

General conditions of the contract

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Article 1 Performance of the contract

1.1. The Contractor shall perform the Contract to the highest professional standards. The Contractor shall have sole responsibility for complying with any legal obligations incumbent on him, notably those resulting from employment, tax and social legislation.

1.2. The Contractor shall have sole responsibility for taking the necessary steps to obtain any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to him are to be carried out.

1.3. Without prejudice to Article 3 any reference made to the Contractor's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.

1.4. The Contractor must ensure that, any staff performing the Contract have the professional qualifications and experience required for carrying out the tasks assigned to them.

1.5. The Contractor may neither represent the European Ombudsman nor behave in any way that would give such an impression. The Contractor shall inform third parties that he does not belong to the European public service.

1.6. The Contractor shall have sole responsibility for the staff who carry out the tasks assigned to him. The Contractor shall be required to state clearly, in the context of the employment or service relationships with his staff, that:

(a) staff carrying out the tasks assigned to the Contractor may not be given orders directly by the European Ombudsman;

(b) the European Ombudsman may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke, in respect of the European Ombudsman, any right arising from the contractual relationship between the European Ombudsman and the Contractor.

1.7. In the event of disruption resulting from the action of a member of the Contractor's staff



working on the European Ombudsman's premises or in the event of the expertise of a member of the Contractor's staff failing to correspond to the profile required by the Contract, the Contractor shall replace him without delay. The European Ombudsman shall have the right to request the replacement of any such member of staff, stating his reasons.

Article 2 Liability

2.1. The European Ombudsman shall not be liable for damage sustained by the Contractor in performance of the Contract except in the event of wilful misconduct or gross negligence on the part of the European Ombudsman.

2.2. The Contractor shall be liable for any loss or damage caused by himself in performance of the Contract, including in the event of subcontracting under Article 12. The European Ombudsman shall not be liable for any act or default on the part of the Contractor in performance of the Contract.

Article 3 Conflicts of interest

3.1. The Contractor shall take all necessary measures to prevent any situation that could compromise the impartial and objective performance of the Contract. Such a conflict of interest could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interest which could arise during performance of the Contract must be notified to the European Ombudsman in writing without delay. In the event of such a conflict, the Contractor shall immediately take all necessary steps to resolve it. The European Ombudsman reserves the right to verify that such measures are adequate and may require additional measures to be taken, if necessary, within a time limit which he shall set. The Contractor shall ensure that his staff, board and directors are not placed in a situation which could give rise to conflicts of interest. Without prejudice to Article 1 the Contractor shall replace, immediately and without compensation from the European Ombudsman, any member of his staff exposed to such a situation.

3.2. The Contractor shall abstain from any contact likely to compromise his independence.

3.3. The Contractor declares:

(a) that he has not made and will not make any offer of any type whatsoever from which an advantage can be derived under the Contract,

(b) that he 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 performance of the Contract.



Article 4 Request for payment

Within 30 days of the completion of the tasks referred to in the purchase order, the Contractor shall submit to the European Ombudsman an invoice quoting the reference number of the Contract to which it relates.

Article 5 Provisions concerning payments

5.1. Payments shall be deemed to have been made on the date on which the European Ombudsman's account is debited.

5.2. The payment period stipulated in the purchase order may be suspended by the European Ombudsman at any time if he informs the Contractor that his payment request is not admissible, either because the amount is not due or because the necessary supporting documents have not been properly produced. The European Ombudsman shall notify the Contractor accordingly by registered letter with acknowledgement of receipt or equivalent. Suspension shall take effect from the date of dispatch of the letter. The remainder of the period shall begin to run again once the suspension has been lifted.

5.3. In the event of late payment the Contractor may claim interest within two months of receiving the payment. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ('the reference rate') plus eight percentage points ('the margin'). The reference rate in force on the first day of the month in which the payment is due shall apply. That rate is published in the C series of the Official Journal of the European Union. Interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment. Suspension of payment by the European Ombudsman may not be deemed to constitute late payment.

Article 6 Recovery

6.1. If total payments made exceed the amount actually due under the Contract or if recovery is justified in accordance with the terms of the Contract, the Contractor shall reimburse the appropriate amount in euro on receipt of the debit note, in the manner and within the time limits set by the European Ombudsman.

6.2. In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article 5.3. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.

6.3. The European Ombudsman may, after informing the Contractor, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Contractor



also has a claim on the European Union that is certain, of a fixed amount and due.

Article 7 Ownership of the results – Intellectual and industrial property

Any results or rights thereto, including copyright and other intellectual or industrial property rights, obtained in performance of the Contract, shall be owned solely by the European Union, which may use, publish, assign or transfer them as it sees fit, without geographical or other limitation, except where industrial or intellectual property rights exist prior to the Contract being entered into.

Article 8 Confidentiality

The Contractor undertakes to treat in the strictest confidence and not make use of or disclose to third parties any information or documents which are linked to the performance of the Contract. The Contractor shall continue to be bound by this undertaking after completion of the tasks.

Article 9 Use, distribution, publication and transfer of information

9.1. The Contractor shall authorise the European Ombudsman to process, use, distribute and publish, for whatever purpose, by whatever means and on whatever medium, any data contained in or relating to the Contract, in particular the identity of the Contractor, the subject matter, the duration, and the amount paid.

9.2. The European Ombudsman may decide to transfer data to other EU institutions or bodies participating in tender procedures if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient. In this case, the recipient(s) shall process the personal data only for the purposes for which they were transmitted.

9.3. Unless otherwise provided, the European Ombudsman shall not be required to distribute or publish documents or information supplied in performance of the Contract. If he decides not to publish the documents or information supplied, the Contractor may not have them distributed or published elsewhere without prior written authorisation from the European Ombudsman.

9.4. Any distribution or publication of information relating to the Contract by the Contractor shall require prior written authorisation from the European Ombudsman and shall mention the amount paid by the European Union. It shall state that the opinions expressed are those of the Contractor only and do not represent the European Ombudsman's official position.

9.5. The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance shall be forbidden, unless the European Ombudsman has



specifically given prior written authorisation to the contrary.

Article 10 Tax provisions

10.1. The Contractor shall have sole responsibility for compliance with the tax laws which apply to him. Failure to comply shall make the relevant invoices invalid.

10.2. As a European institution the European Ombudsman is exempt from all duties and indirect taxes, in particular VAT, pursuant to Articles 3 and 4 of the Protocol n° 7 on the privileges and immunities of the European Communities of 8 April 1965. That exemption is granted to the European Ombudsman by the governments of the Member States either in the form of a posteriori reimbursement, on the basis of supporting documents, or in the form of direct exemption.

Article 11

Force majeure

11.1. Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from fulfilling any of their obligations under the Contract, was not due to error or negligence on their part or on the part of a subcontractor, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.

11.2. Without prejudice to Article 1.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgement of receipt or equivalent, stating the nature, likely duration and foreseeable effects.

11.3. Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Contractor is unable to fulfil his contractual obligations owing to force majeure, he shall have the right to remuneration only for tasks actually carried out.

11.4. The contracting parties shall take the necessary measures to reduce damage to a minimum.

Article 12 Subcontracting

12.1. The Contractor shall not subcontract without prior written authorisation from the European Ombudsman nor cause the Contract to be performed in fact by third parties.



12.2. Even where the European Ombudsman authorises the Contractor to subcontract to third parties, he shall none the less remain bound by his obligations to the European Ombudsman under the Contract and shall bear exclusive liability for proper performance of the Contract.

12.3. The Contractor shall make sure that the subcontract does not affect rights and guarantees to which the European Ombudsman is entitled by virtue of the Contract.

Article 13 Assignment

13.1. The Contractor shall not assign the rights and obligations arising from the Contract, in whole or in part, without prior written authorisation from the European Ombudsman.

13.2. In the absence of such authorisation, or in the event of failure to observe the terms thereof, assignment by the Contractor shall not be enforceable against and shall have no effect on the European Ombudsman.

Article 14 Termination

14.1. The European Ombudsman may terminate the Contract in the following circumstances: (a) where the Contractor is being wound up, is having his affairs administered by the courts,

has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

(b) where the Contractor has been convicted of an offence concerning his professional conduct by a judgment which has the force of *res judicata*;

(c) where the Contractor has been guilty of grave professional misconduct proven by any means which the contracting authority can justify;

(d) where the Contractor has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country applicable to the Contract or those of the country where the Contract is to be performed;

(e) where the European Ombudsman seriously suspects the Contractor of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the European Union's financial interests;

(f) where the Contractor is in breach of his obligations under Article 3;

(g) where the Contractor was guilty of misrepresentation in supplying the information required



by the European Ombudsman as a condition of participation in the contract procedure or failed to supply this information;

(h) where a change in the Contractor's legal, financial, technical or organisational situation could, in the European Ombudsman's opinion, have a significant effect on the performance of the Contract;

(i) where performance of the tasks has not actually commenced within the delivery or performance period set in the purchase order, and the new date proposed, if any, is considered unacceptable by the European Ombudsman;

(j) where the Contractor is unable, through his own fault, to obtain any permit or licence required for performance of the Contract;

(k) where the Contractor, after receiving formal notice in writing to comply, specifying the nature of the alleged failure, and after being given the opportunity to remedy the failure within a reasonable period following receipt of the formal notice, remains in serious breach of his contractual obligations.

14.2. In the event of force majeure, notified in accordance with Article 11, either contracting party may terminate the Contract, where performance thereof cannot be ensured for a period corresponding to at least to one fifth of the period laid down in the purchase order.

14.3. Prior to termination under points e), h) or k), the Contractor shall be given the opportunity to submit his observations. Termination shall take effect on the date on which a registered letter with acknowledgement of receipt terminating the Contract is received by the Contractor, or on any other date indicated in the letter of termination.

14.4. Consequences of termination: in the event of the European Ombudsman terminating the Contract in accordance with this Article and without prejudice to any other measures provided for in the Contract, the Contractor shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work.

On receipt of the letter terminating the Contract, the Contractor shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce his commitments. He shall draw up the documents required for the tasks carried out up to the date on which termination takes effect, within a period not exceeding 60 days from that date.

The European Ombudsman may claim compensation for any damage sustained and recover any sums paid to the Contractor under the Contract. After termination the European Ombudsman may engage any other contractor to complete the work. The European Ombudsman shall be entitled to claim from the Contractor all extra costs incurred in completing the work, without prejudice to any other rights or guarantees he has under the Contract.



Article 15 Liquidated damages

Should the Contractor fail to fulfil his obligations under the Contract within the time limits set by the Contract, then, without prejudice to the Contractor's actual or potential liability incurred in relation to the Contract or to the European Ombudsman's right to terminate the Contract, the European Ombudsman may decide to impose liquidated damages of 0.2% of the amount specified in the purchase order per calendar day's delay. The Contractor may submit arguments against this decision within 30 days of notification by registered letter with acknowledgement of receipt or equivalent. In the absence of reaction on his part or of written withdrawal by the European Ombudsman within 30 days of the receipt of such arguments, the decision imposing the liquidated damages shall become enforceable. Such liquidated damages shall not be imposed where there is provision for interest for late completion. The European Ombudsman and the Contractor expressly acknowledge and agree that any sums payable under this Article are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the losses that may be reasonably anticipated from such a failure to fulfil obligations.

Article 16 Checks and audits

Pursuant to Article 142 of the Financial Regulation applicable to the general budget of the European Union, the European Court of Auditors is empowered to audit the documents held by natural or legal persons receiving payments from the budget of the European Union from the signing of the Contract up to five years after payment of the balance.

Article 17 Supplementary agreements

Any amendment of the Contract shall be the subject of a supplementary agreement in writing concluded by the contracting parties. No oral agreement may bind the contracting parties to that effect.

Article 18 Suspension of the Contract

Without prejudice to the European Ombudsman's right to terminate the Contract, the European Ombudsman may at any time and for any reason suspend performance of the tasks under the Contract or any part thereof. Suspension shall take effect on the day the Contractor receives notification by registered letter with acknowledgement of receipt or equivalent, or at a later date where the notification so provides. The European Ombudsman may at any time following suspension give notice to the Contractor to resume the work suspended. The Contractor shall not be entitled to claim compensation on account of suspension of the Contract or of part thereof.



Article 19 Structure of the contract

The Contract consists of specifications, a purchase order and these General Conditions. In the event of conflicting interpretations, the purchase order shall take precedence over the General Conditions. If the specifications and the Contractor's tender are annexed to the purchase order, the specifications shall take precedence over the tender and the Contract shall take precedence over both. The several instruments shall be an integral part of the Contract and, subject to the above, they shall be taken as mutually explanatory.

Article 20 Applicable Law and ways of appeal

The Contract is governed by the applicable Union law, complemented, where necessary, by the law of Belgium or France.

In accordance with Article 272 TFEU, the General Court or, on appeal, the Court of Justice of the European Union, has sole jurisdiction to hear any dispute between the Union and any beneficiary concerning the interpretation, application or validity of the Contract, if such dispute cannot be settled amicably.

Article 21 Data protection

Article 21.1 Processing of personal data by the contracting authority

21.1.1. Any personal data included in or relating to the contract, including its implementation, shall be processed in accordance with Regulation (EU) 2018/1725 [1] . Such data shall be processed solely for the purposes of the implementation, management and monitoring of the contract by the Ombudsman, the data controller.

21.1. 2. The contractor or any other person whose personal data is processed by the data controller in relation to this contract has specific rights as a data subject under Chapter III (Articles 14-24) 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.

21.1.3. Should the contractor or any other person whose personal data is processed in relation to this contract have any queries concerning the processing of its personal data, it shall address itself to the Ombudsman. They may also address themselves to the Data Protection Officer of the data controller (DPO-Euro-Ombudsman@ombudsman.europa.eu [Link]). They have the right to lodge a complaint at any time to the European Data Protection Supervisor.



Article 21.2 Processing of personal data by the contractor

21.2. 1. The processing of personal data by the contractor shall meet the requirements of Regulation (EU) 2018/1725 and be processed solely for the purposes set out by the Ombudsman. For the purpose of this article, the subject matter and purpose of the processing of personal data by the contractor are strictly linked to the implementation of the contract.

21.2.2. 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 this contract as laid down in Chapter III (Articles 14-24 of Regulation (EU) 2018/1725. The contractor shall inform without delay the controller about such requests.

21.2.3. 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.

21.2.4. The contractor shall grant his personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the contract. The contractor must ensure that 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 mentioned above.

21.2. 5. 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.

21.2.6. The contractor shall notify relevant personal data breaches to the controller without undue delay and at the latest within 24 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.

21.2.7. The contractor shall immediately inform the data controller if, in its opinion, an instruction infringes Regulation (EU) 2018/1725, Regulation (EU) 2016/679 [2] , or other Union or Member State data protection provisions as referred to in the tender specifications.

21.2.8. The contractor shall assist the controller for the fulfilment of its obligations pursuant to Article 33 to 40 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.

21.2.9. 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.

21.2.10 The contracting authority 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 and data security, which includes personal data held on behalf of the contracting authority in the premises of the contractor or subcontractor.

21.2.11. For the purpose of this article, 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 Economic Area and will not leave that territory;

b. the contractor may not change the location of data processing without the prior written authorisation of the contracting authority;



21.2.12. The contractor shall notify the contracting authority without delay of any legally binding request for disclosure of the personal data processed on behalf of the contracting authority 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 contracting authority.

21.2.13. 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. 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 Union or national law requires a longer storage of personal data.

21.2.14. For the purpose of Article 12 mentioned above, if part or all of the processing of personal data is subcontracted to a third party, the contractor shall pass on the obligations referred to in Articles 21.1 and 21.2 in writing to those parties, including subcontractors. At the request of the contracting authority, the contractor shall provide a document providing evidence of this commitment.

[1] 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.

[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 JOL_2016_119_R_0001