

GENERAL CONDITIONS FOR CONTRACTS SIGNED BY THE COMMUNITY PLANT VARIETY OFFICE

Concern all direct, framework, specific contracts/order forms, service/supply, works contracts and purchase orders with French and Foreign suppliers signed by the Community Plant Variety Office (CPVO)

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PART I: GENERAL CONDITIONS

Article 1. Definitions

For the purpose of any *contract* with the CPVO, the following definitions (indicated in *italics* in the text) apply:

'Breach of obligations': failure by a party to fulfil one or more of its contractual obligations;

'Confidential information or document': any information or document received by either party from the other or accessed by either party in the context of the *implementation of the Contract*, that any of the parties has identified in writing as confidential. It may not include information that is publicly available;

'Conflict of interest': a situation where the impartial and objective *implementation of the Contract* by the contractor is compromised or negatively affected for reasons involving family, emotional life, political or national affinity, economic interest, any other direct or indirect personal interest of the contractor, its related persons or personnel, or any other shared interest with the CPVO or any third party related to the subject matter of the *Contract*;

'Contract': means a direct (or purchase order) or framework contract (or specific contract/order form) for supplies or services or works, as specified in the title of the *Contract*;

'Creator': means any natural person who contributes to the production of the *result*;

'Force majeure': any unforeseeable and unavoidable situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the *Contract*. The situation or event must not be attributable to error or negligence on the part of the parties and must prove to be inevitable despite their exercising due diligence.

Constitute events of force majeure for the parties: natural disasters, acts of public authority, such as pandemic or public health crises, embargoes, internal or national strikes, exceptional climatic conditions preventing the manufacture or delivery, insurrections, riots... (non-exhaustive list).

Breaches or negligence of subcontractors, defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as *force majeure*, unless they stem directly from a relevant case of *force majeure*;

'Formal notification' (or 'formally notify'): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;

'Fraud': an act or omission committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the CPVO's financial interests, and relating to: i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the CPVO budget, ii) the non-disclosure of information in violation of a specific obligation, with the same effect or iii) the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the CPVO's financial interests;

'Implementation of a *Contract*': the purchase of services envisaged in a Framework contract through the signature and *performance of specific contracts/order forms* or the purchase of services/supplies/works envisaged through the signature and performance of direct contracts;

'Interface control document': the guideline document which lays down the technical specifications, message standards, security standards, checks of syntax and semantics, etc. to facilitate machine-to-machine connection. This document is updated on a regular basis;

'Irregularity': any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the CPVO's budget;

'Notification' (or 'notify'): form of communication between the parties made in writing including by electronic means;

'Performance of a *Contract*': the execution of *tasks* and delivery of the purchased services by the contractor to the CPVO, within a *Contract*;



'Personnel': persons employed directly or indirectly or contracted by the contractor or its subcontractors to implement the *Contract*; also, *personnel* from a Contractor who is granted access to the CPVO's premises for a short- or long-term period for executing a *Contract*;

'Pre-existing material': any material, document, technology or know-how which exists prior to the contractor using it for the production of a *result* in the *implementation of the Contract*;

'Pre-existing right': any industrial and intellectual property right on *pre-existing material*; it may consist in a right of ownership, a licence right and/or right of use belonging to the contractor, the *creator*, the CPVO as well as to any other third parties;

'Professional conflicting interest': a situation in which the contractor's previous or ongoing professional activities affect or risk affecting its capacity to implement/perform the *Contract* in an independent, impartial and objective manner, to the appropriate quality standard;

'Purchase order': a simplified form of direct contract by which the CPVO purchases supplies, services and/or works;

'Related person' or 'Authorized representative': any natural or legal person who is a member of the administrative, management or supervisory body of the contractor, or who has powers of representation, decision or control with regard to the contractor;

'Request for service': a document from the CPVO requesting that the contractors part of a multiple Framework contract with re-opening of competition to provide a specific tender for services whose terms are not entirely defined under the Framework contract;

'Result': any intended outcome of the *implementation of the Contract*, whatever its form or nature. A *result* may be further defined in the *Contract* as a deliverable. A *result* may, in addition to newly created materials produced specifically for the CPVO by the contractor or at its request, also include *pre-existing materials*;

'Specific contract': a contract implementing the Framework contract and specifying details of a service to be provided;

'Substantial error': any infringement of a *contract* provision resulting from an act or omission, which causes or might cause a loss to the CPVO's budget;

'Tasks' refers to the delivery of supplies and/or the provision of services and/or works, as specified in the tender specifications;

'Willful misconduct': a violation of applicable laws or regulations or ethical standards of the profession to which a contractor or a *related person* belongs, including any conduct leading to sexual or other exploitation or abuse, or any wrongful conduct of the contractor or a *related person* which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence.

Article 2. Roles and responsibilities in the event of a joint tender

Any change in the legal personality of the contractor, whether due to a merger, takeover, acquisition or any other cause, must be *notified* immediately in writing to the CPVO.

Where required by the CPVO, the contractor must provide without unjustified delay a new third-party file form, duly completed and signed.

In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group is appointed as leader of the group.

Article 3. Severability

Each provision of the *Contract* is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the *Contract*. This does not affect the legality, validity or enforceability of any other provisions of the *Contract*, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision, which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article 11 of the present General Conditions. The *Contract* must be interpreted as if it had contained the substitute provision as from its entry into force.

Article 4. Provision of services

- 4.1** Signature of a Framework contract does not guarantee any actual purchase. The CPVO is bound only by *specific contracts/order forms* implementing a Framework contract.
- 4.2** The contractor must provide services of high quality standards, in accordance with the state of the art in the industry and the provisions of the *Contract*, in particular the tender specifications and the terms of its tender. Timely delivery of the services is essential for the CPVO. Where the CPVO has the right to make modifications to the results, they must be delivered in a format and with the necessary information, which effectively allow such modifications to be made in a convenient manner.
- 4.3** The contractor must comply with the minimum requirements in full compliance with the tender specifications. This includes compliance with applicable obligations under environmental, social and labour law established by Union law, national law and collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU¹, in compliance with data protection obligations resulting from Regulation (EU) 2016/679² and Regulation (EU) 2018/1725³.
- 4.4** The contractor must obtain any permit or licence required in the State where the *Contract* has to be performed.
- 4.5** All periods specified in the *Contract* are calculated in calendar days, unless otherwise specified.

¹ OJ L 94 of 28.03.2014, p. 65

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p.1, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG

³ Regulation (EU) 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295/39, 21.11.2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1725&from=EN>



4.6 The contractor must not present itself as a CPVO representative and must inform third parties that it is not part of the European public service.

4.7 The contractor is responsible for the personnel who carry out the tasks assigned to them and exercises its authority over its personnel without interference by the CPVO. The contractor must inform its personnel that:

- (a) they may not accept any direct instructions from the CPVO; and
- (b) their participation in providing the services does not result in any employment or contractual relationship with the CPVO.

4.8 The contractor must ensure that the personnel implementing the Contract and any future replacement personnel possess the professional qualifications and experience required for the execution of the tasks assigned to them, as the case may be on the basis of the selection criteria set out in the tender specifications.

4.9 At the CPVO's reasoned request, the contractor must replace any member of personnel who:

- (a) does not have the expertise required to provide the services; or
- (b) has caused disruption at the premises of the CPVO.

The contractor bears the costs of replacing its *personnel* and is responsible for any delay in providing the services resulting from the replacement of *personnel*. Before deciding to replace a member of *personnel*, the contractor should first give him the opportunity to present observations.

4.10 The contractor must record and report to the CPVO any problem that affects, either partially or totally, its ability to execute the tasks. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.

4.11 Should the contractor fail to perform its obligations under the *Contract* in accordance with high quality standards, the state of the art in the industry and the provisions of the *Contract* (in particular the tender specifications and the terms of its tender), the CPVO may – without prejudice to its right to terminate the *Contract* – reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the CPVO may claim compensation or impose liquidated damages provided for in Article 18 of the present General Conditions or decide to have these obligations performed by a third party, at the contractor's expense. The contracting authority shall *formally notify* the contractor of its decision to have the contractor substituted and the grounds for this substitution.

Any such substitution does not affect the contractor's liability and is without prejudice to the contracting authority's other rights and remedies, including but not limited to its right to claim damages under Article 18 that the substitution would not cover.

4.12 The contractor must immediately inform the CPVO of any changes in the exclusion situations as declared, according to Article 139 (1) of the Financial Regulation (EU)

Article 5. Communication between the parties

5.1 Form and means of communication

Any notification, communication of information, notices or documents under the *Contract* must:

- (a) be made in writing preferably in electronic format in the language of the *Contract*;
- (b) bear the *Contract* number;
- (c) be made using the relevant communication details set out in the special conditions, where applicable.

If a party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.



The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings.

5.2 Date of communications by post and email

Any communication is deemed to have been made when the receiving party receives it, unless the Special Conditions refers to the date when the communication was sent.

E-mail is deemed to have been received by the receiving party on the day of dispatch of the e-mail, provided that it is sent to the e-mail address indicated in the Special Conditions. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Mail sent to the CPVO using the postal services is deemed to have been received by the CPVO on the date on which the department responsible referred to in the Special Conditions registers it.

Formal notifications by postal services are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

5.3 Submission and validity of digital documents

The parties agree that any digital document, including related attachments exchanged via email or signed electronically:

- (a) is considered as equivalent to a paper document,
- (b) is legally binding on the parties and has full legal effect,
- (c) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.

The parties expressly waive any rights to contest the validity of such a document solely on the grounds that communications between the parties occurred through emails or that the document has been signed through electronic means.

Article 6. Liability

- 6.1** The contractor is solely responsible for complying with any legal obligations incumbent on it. In particular, where the *Contract* is to be executed on French territory, the contractor must ensure compliance with the relevant provisions of French legislation concerning health and safety in the workplace and the rights of workers.
- 6.2** The CPVO is not liable for any damage or loss caused by the contractor, including any damage or loss to third parties during or as a consequence of the implementation of the *Contract*.
- 6.3** If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the implementation of the *Contract*. It must also take out supplementary insurance as reasonably required by standard practice in the industry. Upon request, the contractor must provide evidence of insurance coverage to the CPVO.
- 6.4** The contractor is liable for any loss or damage caused to the CPVO during or as a consequence of the implementation of the *Contract*, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the relevant specific contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor or of its personnel or subcontractors,



as well as in the case of an action brought against the CPVO by a third party for breach of its intellectual property rights, the contractor is liable for the whole amount of the damage or loss.

- 6.5** The contractor must indemnify and keep the CPVO clear of any damage or costs incurred in connection with a claim. The contractor must give a compensation in case of an action, claim or procedure brought against CPVO by a third party, as being a damage caused by the contractor during the implementation of the *Contract*.
- 6.6** If a third party brings any action against the CPVO in connection with the implementation of the *Contract*, including any action for alleged breach of intellectual property rights, the contractor must assist the CPVO in the legal proceedings, including by intervening in support of the CPVO upon request. If the CPVO's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the implementation of the *Contract*, Article 6.4 of the present General Conditions applies.
- 6.7** If the contractor is composed of two or more economic operators (i.e. who submitted a joint tender), they are all jointly and severally liable to the CPVO for the implementation of the *Contract*.
- 6.8** The CPVO is not liable for any loss or damage caused to the contractor during or as a consequence of implementation of the *Contract*, unless the loss or damage was caused by wilful misconduct or gross negligence of the CPVO.

Article 7. Conflict of interest and professional conflicting interests

- 7.1** The contractor must take all the necessary measures to prevent any situation of conflict of interest or professional conflicting interest.
- 7.2** The contractor must notify the CPVO in writing as soon as possible of any situation that could constitute a conflict of interest or a professional conflicting interest during the implementation of the *Contract*. The contractor must immediately take action to rectify the situation.

The CPVO may do any of the following:

- (a) verify that the contractor's action is appropriate;
- (b) require the contractor to take further action within a specified deadline to rectify the situation;
- (c) decide not to award a *specific contract* to the contractor until the situation has been rectified.

- 7.3** The contractor declares that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to the performance of the *Contract*

- 7.4** The contractor must pass on all the relevant obligations in writing to:

- (a) its personnel;
- (b) any natural person with the power to represent it or take decisions on its behalf;
- (c) third parties involved in the *implementation of the Contract*, including subcontractors.

The contractor must also ensure that the persons referred to above are not placed in a situation, which could give rise to *conflicts of interests*.

- 7.5** Without prejudice to Article 4 of the present General Conditions, the contractor must replace immediately and without compensation from the CPVO, any member of its personnel placed in a situation, which could give rise to a conflict of interests or a professional conflicting interest.



Article 8. Confidentiality

- 8.1** The CPVO and the contractor must treat with confidentiality any information or document, in any format, disclosed in writing or orally, relating to the *implementation of the Contract*
- 8.2** Each party must:
- (a) not use *confidential information or documents* for any purpose other than to perform its obligations under the *Contract* without the prior written agreement of the other party;
 - (b) ensure the protection of such *confidential information or documents* with the same level of protection as its own *confidential information or documents* and in any case with due diligence;
 - (c) not disclose, directly or indirectly, *confidential information or documents* to third parties without the prior written agreement of the other party.
- 8.3** The confidentiality obligations set out in this article are binding on the CPVO and the contractor during the implementation of the *Contract*, and for as long as the information or documents remain confidential unless:
- (a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
 - (b) the *confidential information or documents* become public through other means than a *breach of the confidentiality obligation*;
 - (c) the applicable law requires the disclosure of the *confidential information or documents*.
- 8.4** The contractor must obtain from any related person and its personnel, as well as from third parties involved in the implementation of the *Contract*, a commitment that they will comply with the present article. At the request of the CPVO, the contractor must provide a document providing evidence of this commitment.
- 8.5** Any distribution or publication of information relating to the *Contract* by the contractor requires prior written authorisation from the CPVO. It must state that the opinions expressed are those of the contractor only and do not represent the CPVO's official position.
- As a consequence, all media and promotion actions carried out by contractors, which reference the commercial relationship between the contractor and the CPVO, must be pre-cleared by the CPVO.
- 8.6** The use of information obtained by the contractor in the course of the *Contract* for purposes other than its performance is forbidden, unless the CPVO has specifically given prior written authorisation to the contrary.
- 8.7** The CPVO is entitled to make available (any part of) the confidential information or documents to its staff and the staff of other Union institutions, agencies and bodies, as well to other persons and entities working for the contracting authority or cooperating with it. This includes other contractors or subcontractors and their personnel, who need to know the same for the performance of a contract who know they must treat it confidentially and who are bound by confidentiality obligations that are no less restrictive than CPVO's confidentiality obligations set out in this section.
- 8.8** The receiving party will, on request from the other party, return all copies and records of the confidential information or documents of the other party and will not retain any copies or records of the confidential information or documents of the other party.
- 8.9** The contractor must not grant access to any equipment provided by or delivered to the CPVO during the implementation of the *Contract* to any third parties, unless priorly authorised by the CPVO in writing.



Article 9. Processing of personal data

9.1 Processing of personal data by the CPVO

Any personal data included in or relating to the *Contract*, including its *implementation*, shall be processed in accordance with Regulation (EU) 2018/1725⁴. Such data shall be processed solely for the purposes of the *implementation*, management and monitoring of the *Contract* by the data controller.

The contractor or any other person whose personal data is processed by the data controller in relation to the *Contract* has specific rights as a data subject under Chapter III (Articles 14-25) of Regulation (EU) 2018/1725, in particular the right to access, rectify or erase their personal data and the right to restrict or, where applicable, the right to object to processing or the right to data portability.

Should the contractor or any other person whose personal data is processed in relation to the *Contract* have any queries concerning the processing of its personal data, it shall address itself to the data controller. They may also address themselves to the Data Protection Officer of the data controller. They have the right to lodge a complaint at any time to the European Data Protection Supervisor.

Details concerning the processing of personal data are available in the data protection notice mentioned in the Special Conditions.

For the purpose of this article,

- (a) the data controller is the entity that will be communicated to the contractor upon signature of the *Contract*;
- (b) the data protection notice is available at
https://cpvo.europa.eu/sites/default/files/Privacy_Statement_for_Public_Procurements.pdf

9.2 Processing of personal data by the contractor

The subject matter and purpose of the processing of personal data by the contractor are to be specified in the Special Conditions, if applicable.

Should the implementation of the *Contract* need to process with personal data, the localisation of and access to the personal data processed by the Contractor shall comply with the following:

- (a) the personal data shall only be processed within the territory of the European Union and the European Economic Area and will not leave that territory;
- (b) the data shall only be held in data centres located within the territory of the European Union and the European Economic Area;
- (c) no access shall be given to such data outside of the European Union and the European Economic Area;
- (d) access to data may be given on a need to know basis only to authorised persons established in a country which has been recognised by the European Commission as providing adequate protection to personal data;
- (e) the contractor may not change the location of data processing without the prior written authorisation of the CPVO;
- (f) any transfer of personal data under the FWC to third countries or international organisations shall fully comply with the requirements laid down in Chapter V of Regulation (EU) 2018/1725.

The processing of personal data by the contractor shall meet the requirements of Regulation (EU) 2018/1725 and

⁴ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC,
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018R1725>



be processed solely for the purposes set out by the controller, designated in the Special conditions.

The contractor shall assist the controller for the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to the *Contract* as laid down in Chapter III (Articles 14-25) of Regulation (EU) 2018/1725. The contractor shall inform without delay the controller about such requests.

The contractor may act only on documented written instructions and under the supervision of the controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

The contractor shall grant its *personnel* access to the data to the extent strictly necessary for the *implementation*, management and monitoring of the *Contract*. The contractor must ensure that the *personnel* authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article 8 of the present General Conditions.

The contractor shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing, in order to ensure, in particular, as appropriate:

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
- (e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

The contractor shall notify relevant personal data breaches to the controller without undue delay and at the latest within 48 hours after the contractor becomes aware of the breach. In such cases, the contractor shall provide the controller with at least the following information:

- (a) nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- (b) likely consequences of the breach;
- (c) measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.

The contractor shall immediately inform the data controller if, in its opinion, an instruction infringes Regulation (EU) 2018/1725, Regulation (EU) 2016/679, or other Union or Member State data protection provisions as referred to in the tender specifications.

The contractor shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 41 under Regulation (EU) 2018/1725 to:

- (a) ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
- (b) notify a personal data breach to the European Data Protection Supervisor;
- (c) communicate a personal data breach without undue delay to the data subject, where applicable;
- (d) carry out data protection impact assessments and prior consultations as necessary.

The contractor shall maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties.



The CPVO is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services as provided by the present article) and data security, which includes personal data held on behalf of the CPVO in the premises of the contractor or subcontractor.

The contractor shall notify the CPVO without delay of any legally binding request for disclosure of the personal data processed on behalf of the CPVO made by any national public authority, including an authority from a third country. The contractor may not give such access without the prior written authorisation of the CPVO.

The duration of processing of personal data by the contractor will not exceed the period referred to in Article 24.2 of the present General Conditions. Upon expiry of this period, the contractor shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless European or national law requires a longer storage of personal data.

For the purpose of Article 10 of the present General Conditions, if part or all of the processing of personal data is subcontracted to a third party, the contractor shall pass on the obligations as set out in the *Contract* in writing to those parties, including subcontractors. At the request of the CPVO, the contractor shall provide a document providing evidence of this commitment.

Article 10. Subcontracting

- 10.1** The contractor must not subcontract and have the *Contract* implemented by third parties beyond the third parties already mentioned in its tender without prior written authorisation from the CPVO.
- 10.2** Even if the CPVO authorises subcontracting, the contractor remains bound by its contractual obligations and is solely responsible for the implementation of the *Contract*.
- 10.3** The contractor must ensure that the subcontract does not affect the rights of the CPVO under the *Contract*, particularly those under Articles 8, 13 and 24 of the present General Conditions.
- 10.4** The CPVO may request the contractor to replace a subcontractor found to be in a situation provided for in points (d) and (e) of Article 18.1 of the present General Conditions. The contractor bears the costs of such replacement.

Article 11. Amendments

- 11.1** Any amendment to the *Contract*, must be made in writing before all contractual obligations have been fulfilled. Any acceptance or payment by the CPVO of an invoice referring to the general terms and conditions of the contractor does not constitute a valid amendment to contract and does not make these general terms and conditions applicable to the *Contract*.
- 11.2** Any amendment must not make changes to the *Contract* that might alter the initial conditions of the procurement procedure or result in unequal treatment of tenderers or contractors.
- 11.3** A specific contract/order form must NOT be deemed to constitute an amendment to a framework contract.

Article 12. Assignment

- 12.1** The contractor must not assign any of the rights and obligations arising from the *Contract*.
- 12.2** By way of exception to the preceding clause, in duly justified exceptional circumstances, rights and / or obligations arising from the *Contract* may be assigned with the prior written authorisation of the CPVO. This authorisation shall be granted or not at the discretion of the contracting authority and upon request by the



contractor. The contractor's request shall detail the exceptional circumstances on which it is based and provide the identity of the intended assignee. The contracting authority may request additional information.

- 12.3** Any right or obligation assigned by the contractor without the authorisation mentioned in the preceding clause is not enforceable against the contracting authority. Accordingly, the assignor will remain jointly and severally bound with the assignee vis-à-vis the contracting authority.

Article 13. Intellectual property rights

13.1 Ownership of the rights in the results

The CPVO acquires irrevocably worldwide ownership of the *results* and of all intellectual property rights on the newly created materials produced specifically for the CPVO under the *Contract* and incorporated in the *results*, without prejudice however to the rules applying to *pre-existing rights* on *pre-existing materials*, as per Article 13.2 of the present General Conditions.

The intellectual property rights so acquired include any rights, such as copyright and other intellectual or industrial property rights, to any of the *results* and in all technological solutions and information created or produced by the contractor or by its subcontractor in *implementation of the Contract*. The CPVO may exploit and use the acquired rights as stipulated in the *Contract*. The CPVO acquires all the rights as from the moment the contractor has created the *results*.

The payment of the price as set out in the *Contract*, includes any fees payable to the contractor about the acquisition of ownership of rights by the CPVO including for all modes of exploitation and of use of the *results*.

13.2 Licensing rights on pre-existing materials

Unless provided otherwise in the Special Conditions, the CPVO does not acquire ownership of *pre-existing rights* under the *Contract*.

The contractor licenses the *pre-existing rights* on a royalty-free, non-exclusive and irrevocable basis to the CPVO, which may use the *pre-existing materials* for all the modes of exploitation set out in the *Contract*. Unless otherwise agreed, the licence is non-transferable and cannot be sub-licensed, except as provided hereafter:

- (a) the *pre-existing rights* can be sub-licensed by the CPVO to persons and entities working for it or cooperating with it, including contractors and subcontractors (whether legal or natural persons), but only for the purpose of their mission for the CPVO;
- (b) if the *result* is a "document" such as a report or a study, and it is meant to be published, the existence of *pre-existing materials* in the *result* may not prevent the publication of the document, its translation or its "reuse", being understood however, that the "reuse" may only be made of the *result* as a whole and not of the *pre-existing materials* taken separately from the *result*; for the sake of this provision, "reuse" and "document" have the meaning given by the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU).

All *pre-existing rights* are licensed to the CPVO from the moment the *results* are delivered and approved by the CPVO.

The licensing of *pre-existing rights* to the CPVO under the *Contract* covers all territories worldwide and is valid for the duration of intellectual property rights protection.

The payment of the price as set out in the *Contract* is deemed to also include any fees payable to the contractor in relation to the licensing of *pre-existing rights* to the CPVO, including for all forms of exploitation and of use of the *results*.

Where *implementation of the Contract* requires that the contractor uses *pre-existing materials* belonging to the CPVO, the CPVO may request that the contractor signs an adequate licence agreement. Such use by the contractor will not entail any transfer of rights to the contractor and is limited to the needs of the *Contract*.



13.3 Exclusive rights

The CPVO acquires the following exclusive rights:

- (a) reproduction: the right to authorise or prohibit direct or indirect, temporary or permanent reproduction of the *results* by any means (mechanical, digital or other) and in any form, in whole or in part;
- (b) communication to the public: the exclusive right to authorise or prohibit any display, performance or communication to the public, by wire or wireless means, including the making available to the public of the *results* in such a way that members of the public may access them from a place and at a time individually chosen by them; this also includes the communication on Internet and broadcasting by cable or by satellite;
- (c) distribution: the exclusive right to authorise or prohibit any form of distribution of *results* or copies of the *results* to the public, by sale or otherwise;
- (d) rental: the exclusive right to authorise or prohibit rental or lending of the *results* or of copies of the *results*;
- (e) adaptation: the exclusive right to authorise or prohibit any modification of the *results*;
- (f) translation: the exclusive right to authorise or prohibit any translation, adaptation, arrangement, creation of derivative works based on the *results*, and any other alteration of the *results*, subject to the respect of moral rights of authors, where applicable;
- (g) where the *results* are or include a database: the exclusive right to authorise or prohibit the extraction of all or a substantial part of the contents of the database to another medium by any means or in any form; and the exclusive right to authorise or prohibit the re-utilization of all or a substantial part of the contents of the database by the distribution of copies, by renting, by on-line or other forms of transmission;
- (h) where the *results* are or include a patentable subject-matter: the right to register them as a patent and to further exploit such patent to the fullest extent;
- (i) where the *results* are or include logos or subject-matter which could be registered as a trademark: the right to register such logo or subject-matter as a trademark and to further exploit and use it;
- (j) where the *results* are or include know-how: the right to use such know-how as is necessary to make use of the *results* to the full extent provided for by the *Contract*, and the right to make it available to contractors or subcontractors acting on behalf of the CPVO, subject to their signing of adequate confidentiality undertakings where necessary;
- (k) where the *results* are documents:
 - (i) the right to authorise the reuse of the documents in conformity with the Commission Decision of 12 December 2011 on the reuse of Commission documents (2011/833/EU), to the extent it is applicable and the documents fall within its scope and are not excluded by any of its provisions; for the sake of this provision, "reuse" and "document" have the meaning given to them by this Decision;
 - (ii) the right to store and archive the *results* in line with the document management rules applicable to the CPVO, including digitisation or converting the format for preservation or new use purposes;
- (l) where the *results* are or incorporate software, including source code, object code and, where relevant, documentation, preparatory materials and manuals, in addition to the other rights mentioned in this Article:
 - (i) end-user rights, for all uses by the CPVO or by subcontractors which result from the *Contract* and from the intention of the parties;
 - (ii) the rights to receive both the source code and the object code;
- (m) to license to third parties any of the exclusive rights or of the modes of exploitation set out in the *Contract*; however, for *pre-existing materials*, which are only licensed to the CPVO, the right to sub-license does not apply, except in the two cases foreseen by Article 13.2. of the present General Conditions;



- (n) to the extent that the contractor may invoke moral rights, the right for the CPVO, except where otherwise provided in the *Contract*, to publish the *results* with or without mentioning the *creator(s)*' name(s), and the right to decide when and whether the *results* may be disclosed and published.

The contractor warrants that the exclusive rights and the modes of exploitation may be exercised by the CPVO on all parts of the *results*, be it via a transfer of ownership of the rights, on those parts which were specifically created by the contractor, or via a licence of the *pre-existing rights*, on those parts consisting of *pre-existing materials*.

Where *pre-existing materials* are inserted in the *results*, the CPVO may accept reasonable restrictions impacting on the above list, provided that the said materials are easily identifiable and separable from the rest, that they do not correspond to substantial elements of the *results*, and that, should the need arise, satisfactory replacement solutions exist, at no additional costs to the CPVO. In such case, the contractor will have to clearly inform the CPVO before making such choice and the CPVO has the right to refuse it.

13.4 Identification of pre-existing rights

When delivering the *results*, the contractor must warrant that, for any use that the CPVO may envisage within the limits set in the *Contract*, the newly created parts and the *pre-existing material* incorporated in the *results* are free of claims from *creators* or from any third parties and all the necessary *pre-existing rights* have been obtained or licensed.

To that effect, the contractor must establish a list of all *pre-existing rights* to the *results* of the *Contract* or parts thereof, including identification of the rights' owners. If there are no *pre-existing rights* to the *results*, the contractor must provide a declaration to that effect. The contractor must provide this list or declaration to the CPVO together with the invoice for payment of the balance at the latest.

13.5 Evidence of granting of pre-existing rights

Upon request by the CPVO, the contractor must, in addition to the list mentioned under Article 13.4. of the present General Conditions, provide evidence that it has the ownership or the right to use all the listed *pre-existing rights*, except for the rights owned or licensed by the CPVO. The CPVO may request this evidence even after the end of the *Contract*.

This provision also applies to image rights and sound recordings.

This evidence may refer, for example, to rights to: parts of other documents, images, graphs, sounds, music, tables, data, software, technical inventions, know-how, IT development tools, routines, subroutines or other programs ('background technology'), concepts, designs, installations or pieces of art, data, source, background materials or any other parts of external origin.

This evidence must include, as appropriate:

- (a) the name and version number of a software product;
- (b) the full identification of the work and its author, developer, *creator*, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- (c) a copy of the licence to use the product or of the agreement granting the relevant rights to the contractor or a reference to this licence;
- (d) a copy of the agreement or extract from the employment contract granting the relevant rights to the contractor where parts of the *results* were created by its *personnel*;
- (e) the text of the disclaimer notice if any.

Provision of evidence does not release the contractor from its responsibilities if it is found that it does not hold the necessary rights, regardless of when and by whom this fact is revealed.

The contractor also warrants that it possesses the relevant rights or powers to execute the transfer and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final *results*.



13.6 Quotation of works in the result

In the *results*, the contractor must clearly point out all quotations of existing works. The complete reference should include as appropriate, the following: name of the author, title of the work, date and place of publication, date of creation, address of publication on the internet, number, volume and other information that allows the origin to be easily identified.

13.7 Moral rights of creators

By delivering the *results*, the contractor warrants that the *creators* will not object to the following on the basis of their moral rights under copyright:

- (a) that their names be mentioned or not mentioned when the *results* are presented to the public;
- (b) that the *results* be divulged or not after they have been delivered in their final version to the CPVO;
- (c) that the *results* be adapted, provided that this is done in a manner, which is not prejudicial to the *creator's* honour or reputation.

If moral rights on parts of the *results* protected by copyright may exist, the contractor must obtain the consent of *creators* regarding the granting or waiver of the relevant moral rights in accordance with the applicable legal provisions and be ready to provide documentary evidence upon request.

13.8 Image rights and sound recordings

If natural persons appear in a *result* or their voice or any other private element is recorded in a recognisable manner, the contractor must obtain a statement by these persons (or, in the case of minors, by the persons exercising parental authority) giving their permission for the described use of their image, voice or private element and, on request, submit a copy of the permission to the CPVO. The contractor must take the necessary measures to obtain such consent in accordance with the applicable legal provisions. This does not apply to persons whose permission is not required in line with the law of the country where photographs were taken, films shot or audio records made.

13.9 Copyright notice for pre-existing rights

When the contractor retains *pre-existing rights* on parts of the *results*, reference must be inserted to that effect when the *result* is used *if* set out in the Special Conditions, with the following disclaimer: '© — year —CPVO. All rights reserved. Certain parts are licensed under conditions to the EU', or with any other equivalent disclaimer as the CPVO may consider best appropriate, or as the parties may agree on a case-by-case basis. This does not apply where inserting such reference would be impossible, notably for practical reasons.

13.10 Visibility of CPVO funding and disclaimer

When making use of the *results*, the contractor must declare that they have been produced under a *Contract* with the CPVO and that the opinions expressed are those of the contractor only and do not represent the CPVO's official position. The CPVO may waive this obligation in writing or provide the text of the disclaimer.

13.11 Use of third parties' Intellectual Property rights

Should performance of the *Contract* involve the use of patents, trademarks, industrial designs, copyrights or any other intellectual right belonging to third parties, the contractor must indemnify the CPVO against any action for infringement, which may be brought against it.

The contractor must not indemnify the CPVO in cases where the action for infringement is the consequence of:

- the CPVO imposing the use of any industrial property rights mentioned in paragraph 13.1 of the present General Conditions and belonging to a third party;



- use of the industrial property rights by the CPVO for a purpose other than that indicated in or contrary to the purposes specified in the *Contract*;
- an unjustified refusal from the CPVO of changes to the provisions of the *Contract* proposed by the contractor to mitigate the risks of infringements of intellectual or industrial property rights.

The CPVO and the contractor must inform each other of any information that could lead to an intellectual property right impeding performance of the *Contract*. At the first indication that an action has been brought by a third party, in particular the lodging of a claim, even after *implementation of the Contract*, the party implicated must notify the other party without delay, whereupon both parties must act jointly and must exchange all information and evidence they may possess or obtain.

The contractor must obtain from third parties involved in the *implementation of the Contract*, including subcontractors, a commitment that they will comply with the obligations set out in this Article. A copy of these written undertakings must be provided to the CPVO, should it so request.

Article 14. Force majeure

- 14.1** If a party is affected by *force majeure*, it must immediately *notify* the other party, stating the nature of the circumstances, their likely duration and foreseeable effects.
- 14.2** A party is not liable for any delay or failure to perform its obligations under the *Contract* if that delay or failure is a result of force majeure. If the contractor is unable to fulfil its contractual obligations owing to force majeure, it has the right to remuneration only for the services actually provided.
- 14.3** The parties must take all necessary measures to limit any damage due to force majeure. In the event of a deposit paid, the parties shall meet to determine together and by common agreement whether it can be kept and reused within six months for a next service or, if no service is expected within six months, simply reimbursed.
- 14.4** Force majeure either suspends the implementation of the *Contract* as provided for in Art.17 of these General conditions or leads to the termination of the *Contract* as provided for in Article 18 of the present General Conditions.

Article 15. Liquidated damages

15.1 Delay in delivery

If the contractor fails to perform its contractual obligations within the applicable time limits set out in the *Contract* then, without prejudice to the contractor's actual or potential liability or to the CPVO's right to terminate the *Contract*, the CPVO may claim liquidated damages for each day of delay using the following formula:

$$(0.3 \times V/d)$$

where:

V is the amount specified in the Special Conditions or, where applicable, the price of the relevant purchase or deliverable or *result*;

d is the duration specified in the Special Conditions or, where applicable, the duration specified in the *Contract* or, failing that, the period between the date specified in the corresponding article of the Special Conditions, where applicable, and the date of delivery or performance specified in the relevant *Contract*, expressed in calendar days.

Liquidated damages for delay in delivery may be imposed together with a reduction in price under the conditions laid down in Article 16 of the present General Conditions or a substitution of the contractor under the conditions laid down in Article 4.11.



Any claim for liquidated damages does not affect (a) the contractor's liability for damages that liquidated damages would not cover, (b) the CPVO's rights under Article 18, nor (c) the CPVO's rights under Article 4.11 or (d) any other right or remedy that the CPVO may have under the *Contract*.

15.2 Procedure

The CPVO must *formally notify* the contractor of its intention to apply liquidated damages for delay in delivery and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the CPVO, taking into account the relevant observations, must *notify* the contractor:

- (a) either the withdrawal of its intention to apply liquidated damages; or
- (b) or its final decision to apply liquidated damages and the corresponding amount.

15.3 Nature of liquidated damages

The parties expressly acknowledge and agree that any amount payable under Article 15.1 and 15.2 of the present General Conditions are in the nature of liquidated damages and not a penalty and, in view of all the circumstances including the legitimate interest of the CPVO for a timely delivery to fulfil its mission of public services, represents a reasonable estimate of fair compensation for the damage incurred due to failure to provide the services within the applicable time limits provided in the *Contract*.

15.4 Claims and liability

Any claim for liquidated damages does not affect the contractor's actual or potential liability or the CPVO's rights under Article 18 of the present General Conditions.

Article 16. Reduction in price

16.1 Quality standards

If the contractor fails to provide the service in accordance with the *Contract* ('unperformed obligations') or if it fails to provide the service or supplies or execute the works in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the CPVO may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low-quality delivery. This includes in particular cases where the CPVO cannot approve a *result*, report or deliverable as defined in the corresponding article of the Special Conditions, after the contractor has submitted the required additional information, correction or new version.

A reduction in price may be imposed together with liquidated damages for delay in delivery under the conditions of Article 15 of the present General Conditions.

16.2 Procedure

The CPVO must *formally notify* the contractor of its intention to reduce the price and the corresponding calculated amount.

The contractor has 30 days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the contractor submits observations, the CPVO, taking into account the relevant observations, must *notify* the contractor:

- (a) of the withdrawal of its intention to reduce the price; or
- (b) of its final decision to reduce the price and the corresponding amount.

16.3 Claims and liability

Any reduction in price does not affect the contractor's actual or potential liability or the CPVO's rights under Article 18 of the present General Conditions.



Article 17. Suspension of the implementation of the *Contract*

17.1 Suspension by the contractor

If the implementation of the *Contract* is affected by *force majeure*, the contractor may suspend the provision of the *Contract*

The contractor must immediately *formally notify* the CPVO of the suspension. The *notification* must include a description of the *force majeure* and state when the contractor expects to resume the provision of services.

The contractor must *notify* the CPVO as soon as it is able to resume *performance of the Contract* unless the CPVO has already terminated it.

The CPVO is not entitled to compensation for suspension of any part of the *Contract*, in the event of *force majeure*.

17.2 Suspension by the CPVO

The CPVO may suspend the *implementation of the Contract* or any part of I; including but not limited to payments:

- (a) In case of *force majeure* affecting the *implementation of the Contract*
- (b) in order to verify whether the presumed *irregularities, fraud or breach of obligations* have actually occurred.
- (c) if the procedure for awarding the *Contract*, or if its performance proves to have been subject to irregularities, fraud or breach of obligations

The CPVO must *formally notify* the contractor of the suspension and the reasons for it. Suspension takes effect on the date of *formal notification*, or at a later date if the *formal notification* so provides.

The CPVO must *notify* the contractor as soon as the verification is completed whether:

- (a) it is lifting the suspension; or
- (b) it intends to terminate the *Contract* under Article 18.1 (f) or (j) of the present General Conditions.

The contractor is not entitled to compensation for suspension of any part of the *Contract* or pending *Contract*.

The CPVO may in addition suspend the time allowed for payments in accordance with Article 21.7 of the present General Conditions.

Article 18. Termination of the *Contract*

18.1 Grounds for termination by the CPVO

The CPVO may terminate the *Contract* in the following circumstances.

- (a) if provision of the services under the *Contract* has not actually started within 15 calendar days of the scheduled date and the CPVO considers that the new date proposed, if any, is unacceptable, taking into account Article 11.2 of the present General Conditions;
- (b) if the contractor is unable, through its own fault, to obtain any permit or licence required for *implementation of the Contract*;
- (c) if the contractor does not implement the *Contract* in accordance with the tender specifications or *request for service, supplies or works*, or is in breach of another substantial contractual obligation or repeatedly refuses to sign *specific contracts*. Termination of three or more *specific contracts* or *order forms* in these circumstances also constitutes grounds for termination of the Framework contract;



- (d) if the contractor or any person that assumes unlimited liability for the debts of the contractor is in one of the situations provided for in points (a) and (b) of Article 136(1) of the Financial Regulation⁵;
- (e) if the contractor or any *related person* is in one of the situations provided for in points (c) to (i) of Article 136(1) of the Financial Regulation;
- (f) if the procedure for awarding the *Contract* or the *implementation of the Contract* prove to have been subject to errors, irregularities, fraud or breach of obligations;
- (g) if the contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the contractor is in a situation that could constitute a *conflict of interest* or a *professional conflicting interest* as referred to in Article 7 of the present General Conditions and does not rectify the situation;
- (i) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the *implementation of the Contract* or substantially modify the conditions under which the *Contract* was initially awarded or a change regarding the exclusion situations listed in Article 136 of the Financial Regulation that calls into question the decision to award the *Contract* or the contractor becomes subject to restrictive measures hindering the performance of the *Contract*;
- (j) in the event of *force majeure*, where either resuming implementation is impossible or the necessary ensuing amendments to the *Contract* would mean that the tender specifications are no longer fulfilled or result in unequal treatment of tenderers or contractors;
- (k) if the contractor is in breach of the personal data protection obligations resulting from Article 9.2 of the present General Conditions;
- (l) if the contractor does not comply with the applicable personal data protection obligations resulting from Regulation (EU) 2016/679;
- (m) if it is manifest that, at a later date and before such breach becomes effective, the contractor will materially fail to perform the *Contract* in accordance with the tender specifications or will be materially in breach of another contractual obligation, unless the contractor provides the contracting authority with sufficient assurances of its future performance;
- (n) in the case of a framework contract, if the needs of the CPVO change and it no longer requires new supplies and/or services under the *Contract*; in such cases ongoing *specific contracts/order forms* remain unaffected;
- (o) if the termination of the framework contract with one or more of the contractors means that the multiple framework contract with reopening of competition no longer has the minimum required level of competition.

18.2 Grounds for termination by the contractor

The contractor may terminate the *Contract* in the following circumstances.

- (a) it has evidence that CPVO has committed substantial errors, irregularities or fraud in the procedure for awarding the *Contract* or in its implementation;
- (b) the CPVO fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to implement the *Contract* as provided for in the tender specifications;
- (c) the contractor may also terminate the *Contract* in the event of *force majeure*, where resuming *implementation* is impossible.

⁵ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193 of 30.7.2018, p.1

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1544791836334&uri=CELEX:32018R1046>



18.3 Procedure for termination

A party must *formally notify* the other party of its intention to terminate the *Contract* and the grounds for termination.

The other party has 15 days following the date of receipt to submit observations, including the measures it has taken or will take to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

If the other party submits observations, the party intending to terminate must *formally notify* it either of the withdrawal of its intention to terminate or of its final decision to terminate.

In the cases referred to in points (a) to (d), (g) to (i), (k) to (o) of Article 18.1 and in Article 18.2 of the present General Conditions, the date on which the termination takes effect must be specified in the *formal notification*.

In the cases referred to in points (e), (f) and (j) of Article 18.1 of the present General Conditions, the termination takes effect on the day following the date on which the contractor receives *notification* of termination.

In addition, at the request of the CPVO and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow the CPVO to complete, continue or transfer the services to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the services provision of goods, or execution of works. The parties may agree to draw up a transition plan detailing the contractor's assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

18.4 Effects of termination

The contractor is liable for damage incurred by the CPVO as a result of the termination of the *Contract*, including the additional cost of appointing and contracting another contractor to provide or complete the services, except if the damage is a result of a termination in accordance with Article 18.1 (j) or *Article* 18.2 of the present General Conditions. The CPVO may claim compensation for such damage.

The contractor is not entitled to compensation for any loss resulting from the termination of the *Contract* including loss of anticipated profits, unless the loss was caused by the situation specified in Article 18.2 of the present General Conditions.

The contractor must take all appropriate measures to minimise costs, prevent damage and cancel or reduce its commitments.

Within 60 days of the date of termination, the contractor must submit any report, deliverable or *result* and any invoice required for services that were provided before the date of termination.

In the case of joint tenders, the CPVO may terminate the *Contract* with each member of the group separately on the basis of points (d), (e), (g), (k), (l) and (m) of Article 18.1, and under the conditions set out in Article 11.2 of the present General Conditions.

Article 19. Invoices, value added tax and e-invoicing

19.1 Invoices and value added tax

As a general rule, the CPVO is exempt from all taxes and duties, including VAT, in accordance with Articles 3 and 4 of the Protocol 7 of the Treaty on the Functioning of the European Union as regards its privileges and immunities.

However, the applicable rule differs depending on the Country where the services and supplies are purchased from:

- For supplies and services purchased **IN FRANCE**, invoices must be **VAT included** and specify separately amounts not including VAT and amounts including VAT.
- For supplies and services, different from 'electronically supplied services', purchased **OUTSIDE France but within the EU**, invoices must be **exempt from taxes and duties, including VAT**. The CPVO shall provide exemption certificates upon validation from the French Ministry of individual proforma invoices for each individual purchase.



- **For 'electronically supplied services' purchased outside France but within the EU**, the invoices must be issued **with French VAT included, i.e. 20 %**. Indeed, since January 2015, telecommunications, broadcasting and electronically supplied services are always taxed in the country of the customer (France for the CPVO).

In all cases, invoices must contain the contractor's (or leader's in the case of a joint tender) identification data, the amount in Euro and the date, as well as the *Contract* reference.

19.2 E-invoicing

The contractor shall submit invoices in electronic format if the conditions concerning electronic invoicing are met. In this case, the receipt of invoices in standard format (pdf) is required.

Article 20. Price revision

If a price revision index is provided in the Special Conditions, the present Article applies to it. In that case, prices are fixed and not subject to revision during the first year of the *Contract*.

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

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

At the anniversary date, the CPVO must communicate the final index for the month in which the request was received, or failing that, the last provisional index available for that month. The contractor establishes the new price on this basis and communicates it as soon as possible to the CPVO for verification.

The CPVO purchases on the basis of the prices in force at the date on which the specific contract enters into force. The price revision is calculated using the following formula:

$$Pr = 0,8 \times Po \times \left(\frac{Ir}{Io} \right) + 0,2 \times Po$$

where:

- Pr = revised price;
- Po = price in the tender;
- Io = index for the month in which the *Contract* enters into force;
- Ir = index for the month in which the request to revise prices is received.

Article 21. Payments and guarantees

21.1 Third-party file form

No payment may be made by the CPVO if the contractor has not completed the 'third-party file form' correctly.

The contractor must inform the CPVO immediately of any changes to its tax and/or bank information and, where necessary, duly fill out and submit a new 'third-party file form' to the CPVO.

The CPVO is not liable for any delay in the payment of invoices due to irregularities or errors in the 'third-party file form' of the contractor.

21.2 Mode and date of payment

The payments are made ONLY by bank transfer and are deemed to have been made on the date on which the CPVO's account is debited.



21.3 Currency

Payments are made in Euros, unless another currency is provided for in the Special Conditions.

21.4 Conversion

The CPVO makes any conversion between the Euro and another currency at the daily Euro exchange rate published in the Official Journal of the European Union, or failing that, at the monthly accounting exchange rate, as established by the European Commission and published on the website indicated below, applicable on the day when it issues the payment order.

The contractor makes any conversion between the Euro and another currency at the monthly accounting exchange rate, established by the Commission and published on the website indicated below, applicable on the date of the invoice.

https://commission.europa.eu/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-infoeuro_en

21.5 Costs of transfer

The costs of the transfer are borne as follows:

- (a) the CPVO bears the costs of dispatch charged by its bank;
- (b) the contractor bears the costs of receipt charged by its bank;
- (c) the party causing repetition of the transfer bears the costs for repeated transfer.

21.6 Pre-financing, performance and money retention guarantees

If, as provided for in the Special Conditions, a financial guarantee is required for the payment of pre-financing, as performance guarantee or as retention money guarantee, it must fulfil the following conditions:

- (a) the financial guarantee is provided by a bank or a financial institution approved by the CPVO or, at the request of the contractor and with the agreement of the CPVO, by a third party; and
- (b) the guarantee shall have the effect of making the bank or financial institution or the third party provide irrevocable collateral security, or stand as first-call guarantor of the contractor's obligations without requiring that the CPVO has recourse against the principal debtor (the contractor).

The contractor bears the cost of providing such guarantee.

Pre-financing guarantees must remain in force until the pre-financing is cleared against interim payments or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee must remain in force for three months after the debit note is sent to the contractor. The CPVO must release the guarantee within the following month.

Performance guarantees cover compliance with substantial contractual obligations until the CPVO has given its final approval for the service, supplies or work. The performance guarantee must not exceed 10 % of the total price of the *Contract*. The CPVO must release the guarantee fully after final approval, as provided for in the *Contract*.

Retention money guarantees cover full delivery of the services, supplies or works in accordance with the *Contract* including during the *Contract* liability period and until its final approval by the CPVO. The retention money guarantee must not exceed 10 % of the total price of the *Contract*. The CPVO must release the guarantee after the expiry of the *Contract* liability period as provided for in the *Contract*.

The CPVO must not request a retention money guarantee for a *Contract* where it has requested a performance guarantee.

21.7 Interim payments and payment of the balance

The contractor (or leader in the case of a joint tender) must send an invoice for interim payment, as provided for in the Special Conditions of the *Contract* or in the tender specifications

The contractor (or leader in the case of a joint tender) must send an invoice for payment of the balance within 30 days



of the end of the period referred to in the Special Conditions, or in the tender specifications

Payment of the invoice and approval of documents does not imply recognition of the regularity, authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

21.8 Suspension of the time allowed for payment

The CPVO may suspend the payment periods specified in the Special Conditions at any time by *notifying* the contractor (or leader in the case of a joint tender) that its invoice cannot be processed. The reasons the CPVO may cite for not being able to process an invoice are:

- (a) because it does not comply with the *Contract*
- (b) because the contractor has not produced the appropriate documents or deliverables; or
- (c) because the CPVO has observations on the documents or deliverables submitted with the invoice.
- (d) because it is manifest that, at a later date and before such breach becomes effective, the contractor will materially fail to perform the *Contract* in accordance with the tender specifications or will be in material breach of another contractual obligation, unless the contractor provides the CPVO with sufficient assurances of its future performance.

The CPVO must *notify* the contractor (or leader in the case of joint tender) in writing as soon as possible of any such suspension, giving the reasons for it. In cases b) and c) referred above, the CPVO shall notify the contractor (or leader in case of a joint tender) the time limits to submit additional information or corrections or a new version of the documents or deliverables if the CPVO requires it

Suspension takes effect on the date the CPVO sent the *notification*. The remaining payment period resumes from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the contractor (or leader in the case of a joint tender) may request the CPVO to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of the present Article and the new document produced is also rejected, the CPVO reserves the right to terminate the *Contract*, in accordance with Article 18.1(c) of the present General Conditions.

21.9 Interest on late payment

On expiry of the payment periods specified in the Special Conditions, or in the *Contract*, and without prejudice to Article 21.7 of the present General Conditions, the contractor (or leader in the case of a joint tender) is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in Euros (the reference rate) plus eight percentage points. The reference rate is the rate in force, as published in the C series of the *Official Journal of the European Union*, on the first day of the month in which the payment period ends.

Suspension of the payment period as provided for in Article 21.8 of the present General Conditions is not considered as giving rise to late payment.

Interest on late payment covers the period running from the day following the due date for payment up to and including the date of payment as defined in Article 21.1 of the present General Conditions.

However, when the calculated interest is EUR 200 or less, it must be paid to the contractor (or leader in the case of a joint tender) only upon written request submitted within two months of receiving late payment.

Article 22. Reimbursements

22.1 If provided for in the Special Conditions or in the tender specifications, the CPVO must reimburse expenses directly connected with the performance of the *Contract*, either on presentation of the supporting documents by the contractor, or on the basis of flat rates.

22.2 The CPVO reimburses travel and subsistence expenses on the basis of the shortest itinerary and the minimum number of nights necessary for overnight stay at the destination.



22.3 The CPVO reimburses travel expenses as follows:

- (a) travel by air: up to the maximum cost of an economy class ticket at the time of the reservation;
- (b) travel by boat or rail: up to the maximum cost of a first class ticket;
- (c) travel by car: at the rate of one first class rail ticket for the same journey and on the same day;

In addition, the CPVO reimburses travel outside Union territory if it has given its prior written approval for the expenses.

22.4 The CPVO reimburses subsistence expenses on the basis of a daily subsistence allowance as follows:

- (a) for journeys of less than 200 km for a return trip, no subsistence allowance is payable;
- (b) the daily subsistence allowance is payable only on receipt of supporting documents proving that the person concerned was present at the destination;
- (c) the daily subsistence allowance takes the form of a flat-rate payment to cover all subsistence expenses, including meals, local transport including transport to and from the airport or station, insurance and sundries;
- (d) the daily subsistence allowance is reimbursed at the flat rates specified in the corresponding Article of the Special Conditions;
- (e) accommodation is reimbursed on receipt of supporting documents proving the necessary overnight stay at the destination, up to the flat-rate ceilings specified in the corresponding Article of the Special Conditions.

22.5 The CPVO reimburses the cost of shipment of equipment or unaccompanied luggage if it has given its prior written approval for the expense.

Article 23. Recovery

If an amount is to be recovered under the terms of the *Contract*, the contractor must repay the CPVO the amount in question.

23.1 Recovery procedure

Before recovery, the CPVO must *formally notify* the contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the contractor to make any observations within 30 days of the notification's receipt.

If no observations have been submitted or if, despite the observations submitted, the CPVO decides to pursue the recovery procedure, it must confirm recovery by *formally notifying* a debit note to the contractor, specifying the date of payment. The contractor must pay in accordance with the provisions specified in the debit note.

If the contractor does not pay by the due date, the CPVO may, after informing the contractor in writing, recover the amounts due:

- (a) by offsetting them against any amounts owed to the contractor by the CPVO or by the European Atomic Energy Community or by an executive agency when it implements the Union budget;
- (b) by calling in a financial guarantee if the contractor has submitted one to the CPVO;
- (c) by taking legal action.

23.2 Interest on late payment

If the contractor does not honour the obligation to pay the amount due by the date set by the CPVO in the debit note, the amount due bears interest at the rate indicated in Article 21.9 of the present General Conditions. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when the CPVO receives the full amount owed.

Any partial payment is first entered against charges and interest on late payment and then against the principal amount.



23.3 Recovery rules in the case of joint tender

If the *Contract* is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article 6 (Liability) of the present General Conditions. The CPVO shall send the debit note first to the leader of the group.

If the leader of the group does not pay by the due date the whole amount, and if the amount due cannot be offset or can only be offset partially in accordance with Article 23.1(a) of the present General Conditions, the CPVO may claim the amount still due to any other member or all members of the group by respectively *notifying* them with a debit note already sent to the leader in conformity with the provisions laid down in Article 23.1 of the present General Conditions.

Article 24. Checks and audits

24.1 The CPVO and the European Anti-Fraud Office (OLAF) may check or require an audit on the *implementation of the Contract*. This may be carried out either by OLAF's own staff or by any outside body authorised to do so on its behalf.

Such checks and audits may be initiated at any moment during the *performance of the Contract* and up to five years starting from the payment of the balance.

The audit procedure is initiated on the date of receipt of the relevant letter sent by the CPVO. Audits are carried out on a confidential basis.

24.2 The contractor must keep all original documents stored on any appropriate medium, including digitised originals if authorised under national law, for a period of five years starting from the payment of the balance.

24.3 The contractor must grant the CPVO's staff and outside personnel authorised by the CPVO the appropriate right of access to sites and premises where the *Contract* is implemented and to all the information, including information in electronic format, needed to conduct such checks and audits. The *Contractor* must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.

24.4 On the basis of the findings made during the audit, a provisional report is drawn up. The CPVO or its authorised representative must send it to the contractor, who has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 30 days following the expiry of the deadline to submit observations.

24.5 On the basis of the final audit findings, the CPVO may recover all or part of the payments made in accordance with Article 23 of the present General Conditions and may take any other measures, which it considers necessary.

24.6 In accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against *frauds* and other *irregularities* and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the OLAF, the OLAF may carry out investigations, including on the spot checks and inspections, to establish whether there has been *fraud*, corruption or any other illegal activity under the *Contract* affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the *performance of the Contract* and up to five years starting from the payment of the balance of the *Contract*.

24.7 The Court of Auditors, the European Public Prosecutor's Office ('the EPPO') established by Council Regulation (EU) 2017/1939⁶ (the "EPPO") and, for the processing of personal data, the European Data Protection Supervisor have the same rights as the CPVO, particularly right of access, for the purpose of checks, audits and investigations.

⁶ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office



PART II: ADDITIONAL PROVISIONS CONCERNING THE PERFORMANCE OF SUPPLIES CONTRACTS

Article 25. Packing, Shipping, Carriage and Insurance

The packing, shipping, carriage and insurance of supplies is the responsibility of the contractor.

The contractor must complete or cause to be completed all the formalities involved in shipping, in particular those involved in exportation.

The contractor must complete or cause to be completed all the formalities involved in importation or must provide all the documents required for the purpose, as required by the tender conditions.

Article 26. Packaging

26.1 The supplies must be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damage or deterioration. Packaging, pallets, etc., including contents, must not weigh more than 500 kg.

The maximum total volume for packed goods (where applicable, pallet included) must not exceed 1250 mm width and 1600 mm height.

26.2 Unless otherwise specified in the Special Conditions of the *Contract* or in the tender specifications, the packing materials remain the property of the CPVO. Pallets are considered as one-way packaging and are not returned.

26.3 Each box must be clearly labelled with the following information:

- Community Plant Variety Office (CPVO) and address for delivery;
- Name of contractor;
- Description of contents;
- Date of delivery;
- Reference number and date of the *Contract*.

Article 27. Delivery of Supplies

27.1 Procedure for delivery

The time allowed for delivery is a maximum of four weeks unless otherwise specified in the Special Conditions of the *Contract* or the tender specifications.

The delivery of the supplies must be made at the Reception of the CPVO's main seat, situated in 3 boulevard Maréchal Foch, 49100 ANGERS, FRANCE. The place of delivery might also be any other building in the area of Angers where the CPVO has premises.

The CPVO reserves the right to change the delivery address, giving sufficient notice. In such a case, the cost of carriage may be adjusted by mutual agreement.

The CPVO must be notified in writing at least four working days in advance of the exact date of delivery. All deliveries must be unloaded by the contractor or its carrier at the agreed place of delivery between 09:00h and 17:00h.

The contractor bears all costs and risks involved in delivering the supplies to the place of delivery.



27.2 Consignment note

Each delivery must be accompanied by a consignment note in duplicate, duly signed and dated by the contractor or its carrier. The consignment note must give the *Contract* number and particulars of the supplies delivered. Where applicable, a copy of the *purchase order or specific contract/order form*, stamped by the contractor, must be annexed to the consignment note. One copy of the consignment note must be countersigned by the CPVO and returned to the contractor or to its carrier.

Signature of the consignment note by the CPVO is simply an acknowledgment of the fact that the supplies have been delivered and in no way implies conformity of the supplies with the *Contract*.

Article 28. Conformity

28.1 Certificate of conformity

Conformity of the supplies delivered must be evidenced by the signature of a certificate to this effect by the CPVO no later than one month after the date of delivery, unless otherwise specified in the Special Conditions or in the tender specifications.

Conformity is declared only where the conditions laid down in the *Contract* are satisfied and the supplies conform to the tender specifications.

Where, for reasons attributable to the contractor, the CPVO is unable to accept the supplies, the contractor must be notified in writing.

28.2 Conformity of the supplies delivered with the *Contract*

- (a) The supplies delivered by the contractor to the CPVO must be in conformity in quantity, quality, price and packaging with the *Contract*
- (b) To be in conformity, the supplies delivered must:
 - (i) correspond to the description given in the tender specifications and possess the same characteristics of the supplies provided by the contractor to the CPVO as a sample or model;
 - (ii) be fit for any specific purpose required of them by the CPVO and made known to the contractor at the time of conclusion of the *Contract* and accepted by the contractor;
 - (iii) be fit for the purposes for which supplies of the same type are normally used;
 - (iv) demonstrate the quality and performance which are normal in supplies of the same type and which the CPVO can reasonably expect, given the nature of the supplies and taking into account any public statements on the specific characteristics of the supplies made by the contractor, the producer or its representative, particularly in advertising or on labelling; in accordance with the state of the art in the industry and the provisions of this *Contract*, in particular the tender specifications and the terms of its tender;
 - (v) be packaged according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

28.3 Remedy

- (a) The contractor is liable to the CPVO for any lack of conformity, which exists at the time the supplies are verified.
- (b) In case of lack of conformity, without prejudice to Article 15 of the present General Conditions regarding damages applicable to the total price of the supplies concerned, the CPVO is entitled:
 - (i) either to have the supplies brought into conformity, free of charge, by repair or replacement;
 - (ii) or to have an appropriate reduction made in the price.



- (c) Any repair or replacement must be completed within a reasonable time and without any significant inconvenience to the CPVO, taking account of the nature of the supplies and the purpose for which they are required by the CPVO.
- (d) The term 'free of charge' in paragraph b) refers to the costs incurred to bring the goods into conformity, particularly the cost of carriage, labor and materials.

28.4 Assembly

If required, the contractor must assemble the supplies delivered within a period of one month unless otherwise specified in the Special Conditions or the *Contract*.

Any lack of conformity resulting from incorrect installation of the supplies delivered is deemed to be equivalent to lack of conformity of the supplies if installation forms part of the *Contract* and the supplies were installed by the contractor or under its responsibility. This applies equally if the product was to be installed by the CPVO and was incorrectly installed owing to a shortcoming in the installation instructions.

28.5 Services provided to supplies

If required by the Special Conditions or the tender specifications, services related to supplies must be provided accordingly.

Article 29. Guarantee

29.1 The supplies must be guaranteed against all defects in manufacture or materials for two years from the date of delivery, unless provision for a longer period is made in the tender specifications.

29.2 The contractor must guarantee that any permits and licenses required for manufacturing and selling the supplies have been obtained.

29.3 The contractor must replace at its own expense, within a reasonable time limit to be determined by agreement between the parties, any items which become damaged or defective in the course of normal use during the guarantee period.

29.4 The contractor is responsible for any conformity defect which exists at the time of delivery, even if this defect does not appear until a later date.

The contractor is also responsible for any conformity defect, which occurs after delivery and is ascribable to non-compliance with his obligations, including failure to provide a guarantee that, for a certain period, supplies used for the purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.

29.5 If part of an item is replaced, the replacement part must be guaranteed under the same terms and conditions for a further period of the same duration as that specified above (point 29.1).

29.6 If a defect is found to originate in a systematic flaw in design, the contractor must replace or modify all identical parts incorporated in the other supplies that are part of the *Contract* even though they may not have been the cause of any incident. In this case, the guarantee period must be extended as stated above.



PART III: ADDITIONAL PROVISIONS CONCERNING THE PERFORMANCE OF WORKS CONTRACTS

Article 30. Representation of the CPVO

The CPVO must appoint a representative to oversee the contractor to ensure that all the stipulations and provisions contained in the *Contract* documents are fully observed.

The CPVO must inform the contractor of the name of its representative, and the name of the person who will stand in for the representative in the event of the latter's absence, within 15 calendar days of the signature of the *Contract*.

The CPVO's representative is responsible in particular for:

- authorizing the entry of the contractor's staff to the CPVO's premises;
- monitoring the services provided by the contractor under the *Contract* and verifying that the provisions of the *Contract* are adhered to;
- proposing alterations or amendments that may improve progress of the task in hand;
- checking and certifying the number of persons employed by the contractor, and their qualifications, against the requirements of the *Contract*;
- indicating defects and failures in the performance of the *Contract*.

The contractor must afford and must ensure that its staff afford due respect to the representatives of the CPVO. It must ensure that they have free access to the contractor's work locations, all works areas and stores of materials to be used in the works, for their inspection.

The fact that the CPVO's representative performs supervisory duties, carries out inspections and verifications and issues provisions or stipulations does not release the contractor from its own obligations or liabilities regarding the correct and full implementation of the *Contract* and does not release the contractor from its obligations under the applicable laws, regulations and standards in force.

Article 31. Suspension of contractual activities

In the event that unforeseen circumstances temporarily prevent all or some of the contractual activities being performed, the CPVO may order suspension of those activities and their subsequent resumption as soon as the grounds for that suspension cease to exist.

If the CPVO orders the suspension of only part of the contractual activities, the contractor must continue to perform the remaining activities and is not entitled to request compensation for being unable to perform all the contractual activities simultaneously

Article 32. Prohibition on the contractor suspending, interrupting or delaying contractual activities

The contractor may not, under any circumstances, take a unilateral decision to suspend, interrupt or delay performance of the contractual activities even in the event of disputes with the CPVO awaiting resolution.

A unilateral decision by the contractor to suspend, interrupt or delay the contractual activities constitutes a failure to perform and may give rise to the immediate termination of the *Contract* on the grounds of *breach of obligations* by the contractor.

