



GENERAL CONDITIONS OF CONTRACT (GOODS)

DEFINITIONS

1. In the Contract as defined below, words and expressions shall have the following meanings assigned to them:
 - (a) "Contract" means the agreement of the Parties relating to the procurement of Goods including the present General Conditions of Contract (Goods), the OSCE Purchase Order, and all attachments incorporated by reference, which shall form an integral part of the Contract. In the event of any discrepancy, the documents to prevail shall be given precedence in the following order: (i) the OSCE Purchase Order, (ii) the General Conditions of Contract, and (iii) attachments,;
 - (b) "Contractor" means the person or entity named in the 'CONTRACTOR' named field of the OSCE Purchase Order and any agreed in writing by the OSCE legal successor(s) in title;
 - (c) "Day" means any calendar day;
 - (d) "Delivery Date" means the latest possible date by which the Goods shall be delivered by the Contractor to the OSCE, as specified in the 'DELIVERY DATE' named field of the OSCE Purchase Order;
 - (e) "*Force Majeure*" means acts of God, war, acts of public enemy, invasion or acts of similar cause or force. Failure to perform caused by events arising out of, or in connection with civil unrest shall not constitute force majeure under the Contract;
 - (f) "Goods" means all of the goods to be supplied to the OSCE by the Contractor under the Contract;
 - (g) "OSCE" means the Organization for Security and Co-operation in Europe, including the OSCE Secretariat, Institutions (the Office of the High Commissioner on National Minorities (HCNM), the Office of Democratic Institutions and Human Rights (ODIHR) and the Office of the Representative on Freedom of the Media) and Field Operations (Missions, Centres, Groups, Presences, Offices, Project Coordinators and any other field operations), whichever is or are applicable;
 - (h) "OSCE Purchase Order" means the OSCE's official purchase order document;
 - (i) "Party" means the OSCE or the Contractor and "Parties" means the OSCE and the Contractor; and
 - (j) "Place(s) of Delivery" means the location(s) or place(s) where the Goods are to be delivered, as specified in the 'SHIP TO' named field of the OSCE Purchase Order.

CONCLUSION OF THE CONTRACT

2. The Contract is made between the OSCE and the Contractor. The Contractor is engaged as an independent contractor for the sole purpose of delivering the Goods.
3. The Contract shall be concluded upon the Contractor duly following the countersigning procedure as stated in the OSCE Purchase Order;

FUNDING

4. This Contract shall become and remain effective only on the condition that the Secretary General of the OSCE issues a budget allotment or a provisional budget allotment in respect to the Goods to be provided under this Contract. In the event this is not or no longer the case, the OSCE shall without unreasonable delay notify the Contractor thereof. Any continuation of the Contractor's performance under this Contract after being notified by the OSCE shall be at the Contractor's risk and expense.

DELIVERY AND TAKE-OVER OF GOODS

5. The Contractor shall deliver the Goods at the Place(s) of Delivery. The OSCE, through a duly authorised representative(s), shall take-over the Goods upon delivery. Take-over of the Goods by the OSCE shall not be deemed acceptance of the Goods by the OSCE. Unless otherwise stipulated in the Contract, the Goods shall be delivered duty unpaid. The time of delivery as specified in the Contract shall be strictly adhered to, and time shall be of the essence.

QUALITY OF GOODS 6. The Contractor shall deliver Goods that are:

- a) of the quality, quantity and description as required by the Contract; and
 - b) free from any right or claim of a third party, including rights based on industrial property or other intellectual property.
7. Should the Goods be of the type "homogeneously defined" or disposable, the Contractor shall provide a sample and undertake, certify, and guarantee that all Goods delivered shall be of the same quality and characteristics as the sample(s) provided.

INSPECTION AND ACCEPTANCE

8. The duly authorised representative(s) of the OSCE shall have the right, before payment, to inspect the Goods either at the Contractor's stores, during manufacture, at the ports and/or in places of shipment, or at the OSCE's premises upon delivery. The Contractor shall provide all facilities for such inspection. The OSCE may issue a written waiver of inspection. Any inspection carried out by representative(s) of the OSCE or any waiver thereof shall be without prejudice to other provisions of the Contract concerning obligations assumed by the Contractor, including specifications of the Goods.

9. Upon delivery and inspection of the Goods, the OSCE shall issue a written protocol, stating acceptance of the Goods. Should any Goods fail to conform to the technical specifications, codes and standards under the Contract, the OSCE may reject the Goods. The Contractor shall, at no cost to the OSCE, replace the rejected Goods or, alternatively, rectify the non-conformity.
10. In the case of Goods ordered on the basis of specifications or samples, the OSCE shall have the right to reject the Goods or any part thereof and terminate the Contract if the Goods do not conform to the specifications and/or samples. Nothing in this clause shall in any way release the Contractor from any warranty or other obligations under the Contract.

SHIPPING AND INSURANCE

11. Shipping arrangements shall be undertaken by the Contractor who shall pre-pay the freight and insurance. Partial shipments for Goods requiring customs declarations shall be agreed in advance with the OSCE. Original shipping documents including the packing list shall be airmailed by the Contractor to the OSCE.

CUSTOMS DECLARATION

12. Where imported Goods are subject to import duties, a customs declaration shall be provided by the OSCE, exempting the OSCE from these charges.

OBSERVANCE OF LAW AND EXPORT LICENCES

13. The Contractor shall comply with all laws, ordinance, rules and regulations bearing upon the performance of its obligations under the terms of the Contract. If an export licence or any other governmental authorisation is required for the Goods, it shall be the obligation of the Contractor to obtain such licence or governmental authorisation. In the event of the Contractor's failure to obtain such licence or authorisation within a reasonable time, the OSCE may immediately terminate the Contract.

PRICE

14. The price of the Goods shall be as stated in the Contract and may not be increased, except with the express written agreement of the OSCE. Time in connection with any cost discounts offered will be computed from the date of receipt by the OSCE of full documentation as specified in the Contract.

PAYMENT

15. Unless otherwise stipulated in the Contract, the OSCE shall make payment within thirty (30) Days of the later of:
 - (a) acceptance by the OSCE of the Goods;
 - (b) receipt of customary shipping documents and any other documents specified in the Contract; and
 - (c) receipt of the original invoice issued by the Contractor.
16. All invoices shall be in original and shall contain the OSCE Purchase Order number, and a description, the quantities, unit and total price(s) of the Goods delivered. The currency of invoice and payment shall be as specified in the Contract. Unless otherwise authorised by the OSCE, a separate invoice shall be submitted for each shipment under the Contract. Subject to Clause 19 below, if applicable, the VAT amount shall be separately identified in the invoice.
17. Payment for Goods by the OSCE shall not be deemed an acceptance of the Goods.
18. The OSCE shall not pay any charge for late payments.

TAX EXEMPTION

19. The Contractor's price shall reflect any tax exemption to which the OSCE is entitled. If it is subsequently determined that any taxes that have been included in the price are not required to be paid or if, having been paid, any such taxes are subject to refunding, the OSCE shall deduct the amount from the Contract price. Payment of such adjusted amount shall constitute full payment by the OSCE. In the event that any taxing authority refuses to recognize the OSCE's exemption from taxes, the Contractor shall immediately consult with the OSCE to determine a mutually acceptable procedure for settling the applicable amount.

WARRANTY

20. The Contractor warrants that the Goods furnished under the Contract conform to the technical specifications, description and standards specified in the Contract, and are new and unused, and free from defects in design, workmanship and/or materials.
21. The Contractor shall provide a warranty for the Goods for a period of one (1) year from the date of acceptance of the Goods by the OSCE, unless the standard manufacturer's warranty period is longer in which case the longer period shall apply.
22. In the case of "homogeneously defined" or disposable goods, should any portion of the Goods, at any time, not comply with clause 6 or 7 herein or otherwise prove to be defective, the Contractor shall, upon written notification from the OSCE, replace that portion of the Goods and bear all costs associated with the replacement of same.

PACKING

23. The Goods shall be packed and marked in a proper manner and in accordance with the Contract and any statutory requirements and any requirements of the carrier(s). In particular, the Goods shall be marked with the OSCE Purchase Order number and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings.
24. The Contractor shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination. The packing shall be sufficient to withstand, without limitation, rough handling during transit. Packing case

size and weights shall take into consideration, where appropriate, the remoteness of the final destination and the absence of appropriate handling facilities at all points in transit.

25. All packaging materials shall be non-returnable.

DEFAULT AND DAMAGES

26. If due to reasons attributable to the Contractor, the Contractor fails or refuses to:
- (a) deliver any or all of the Goods under the Contract;
 - (b) comply with any or all of the terms and conditions set out in the Contract; or
 - (c) deliver any or all of the Goods under the Contract on or before the Delivery Date;

the OSCE may hold the Contractor in default under the Contract.

27. When the Contractor is thus in default, the OSCE may, by written notice to the Contractor, immediately terminate the Contract in whole or in such part or parts thereof in respect of which the Contractor is in default.
28. Alternatively to clause 27 above when the Contractor is thus in default, the OSCE may, at its own discretion, set a reasonable period of time for the Contractor to remedy its default. Any new Delivery Date shall be specified in a written amendment to the Contract, duly countersigned by the Contractor.
29. The OSCE may, at its discretion, impose penalties upon the Contractor calculated in accordance of clause 33 for each Day the Contractor is late in delivering the Goods past the Delivery Date initially specified in the Contract.
30. If the Contractor does not remedy its default within the period of time accorded under clause 28, the OSCE may, by written notice to the Contractor, terminate the Contract with immediate effect.
31. Upon any termination of the Contract, in whole or such part(s) thereof in respect of which the Contractor is in default, the OSCE may engage another contractor to deliver the Goods and recover any difference in price and any additional costs from the Contractor.
32. The Contractor shall indemnify the OSCE for all losses, charges, costs and expenses, which the OSCE may suffer or incur as a result the Contractor's default, including those resulting from engaging another contractor pursuant to clause 31.

PENALTIES

33. If, in accordance with clause 29, the OSCE imposes penalties on the Contractor, such penalties shall amount to zero point one percent (0.1%) of the total Contract price for each Day following the initial Delivery Date specified in the Contract but shall not amount more than ten percent (10%) of the total Contract price. The penalties for the delay may be deducted by OSCE from any sum(s) due, or to become due, by the OSCE to the Contractor.

DELAY NOT ATTRIBUTABLE TO THE CONTRACTOR

34. If the Contractor is delayed at any time in the delivery of the Goods or fulfilment of any other of the Contractor's obligations by any act or omission of the OSCE, or by any of its officials, or by any separate contractor(s) contracted by the OSCE, or by changes ordered in the type and/or quantity of the ordered Goods, or the Place(s) of Delivery, or any causes beyond the Contractor's reasonable control, or by any other cause, which the OSCE determines may reasonably justify the delay, the Delivery Date of the Goods, or fulfilment of any other of the Contractor's applicable obligations shall be extended for such reasonable period of time as the OSCE and the Contractor mutually determine. The set reasonable period of time and any amended delivery date shall be specified in a written amendment to the Contract, duly countersigned by the Contractor.

FORCE MAJEURE

35. As soon as possible after the occurrence of any event constituting *Force Majeure*, but no later than three (3) Days, the Contractor shall give notice and full particulars in writing to the OSCE of the *Force Majeure*. If the Contractor is thereby rendered unable, wholly or in part, to meet its obligations under the Contract, the OSCE may terminate the Contract with immediate effect by providing written notice to the Contractor.

INDEMNITY

36. The Contractor shall indemnify, hold and save harmless and defend at its own expense the OSCE, its officials, agents, servants and employees from and against all suits, claims, demands and liability of any nature or kind, including costs and expenses, arising out of acts or omissions of the Contractor or its employees, agents or subcontractors in the performance of the Contract.
37. Clause 36 shall include, without limitation, claims and liabilities in the nature of workmen's compensation and claims and liabilities arising out of the use of patented inventions or devices.

ASSIGNMENT

38. The Contractor shall not assign, transfer, pledge or make other disposition of the Contract or any part thereof or of any of the Contractor's rights, claims or obligations under the Contract except with the express written consent of the OSCE. Any assignment made without such consent shall be void and of no effect.
39. The Contractor shall not subcontract any of its obligations under the Contract without the express written consent of the OSCE. The OSCE may require the Contractor to furnish particulars of the proposed subcontract as the OSCE deems necessary.

40. The OSCE's approval of any subcontracting shall not relieve the Contractor from any liability or obligation under the Contract. In any subcontract, the Contractor agrees to bind the subcontractor by the same terms and conditions by which the Contractor is bound under the Contract.

INSOLVENCY AND BANKRUPTCY

41. Should the Contractor become insolvent or should control of the Contractor change by virtue of insolvency, the OSCE may with immediate effect and without prejudice to any other right or remedy available to it, suspend the performance of the Contractor's obligations or terminate the Contract with immediate effect, by providing the Contractor with written notice thereof.

42. Should the Contractor be adjudged bankrupt, or should the Contractor make a general assignment for the benefit of its creditors, or should a receiver be appointed on account of the Contractor's insolvency, the OSCE may, without prejudice to any other right or remedy available to it, terminate the Contract with immediate effect by providing the Contractor with written notice thereof.

TERMINATION

43. The OSCE shall have the right to terminate the Contract or any of the provisions thereof at any time by serving a three (3) Days notice to the Contractor.

44. In the event of termination, the Contractor may charge the OSCE for reasonable costs or expenses incurred by it up to the effective date of the termination. Such expenses shall only be paid by the OSCE on production by the Contractor of supporting evidence to the satisfaction of the OSCE.

45. Clause 44 above shall not apply to cases of termination including those in accordance with clauses 27 and 30 herein.

WAIVER

46. A waiver of any breach of or default under the Contract shall not constitute a waiver of any other breach or default and shall not affect the other terms of the Contract. The rights and remedies provided by the Contract are cumulative and are not exclusive of any other rights or remedies.

ADVERTISING

47. The Contractor shall not advertise or otherwise make public the fact that it is a contractor to the OSCE. The Contractor shall not in any way use the name, emblem, logo, official seal, or any abbreviation of the OSCE.

DISCRETION and CONFIDENTIALITY

48. The Contractor is required to exercise the utmost discretion in all matters relating to the Contract. Unless required in connection with the performance of the Contract or expressly authorised in writing by the OSCE, the Contractor shall not disclose at any time to any third party any information which has not been made public and which is known to the Contractor by reason of its association with the OSCE. The Contractor shall not, at any time, use such information to any private advantage. These obligations do not lapse upon any completion, expiration, cancellation or termination of the Contract.

NOTICES

49. Any notice given in connection with the Contract shall be given in English and in writing and shall be deemed to be validly given if sent by registered mail or by fax to the other Party at the following:

- (a) for the OSCE: the contact details set out in the 'OSCE BUYER' name field of the Purchase Order; and
- (b) for the Contractor: the contact details set out in the 'CONTRACTOR' named field of the OSCE Purchase Order.

STAFF MEMBERS NOT TO BENEFIT

50. The Contractor shall not grant to any official of the OSCE any direct or indirect benefit or preferential treatment on the basis of the Contract or the award thereof. Any breach of this provision shall constitute a fundamental breach of the Contract.

GOVERNING LAW

51. The Contract shall be governed by and construed in accordance with the substantive laws of the Republic of Austria.

SETTLEMENT OF DISPUTES

52. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with the Contract or its interpretation. Any dispute, controversy or claim arising out of or in relation to this Contract shall be settled through negotiations between the Parties. If the Parties fail to settle the dispute amicably within sixty (60) Days of commencement of the negotiations, the dispute shall be settled through arbitration. Arbitration shall be performed in accordance with the UNCITRAL arbitration rules. One (1) sole arbitrator shall be appointed who shall have full powers to make final and binding decisions. The appointing authority shall be the Permanent Court of Arbitration at The Hague. The place of arbitration shall be Vienna and the language used in the arbitration proceedings shall be English.

PRIVILEGES AND IMMUNITIES

53. No provision of the Contract shall be deemed, or interpreted as, a waiver of the privileges and immunities enjoyed by the OSCE.

AMENDMENTS

54. No modification, amendment or change to the Contract, or waiver of any of its provisions, or any additional contractual relationship with the Contractor shall be valid unless approved in the form of a written amendment to the Contract, signed by a fully authorised representative of each Party.

VALIDITY

55. The invalidity in whole or part of any condition of the Contract or clause thereof shall not affect the validity of the remainder of such condition or clause.

AUDIT

56. The Contractor shall keep accurate and systematic accounts and records in respect of its performance of the Contract, in accordance with internationally accepted bookkeeping standards and principles. The Contractor shall permit the OSCE or its designated representative periodically, and up to seven (7) years after the expiry or termination of the Contract, to examine these accounts and records, to have them audited by auditors appointed by the OSCE, and to have copies made.

ENTIRE AGREEMENT

57. The Contract constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement, whether orally or in writing, between the Parties relating to the subject matter of the Contract.

GOVERNING LANGUAGE

58. This Contract has been executed in the English language which shall be the binding and controlling language for all matters relating to the meaning and interpretation of this Contract.