphical creations, images, films, and music, etc.: the source and native files in an open format.

The contractor may not impose confidentiality on the delivered source codes in particular.

The material ownership of these items is transferred to the buyer. It is included in the contract price.

##### **40.4.2. Rights guarantees:**

The contractor guarantees the buyer full and complete entitlement, free of any restrictions, to the rights assigned or licensed under the terms of the contract to the deliverables and prior knowledge, whether standard or not.

In this respect, the contractor guarantees:

- That they hold the assigned or licensed rights;
- That they have the authorisations relating to the personality rights and, more generally, that they have all the necessary authorisations for the purposes and needs of use applicable to the contract;
- That they indemnify the buyer, in the absence of any fault directly attributable to them, without the benefit of discussion or division, against any action, claim, demand, or opposition from any person invoking a right that has been infringed by the use of the deliverables and prior knowledge that is standard or not in accordance with the stipulations of Articles 38 to 40. That if the buyer is sued for infringement, unfair competition, or free riding through no fault of their own due to the use of the deliverables and prior knowledge or not in accordance with the stipulations of Articles 38 to 40, they shall inform the contractor without delay, who may then intervene in the legal action;
- In these cases, the contractor shall provide the buyer with all necessary assistance at their own expense;
- That the contractor undertakes, at its option, (i) to modify or replace the items in dispute or at serious risk of dispute in such a way that they cease to fall within the scope of the claim, while remaining in conformity with the contract specifications, (ii) to ensure that the buyer can use the disputed items without any limitation or additional cost, or (iii) in the event that one of these remedies cannot reasonably be implemented, to reimburse the buyer for the amounts paid in respect of the disputed items and to compensate the buyer for the damage suffered.

In these cases, the contractor shall be liable for all damages and interest to which the buyer, in the absence of a fault directly attributable to them, would be condemned because of an act of infringement, unfair competition, or free riding, due to the use of the deliverables and prior knowledge that are standard or not in conformity with the stipulations of Articles 38 to 40, as soon as the sentence pronouncing them becomes enforceable.

The contractor guarantees the assigned or licensed rights to deliverables or standard or non-standard prior knowledge to the buyer in the event of any assignment or license of rights to deliverables or standard or non-standard prior knowledge.

The contractor guarantees that the deliverables, prior knowledge, and standard prior knowledge used follow the regime of the rights of use applicable to the contract.

Upon request, the contractor undertakes, at their own expense, to replace the deliverables, the standard or non-standard prior knowledge that would not enable the buyer to exploit them under the conditions provided for in the contract.

The contractor shall not be held liable for any claims concerning:

- Standard or non-standard prior knowledge provided by the buyer to the contractor for the contract's performance;
- Elements incorporated into the deliverables at the buyer's express request;
- Changes and adaptations to the deliverables, if the cause of the claim is based on a change or adaptation made by the buyer or at their express request.

The contractor indemnifies the buyer against all legal and contractual obligations towards the contractor's employees or principals.

#### 40.4.3. Final provisions:

In general, the contractor may not oppose their rights, intellectual property titles, or rights of any other nature to the use of the deliverables and prior knowledge, if this is in accordance with the requirements of use relevant to the contract.

The contractor may not oppose any right relating to the graphical appearance, the sequences, and titles of menus or commands that would be of a nature to limit the need for further development, adaptation, translation, or incorporation of the deliverables, in particular for purposes of interoperability with other systems and software.

The contractor authorises the buyer to freely extract and re-use the databases included in the deliverables. In particular, if it is with a view towards making the public information available for re-use free of charge or for a fee.

In the event the contract is terminated for any reason, the buyer shall retain the usage rights applicable to the contract.

The buyer may sub-assign, sub-license, or sub-contract the use of the deliverables, prior knowledge, and standard prior knowledge on their own behalf, within the scope of the contract.

The buyer may freely publish the deliverables subject to any confidentiality obligations stipulated in the specific contract documents. Such publication shall not constitute a disclosure under industrial property law.

Restrictions on the right to publish the deliverables shall not prevent the publication of general information on the existence of the contract and the nature of the deliverables.

The limitations on the right to publish do not prevent the buyer, for the purpose of enforcing their rights, from communicating these deliverables, in whole or in part, to a third-party in accordance with Article 5.1.

Any publication must mention the name of the contractor and the authors.

The parties shall inform each other of any changes they wish to make to the deliverables in order to obtain any relevant comments from the other party. They shall grant each other the free disposal of minor modifications and corrections to the deliverables.

## CHAPTER 7

### TERMINATION

#### Article 41

##### *General Principles*

The buyer may terminate the execution of the services covered by the contract prior to their completion. Such termination may be at the request of the contractor under the conditions laid down in Article 43, or due to the contractor's fault under the conditions laid down in Article 44, or in the case of the special circumstances mentioned in Article 42.

The buyer may also terminate the provision of services at any time on grounds of general interest. In this case, the contractor is entitled to compensation for the loss suffered as a result of this decision, in accordance with the procedures referred to in Article 46.

The contractor shall be notified of the decision to terminate the contract. Subject to the specific provisions mentioned below, termination shall take effect on the date set out in the decision to terminate or, failing that, on the date of its notification.

## Article 42

### *Termination for events outside the contract*

#### **42.1. Death or legal incapacity of the contractor:**

In the event of the death or legal incapacity of the contractor, the buyer may terminate the contract or accept its continuation by the successors or curator. A transfer amendment shall be drawn up for this purpose.

Termination, if declared, shall take effect on the date of death or legal incapacity. It does not entitle the contractor or successors to any compensation.

#### **42.2. Insolvency, judicial recovery, or judicial liquidation:**

In the event of judicial reorganisation or receivership, the contract shall be terminated if, after formal notice is served by the court administrator under the conditions laid down in Article L.622-13 of the French Commercial Code, the latter indicates not taking over the contractor's obligations.

In the event of the judicial liquidation of the contractor, the contract shall be terminated if, after formal notice is served by the liquidator, under the conditions provided for in Article L.641-11-1 of the Commercial Code, the liquidator indicates not taking over the obligations of the contractor.

Termination, if imposed, takes effect on the date of the event. It does not entitle the contractor to any compensation.

#### **42.3. Physical incapacity of the contractor:**

In the event of the contractor's clear and lasting physical incapacity compromising the proper performance of the contract, the buyer may terminate their contract.

Termination does not entitle the contractor to any compensation.

## Article 43

### *Termination for contract-related reasons*

#### **43.1. Difficulty in performing the contract:**

During the execution of the services, if the contractor encounters particular technical difficulties, the solution of which would require implementing resources out of proportion to the amount of the contract, the buyer may terminate the contract, on their own initiative or at the request of the contractor.

If the contractor is prevented from fulfilling the contract due to a *force majeure* event, the buyer shall terminate the contract.

#### **43.2. Late service order:**

If the contract is terminated at the contractor's request pursuant to Article 3.8.3, the contractor shall be compensated for any costs and investments incurred for the contract that are strictly necessary for its performance.

It is the contractor's responsibility to provide the buyer with all the evidence necessary to determine this part of the compensation within 15 days of the end of the notification of the termination of the contract.

#### **43.3. Termination of the service performance:**

If performance of the services is discontinued in accordance with Article 26, the buyer shall terminate the contract.

Termination does not entitle the contractor to any compensation.

## Article 44

### *Termination for contractor's fault*

44.1. The buyer may terminate the contract on the grounds of fault on the part of the contractor in the following cases:

*a)* The contractor violates legal or regulatory obligations relating to work, the protection of the environment, the safety and health of persons, or the preservation of the surrounding area;

*b)* Resources of buildings or land were made available to the contractor who is in one of the cases provided for in Article 19.10;

*c)* The contractor did not fulfil their obligations within the contractual deadlines;

*d)* The contractor obstructed the buyer's inspection procedure in accordance with Articles 21 and 22;

*e)* The contractor subcontracted in violation of the legislative and regulatory provisions relating to subcontracting or did not respect the obligations relating to subcontractors, mentioned in Article 3.6;

*f)* The contractor failed to submit the insurance certificates in accordance with the conditions set out in Article 10;

*g)* The contractor declares, independently of the situations provided for in Article 42.1, not being able to fulfil their commitments;

*h)* The contractor failed to notify the modifications mentioned in Article 3.4.2 that could jeopardise the proper performance of the contract;

*i)* The contractor engaged in fraudulent acts during the performance of the contract;

j) The contractor or subcontractor failed to comply with the obligations relating to confidentiality, protection of personal data, and security, mentioned in Article 5;

k) The buyer's use of the deliverables was seriously compromised, due to the contractor's delay in fulfilling the contract;

l) Subsequent to the contract's signature, the contractor was prohibited from exercising any industrial or commercial profession;

m) After the contract's signature, the information or documents produced by the contractor in support of their application or required prior to the award of the contract were found to be inaccurate;

n) Where the replacement appointed to conduct the services is objected to in accordance with Article 3.4.3., if a new replacement is not appointed within 30 days, or if the replacement is objected to within 30 days.

44.2. Except in the instances provided for in *g*, *i*, *l*, and *m* of 44.1 above, the contractor must have been given prior formal notice, together with a deadline for performance that remains ineffective:

In the context of the formal notice, the buyer informs the contractor of the intended sanction and invites the contractor to submit any observations.

44.3. Termination of the contract does not prevent the pursuit of any civil or criminal proceedings that may be brought against the contractor.

## Article 45

### *Termination for reasons of public interest*

If the buyer terminates the contract for reasons of public interest, the contractor is entitled to termination compensation. This is obtained by applying to the initial pretax amount of the contract, reduced by the unrevised pretax amount of the accepted services, a percentage fixed by the specific documents of the contract or, failing that, 5%.

The contractor is also entitled to compensation for any costs and investments incurred in connection with the contract that were strictly necessary for its execution and that were not taken into account in the amount of the services paid. It is the contractor's responsibility to provide the buyer with all the evidence necessary to determine this part of the compensation within 15 days of the end of the notification of the termination of the contract.

These indemnities shall be included in the termination statement, without the contractor having to submit a specific request in this respect.

## Article 46

### *Termination account*

46.1. The contract is subject to a termination account that is drawn up by the buyer and notified to the contractor.

46.2. The termination account shall be drawn up following a termination decision taken in application of Articles 43 and 45. It shall include:

46.2.1. To the contractor's debit:

- The amount paid as an advance, an interim payment, a final partial payment, and the balance;
- The value, determined by the contract and any amendments thereto, of the resources entrusted to the contractor that the latter cannot return, as well as the take-back value of the resources that the buyer transfers to the contractor by mutual agreement;
- The amount of the penalties.

46.2.2. To the contractor's credit:

46.2.2.1. The value of the services provided to the buyer, i.e:

- The contractual value of the accepted services, including, if applicable, default interest;
- The value of any services provided at the buyer's request, such as the storage of supplies;

46.2.2.2. Expenditures incurred by the contractor in the performance of services that were not provided to the buyer, insofar as these expenditures were not previously amortised or cannot be amortised in the future. Namely:

- The cost of material and items procured for the performance of the contract;
- The cost of installations, material, and tools made for the performance of the contract;
- Other costs incurred by the contractor directly related to the performance of the contract;

46.2.2.3. Staff costs proven by the contractor to be the direct and necessary consequence of the contract's termination;

46.2.2.4. If the termination is effected pursuant to Article 45, a lump sum calculated by applying a percentage to the difference between the unrevised pretax amount of the contract and the unrevised pretax amount of the services accepted. If the contract makes no mention of it, this percentage shall be 5%. The amount thus calculated will be revised on the effective date of the termination in accordance with the contract's provisions;

46.2.2.5. More generally, any damage suffered by the contractor and possibly their subcontractors and suppliers as a result of the termination.

46.3. The termination account shall be drawn up following a termination decision taken in application of Article 44. It shall include:

46.3.1. To the contractor's debit:

- The amount paid as an advance, an interim payment, a final partial payment, and the balance;
- The value, determined by the contract and any amendments thereto, of the resources entrusted to the contractor that the latter cannot return, as well as the take-back value of the resources that the buyer transfers to the contractor by mutual agreement;
- The amount of the penalties;
- Where appropriate, the additional expenditures resulting from the award of a contract at the expense and risk of the contractor under the conditions laid down in Article 48;

46.3.2. To the contractor's credit:

- The contractual value of the accepted services, including, if applicable, default interest;
- The value of any services provided at the buyer's request, such as the storage of supplies.

46.4. The termination account shall be drawn up following a termination decision taken in application of Article 42 or following a request by the contractor. It shall include:

46.4.1. To the contractor's debit:

- The amount paid as an advance, an interim payment, a final partial payment, and the balance;
- The value, determined by the contract and any amendments thereto, of the resources entrusted to the contractor that the latter cannot return, as well as the take-back value of the resources that the buyer transfers to the contractor by mutual agreement;
- The amount of the penalties.

46.4.2. To the contractor's credit:

- The contractual value of the accepted services, including, if applicable, default interest;
- The value of any services provided at the buyer's request, such as the storage of supplies.

46.5. The notification of the account by the buyer to the contractor must be made no later than two months after the effective date of the contract termination. Failure to notify the termination account within this deadline constitutes a dispute within the meaning of Article 49.1.

Where applicable, penalties for delay shall be imposed up to and including the day prior to the effective termination date.

## Article 47

### *Delivery of the services and material resources enabling the contract to be performed*

In the event of termination, the buyer may require the contractor to:

- The surrender of services in progress, as well as materials and objects held for the purpose of the contract's execution;
- The handing over of the material resources for the contract's execution;
- The implementation of precautionary measures, in particular storage or guarding operations.

The buyer shall inform the contractor or successors when notifying the termination, indicating the deadline for the delivery of these goods by the contractor and the conditions for their storage pending this delivery.

In the event of termination due to the contractor's fault, the present article shall be applied at the contractor's expense.

## Article 48

### *Provision of the service at the expense and risk of the contractor*

48.1. The buyer may have a third-party perform all or part of the services provided for in the contract, at the contractor's expense and risk:

- Either if the contractor fails to respond to a formal notice to comply with the stipulations of the contract or the service orders, or in the event of non-performance by the latter of a service that, by its nature, cannot be delayed. The decision to have the services performed by a third-party, instead of the contractor, shall be notified to the contractor by the buyer. Provided they have not been fully executed, the contractor may be authorised by service order to resume the execution of the services if they can prove having the necessary means to do so within the period provided for in the specific documents of the contract or, failing that, within a period of three months following the notification of the decision to execute the contract at their own risk and expense. If the contractor has not been authorised to resume the contract's execution within this period, the contract shall be terminated on the grounds of the contractor's fault;
- Or in the event of termination of the contract for the contractor's fault, provided that the termination decision expressly mentions this.

48.2. If it is not possible for the buyer to obtain, under acceptable conditions, services that exactly conform to those whose performance is provided for in the specific contract documents, the buyer may substitute equivalent services.

48.3. The contractor of the terminated contract is not allowed to take part, either directly or indirectly, in the performance of the services carried out at the contractor's expense and risk. However, the contractor must provide all the information gathered and the means used in the performance of the original contract that would be necessary for the performance of the replacement contract. This replacement contract is sent to the defaulting contractor for information purposes only.

48.4. The increase in cost compared with the contract prices resulting from the performance of the services at the expense and risk of the contractor is to be borne by the contractor. Any decrease in costs shall not benefit the contractor.

## CHAPTER 8

### DISPUTES

#### Article 49

##### *Settlement of disputes between the parties*

49.1. The buyer and the contractor shall endeavour to settle amicably any dispute relating to the interpretation of the contract's provisions or the performance of the services covered by the contract.

Within the meaning of this Article, the dispute arises from:

- Either a written, explicit, and unequivocal statement of position from the buyer indicating the disagreement;
- Or the silence kept by the buyer following a formal notice sent by the contractor inviting the buyer to take a position on the disagreement within a period that cannot be less than fifteen days;
- Or the failure to notify the termination account within the period mentioned in Article 46.

##### *Comments:*

*In the absence of a formal notice, the mere fact that the buyer does not pay the invoices sent in good time, without explicitly refusing to settle them, is not sufficient to characterise the existence of a dispute within the meaning of this article.*

49.2. Any dispute between the contractor and the buyer must be the subject, on the part of the contractor, of a statement of claim setting out precisely the reasons for this dispute. This must indicate, if necessary, for each point of contention, the amount claimed and its justification.

This statement of claim must be communicated to the buyer within two months from the day on which the dispute arose.

The time limit for communicating the statement of claim shall be time-barred.

49.3. The buyer shall have a period of two months from receipt of the statement of claim to notify their decision. If no decision is taken within this period, the claim is rejected.

49.4. If the buyer and the contractor cannot manage to settle the dispute at the end of the procedure described in 1 to 3 of this Article, they shall favour recourse to a consultative committee for amicable settlement, conciliation, mediation, in particular with the corporate ombudsman, or arbitration, in the cases and under the conditions provided for by the Public Procurement Code.

Referral to a consultative committee for the amicable settlement of disputes suspends the time-limits for bringing legal proceedings until notification of the decision taken by the buyer based on the committee's opinion.

Referral to a mediator interrupts the time limits for legal action until notification of the decision taken after mediation or the mediator's finding that their mission failed.

49.5. For claims to which the balance of the contract gave rise, the contractor shall have a period of two months, from the notification of the decision taken by the buyer or the occurrence of the implicit rejection decision mentioned in 3 of this Article, to bring claims before the competent administrative court. Once this period has elapsed, the contractor is deemed to have accepted this decision.

Disputes concerning civil actions relating to literary and artistic property covered by Article L.331-1 of the Intellectual Property Code shall be brought before the competent court.

## CHAPTER 9

### SPECIAL PROVISIONS FOR REPAIR AND MODIFICATION CONTRACTS

#### Article 50

##### *Contracts affected by the provisions of Chapter 9*

The provisions of this Chapter shall apply to a contract only if it expressly refers to it.

#### Article 51

##### *Prior examination and contractor's liability*

51.1. A joint report is drawn up to establish the condition of the material to be repaired or modified, at the time the buyer entrusts it to the contractor. This report shall be signed by both parties.

51.2. The contractor is responsible for the material entrusted to them, under the conditions set out in Article 18.

51.3. The contractor is obliged to insure it under the conditions of Article 20.

51.4. To this end, the value of the material entrusted to the contractor is determined on a flat-rate basis at:

- Half the price of new material, for material likely to be listed for repair or already classified in this category;
- Two thirds of this price, for repaired material;
- 5 % of this price, for material intended to be recycled.

The value of the material shall be indicated in the specific contract documents or, failing that, shall be stated in the joint report mentioned in Article 51.1.

51.5. The contractor may request to be exempted from the insurance obligation, up to a maximum of 90% of the value of the material on deposit, in the following two cases:

- If the cost of the repair, conversion, or modification is particularly low in relation to the residual value of the material entrusted to the company;
- Or if the accumulation of material belonging to the buyer and stocks constitutes a disproportionate insurance burden in relation to the contract value.

51.6. This exemption may be granted by a decision of the buyer under the following conditions:

a) This exemption shall only apply to the buyer's material stored either for repair or awaiting delivery, after regular takeover by the buyer;

b) This does not exempt the contractor from taking all the fire safety measures usually required by insurance companies;

c) The contractor must provide proof of insurance covering the additional value of the material stored, i.e. at least 10% of this value;

d) The contractor's share of any damage is limited in proportion to the value of the damaged material for which the contractor is obliged to take out insurance.

## Article 52

### *Work proposal and price summary*

The work proposal shall indicate the assemblies or parts to be replaced. Parts to be provided by the contractor and those to be provided by the buyer are listed separately.

A price summary statement shall accompany each work proposal.

Within a deadline of thirty days from the joint report mentioned in Article 50.1, the contractor must submit to the buyer the work proposals and the price summaries.

In the light of the work proposal and the price summary, the buyer notifies the service order for the execution or abandonment of the repair or modification. In the absence of a service order within thirty days of the presentation of the proposal and the summary, the contractor shall carry out the work.

If a work proposal is not accepted, the contractor is only paid the costs of the preliminary and ancillary operations: examination, removal, dismantling, cleaning, checks, transport, actually carried out, as well as the costs of drawing up the proposal.

## Article 53

### *Modification of work during execution*

If, in the course of performance, the contractor ascertains that additional work needs to be carried out or, on the contrary, that work planned is unnecessary, the contractor shall submit a new work proposal to the buyer, together with a new price summary, before any change in the performance of the service.

## Article 54

### *Recuperation*

Where applicable, and upon request of the buyer, irreparable and residual parts, parts replaced in good condition or repairable, as well as material and parts supplied by the buyer that have not been used, shall be grouped into categories by the contractor. They shall then be returned to the buyer at the latter's expense.

## Article 55

### *Inventory*

The contractor shall keep an inventory in accordance with the provisions of Article 19.4. This inventory shall record each entry and exit, distinguishing in particular:

- Material to be repaired;
- New parts collected from the buyer's premises;
- Parts in good condition recovered not to be repaired;
- Parts in poor condition, salvaged materials, and scraps.

This inventory is inspected by the buyer.