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## GENERAL CONDITIONS OF SUPPLY CONTRACT

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### §1

#### DEFINITIONS

For the purpose of this contract, the following definitions 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 performance of the contract. It may not include information that is publicly available;
- 'Conflict of interest': a situation where the impartial and objective performance 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 third party related to the subject matter of the contract;
- '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 the negligence of the debtor. Breaches or negligence of subcontractors, defaults, 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 CTAO'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 CTAO's 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 CTAO's financial interests;

- 'Grave professional 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;
- 'Notification' (or 'notify'): form of communication between the parties made in writing including by electronic means;
- 'Performance of the contract': the execution of tasks and delivery of the purchased supplies by the contractor to the contracting authority;
- 'Personnel': persons employed directly or indirectly or contracted by the contractor to perform the contract;
- 'Professional conflicting interest': a situation in which the contractor's previous or ongoing professional activities affect its capacity to perform the contract to an appropriate quality standard;
- 'Related person': 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;

## **§2**

### **ROLES AND RESPONSIBILITIES IN THE EVENT OF A JOINT TENDER**

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.

## **§3**

### **SEVERABILITY**

Each provision of this contract is severable and distinct from the others, unless it is essential to the agreement of the parties. 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 contract must be interpreted as if it had contained the substitute provision as from its entry into force.

## **§4**

### **DELIVERY OF SUPPLIES**

- a. The contractor must comply with the requirements provided for in the Technical Specifications and Statement of Work (Annex I). This includes compliance with applicable obligations under environmental, social and labour law established by national law and collective agreements or by the international environmental, social and labour law provisions.
- b. All periods specified in the contract are calculated in calendar days, unless otherwise specified.
- c. The contractor is responsible for the personnel who perform the contract and exercises its authority over its personnel without interference by CTAO.
- d. The contractor must ensure that the personnel performing the contract and any

future replacement personnel possess the professional qualifications and experience required to provide the supplies, as the case may be on the basis of the selection criteria set out in the tender.

- e. At CTAO's reasoned request, the contractor must replace any member of personnel who:
  - 1) does not have the expertise required to provide the supplies; or
  - 2) has caused disruption at the premises of CTAO.

The contractor bears the cost of replacing its personnel and is responsible for any delay in providing the supplies 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.

- f. The contractor must record and report to CTAO any problem that affects its ability to deliver the supplies. The report must describe the problem, state when it started and what action the contractor is taking to resolve it.
- g. Date, time and place of delivery. CTAO must be notified in writing of the exact date of delivery. All deliveries must be made at the agreed place of delivery. The contractor must bear all costs and risks involved in delivering the supplies to the place of delivery.
- h. Certificate of conformity. Signature of the consignment note by CTAO is simply an acknowledgment of the fact that that the delivery took place and in no way implies conformity of the supplies with the contract. Conformity of the supplies delivered must be evidenced by the signature of a certificate to this effect by CTAO no later than one month after the date of delivery, unless otherwise specified in the special conditions or in the tender specifications.  
Conformity must be declared only where the conditions laid down in the contract are satisfied and the supplies conform to the tender specifications.

If, for reasons attributable to the contractor, CTAO is unable to accept the supplies, the contractor must be formally notified at the latest by the deadline for conformity.

- i. Conformity of the supplies delivered with the contract. The supplies delivered by the contractor to CTAO must be in conformity in quantity, quality, price and packaging with the contract. To be in conformity, the supplies delivered must:
  - 1) correspond to the description given in the tender specifications and possess the characteristics of the supplies provided by the contractor to CTAO as a sample or model;
  - 2) be fit for any specific purpose required of them by CTAO and made known to the contractor at the time of conclusion of this contract and accepted by the contractor;
  - 3) be fit for the purposes for which supplies of the same type are normally used;
  - 4) demonstrate the high quality standards and performance which are normal in supplies of the same type and which the contracting authority 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.
  - 5) be packaged according to the requirements laid down in the Routing and Packing Instructions (Annex III) and according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.
- j. Remedy. The contractor is liable to CTAO for any lack of conformity which exists at the

time the supplies are verified. In case of a lack of conformity, without prejudice to Article 13 on liquidated damages applicable to the total price of the supplies concerned, CTAO is entitled:

- 1) either to have the supplies brought into conformity, free of charge, by repair or replacement; or
- 2) to have an appropriate reduction in the price in accordance with Article 14.

Any repair or replacement must be completed within a reasonable time and without any significant inconvenience to the contracting authority, taking account of the nature of the supplies and the purpose for which they are required by CTAO. The term 'free of charge' in paragraph refers to the costs incurred to bring the supplies into conformity, particularly the cost of postage, labour and materials.

- k. Assembly. If required by the Technical Specifications and Statement of Work (Annex I), the contractor must assemble the supplies delivered within a period of one month unless otherwise specified in the special conditions. Any lack of conformity resulting from incorrect installation of the supplies must be 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 CTAO and was incorrectly installed owing to a shortcoming in the installation instructions.
- l. Services provided to supplies. If required by the tender specifications, services to supplies must be provided accordingly.
- m. Packaging. All shipments to the CTAO South-Site in Chile must comply with the Routing and Packing Instructions annexed to the Contract (Annex III).

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

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

The contractor must replace at its own expense, within a reasonable time and without any significant inconvenience to CTAO, taking account of the nature of the supplies and the purpose for which they are required, any items which become damaged or defective in the course of normal use during the guarantee period.

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 its 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.

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.

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 order, even though they may not have been the cause of any incident. In this case, the guarantee period must be extended as stated above.

- o. If the contractor fails to deliver the supply in accordance with the contract or if it fails to deliver the supply in accordance with the expected quality levels specified in the Technical Specifications, CTAO may, even if

these failings constitute a breach that could trigger Article 16, without prior notice of default to the contractor or judicial intervention being required, decide to have these obligations performed by a third party, at the contractor's expense. CTAO 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 that the substitution would not cover.

## **§5**

### **COMMUNICATION BETWEEN THE PARTIES**

- a. Any notifications, communication of information or exchange of documents under the contract must be made in writing, in the language of the contract and must clearly identify the contract number, if applicable. Communication between the parties can take place:
- by electronic means, via email
  - on paper, via mail - by courier service with proof of delivery or by registered post with proof of delivery.

Notifications via email are considered to have been made and the email is deemed to have been received by the receiving party on the date of dispatch of that e-mail, if it is sent to the email address indicated in the Preamble and does not have characteristics that could reasonably prevent its proper delivery (such as sending extremely voluminous e-mails that can be blocked for their size or emails containing elements that the majority of the spam filters would block). The sending party must be able to prove the date of dispatch. If the sending party sends the email to the email address indicated in the Preamble and receives a non-delivery report, it must make every reasonable effort to ensure that the other party receives the communication.

- b. Date of communications via email for formal notifications. Formal notifications by email are considered to have been received on the date of dispatch of a return email expressly or impliedly acknowledging receipt. In case no such email is received by the party who sent the formal notification within ten (10) days, the formal notification should be re-sent via courier service with proof of delivery or registered post.

## **§6**

### **LIABILITY**

- a. The contractor shall perform the contract at its own risk. The contractor warrants and holds CTAO harmless against any action or claim brought by a third party for any damage or loss suffered during or as a consequence of implementation of the contract (including the related costs such as lawyer fees).
- b. If required by the relevant applicable legislation, the contractor must take out an insurance policy against risks and damage or loss relating to the performance 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 CTAO.
- c. Except in case of force majeure, the contractor is liable for any loss or damage caused to CTAO during or as a consequence of the performance of the contract, resulting from a breach attributable to the contractor, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the contract. However, if the damage or loss is caused by the gross negligence or wilful misconduct of the contractor, a related person, its personnel or its subcontractors, or if an injury has been caused to the life or the physical integrity of a person, as well as in the case of an action brought against CTAO by a third party for

breach of its intellectual property rights, the contractor is liable for the whole amount of the damage or loss.

- d. If a third party brings any action against CTAO in connection with the performance of the contract, the contractor must assist CTAO in the legal proceedings, including by intervening in support of CTAO upon request. If the CTAO's liability towards the third party is established and that such liability is caused by the contractor during or as a consequence of the performance of the contract, the limitations of liability foreseen do not apply.
- e. 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 CTAO for the performance of the contract.
- f. CTAO is not liable for any loss or damage caused to the contractor during or as a consequence of performance of the contract, unless the loss or damage was caused by wilful misconduct or gross negligence of CTAO.

## **§7**

### **CONFLICT OF INTERESTS AND PROFESSIONAL CONFLICTING INTERESTS**

- a. The contractor must take all the necessary measures to prevent any situation of conflict of interest or professional conflicting interest.
- b. The contractor must notify CTAO in writing as soon as possible of any situation that could constitute a conflict of interest or a professional conflicting interest during the performance of the contract. The contractor must immediately take action to rectify the situation. CTAO may do any of the following:
  - 1) verify that the contractor's action is appropriate;
  - 2) require the contractor to take further action within a specified deadline to rectify this situation.

- c. The contractor must pass on all the relevant obligations in writing to:

- 1) its personnel;
- 2) any related person;
- 3) third parties involved in the performance 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 interest.

## **§8**

### **CONFIDENTIALITY**

- a. CTAO and the contractor must treat with confidentiality any information or documents, in any format, disclosed in writing or orally, relating to the performance of the contract.
- b. Each party must:
  - 1) 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;
  - 2) 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;
  - 3) not disclose, directly or indirectly, confidential information or documents to third parties without the prior written agreement of the other party.
- c. The confidentiality obligations set out in this Article are binding on CTAO and the contractor during the performance of the contract and for as long as the information or documents remain confidential unless:
  - 1) the disclosing party agrees to release the receiving party from the confidentiality obligation;

- 2) the confidential information or documents become public through other means than a breach of the confidentiality obligation;
  - 3) the applicable law requires the disclosure of the confidential information or documents.
- d. The contractor must obtain from any related person and its personnel, as well as from third parties involved in the performance of the contract, a written commitment that they will comply with this Article. At the request of CTAO, the contractor must provide a document providing evidence of this commitment.
  - e. CTAO is entitled to make available (any part of) the confidential information or documents to its staff, as well to other persons and entities working for CTAO 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 the contracting authority's confidentiality obligations set out in this section.
  - f. 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.
- b. Even if CTAO authorises subcontracting, the contractor remains bound by its contractual obligations and remains entirely responsible for the performance of this contract vis-à-vis CTAO.
  - c. The contractor must ensure that the subcontract does not affect the rights of CTAO under this contract.
  - d. CTAO may request the contractor to replace a subcontractor found to be in a situation provided for in Article 16. The contractor bears the costs of such replacement.

## **§10 AMENDMENTS**

- a. Any amendment to the contract must be made in writing before all contractual obligations have been fulfilled. Any acceptance or payment by CTAO 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.
- b. 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 ASSIGNMENT OF THE CONTRACT TO A THIRD-PARTY**

- a. The contractor must not assign any of the rights and obligations arising from the contract.
- b. 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

## **§9 SUBCONTRACTING**

- a. The contractor must not subcontract and have the contract performed by third parties beyond the third parties already mentioned in its tender without prior written authorisation from CTAO.

written authorisation of CTAO. This authorisation shall be granted or not at the discretion of CTAO 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. CTAO may request additional information.

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

## **§12 FORCE MAJEURE**

- a. 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.
- b. 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 supplies actually delivered and which obtain a certificate of conformity.
- c. The parties must take all necessary measures to limit any damage due to force majeure.
- d. Force majeure either suspends the performance of the contract as provided for in Article 16 or leads to the termination of the contract as provided for in Article 16.

## **§13 LIQUIDATED DAMAGES FOR DELAY IN DELIVERY**

- a. Delay in delivery. If the contractor fails to perform its contractual obligations within the applicable time limits set out in this contract, CTAO may claim liquidated damages for each day of delay using the following formula:

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

where:

- V is the price of the relevant purchase or supply;
- d is the duration specified in the contract for delivery of the relevant purchase or supply or, failing that, the duration of performance of the contract specified in the Preamble expressed in days.

Liquidated damages for delay in delivery may be imposed together with a reduction in price under the conditions laid down in Article 14 or a substitution of the contractor.

Any claim for liquidated damages does not affect:

- 1) the contractor's liability for damages that liquidated damages would not cover,
  - 2) CTAO's rights under Article 16, nor
  - 3) CTAO's rights under Article 17
  - 4) any other right or remedy that CTAO may have under the contract.
- b. Procedure. CTAO must formally notify the contractor of its intention to apply liquidated damages for delay in delivery and the corresponding calculated amount. The contractor has thirty (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, CTAO, taking into account the relevant observations, must notify the contractor:

- 1) of the withdrawal of its intention to apply liquidated damages; or



- 2) of its final decision to apply liquidated damages and the corresponding amount.
- c. Nature of liquidated damages. The parties expressly acknowledge and agree that any amount payable under this Article is not a penalty and, in view of all the circumstances including the legitimate interest of CTAO, represents a reasonable estimate of fair compensation for the damage that may be incurred by the contracting authority due to failure to provide the supplies within the applicable time limits set out in this contract.
- b. Procedure. CTAO must formally notify the contractor of its intention to reduce the price and the corresponding calculated amount. The contractor has thirty (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, CTAO, taking into account the relevant observations, must notify the contractor:
  - 1) of the withdrawal of its intention to reduce the price; or
  - 2) of its final decision to reduce the price and the corresponding amount.

#### **§14**

##### **REDUCTION IN PRICE**

- a. Quality standards. If the contractor fails to deliver the supply in accordance with the contract ('unperformed obligations') or if it fails to deliver the supply in accordance with the expected quality levels specified in the Technical Specifications and Statement of Work – Annex I ('low-quality delivery'), CTAO may, even if these failings constitute a breach that could trigger Article 16, reduce the price. The price reduction will be directly proportional to the difference, upon the time of the signature of the contract, between the value of the unperformed obligations or low-quality delivery and the value of the agreed supply. This includes cases where CTAO cannot approve a document or deliver a certificate of conformity for supply after the contractor has submitted the required additional information, correction or new supply.  
A reduction in price may be imposed together with liquidated damages for delay in delivery under the conditions of Article 13.  
Any reduction in price does not affect the contractor's liability or CTAO's rights under Article 16 for damages that the reduction in price would not cover or any other right or remedy that CTAO may have under the contract.

#### **§15**

##### **SUSPENSION OF THE PERFORMANCE OF THE CONTRACT**

- a. Suspension by the contractor. If the performance of the contract is affected by force majeure, the contractor may suspend the performance of that contract. The contractor must immediately formally notify CTAO about the suspension. The notification must include a description of the force majeure and state when the contractor expects to resume the performance of the contract. The contractor must notify CTAO as soon as it is able to resume performance of the contract, unless CTAO has already terminated the contract.  
CTAO is not entitled to compensation for suspension of any part of the contract, in the event of force majeure.
- b. Suspension by CTAO. CTAO may suspend the performance of the contract or any part of it:
  - 1) in case of force majeure affecting the performance of the implementation of the contract;
  - 2) in order to verify whether the presumed irregularities, fraud or breach of obligations have actually occurred;
  - 3) if the procedure for awarding the contract or the implementation of the contract proves to have been subject to

irregularities, fraud or breach of obligations.

CTAO 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. CTAO must notify the contractor as soon as the verification is completed whether:

- 1) it is lifting the suspension; or
- 2) it intends to terminate the contract under Article 16.

The contractor is not entitled to compensation for suspension of any part of the contract.

CTAO may in addition suspend the time allowed for payments.

## **§16**

### **TERMINATION OF THE CONTRACT**

- a. Grounds for termination by CTAO. CTAO may terminate the contract in the following circumstances:

- 1) if provision of the supplies under the contract has not actually started within fifteen (15) days of the scheduled date and CTAO considers the new date proposed, if any, unacceptable;
- 2) if the contractor is unable, through its own fault, to obtain any permit or licence required for performance of the contract;
- 3) if the contractor fails to perform the contract in accordance with the tender specifications or is materially in breach of another contractual obligation;
- 4) if the procedure for awarding the contract or the performance of the contract prove to have been subject to errors, irregularities, fraud or breach of obligations;
- 5) if the contractor does not comply with applicable obligations under environmental, social and labour law

established by, national law, collective agreements, or international law.

- 6) if the contractor is in a situation that could constitute a conflict of interest or a professional conflicting interest, and does not rectify the situation;
  - 7) if a change to the contractor's legal, financial, technical, organisational or ownership situation is likely to substantially affect the performance of the contract or substantially modify the conditions under which the contract was initially awarded or a change regarding the exclusion situations listed in the tender that calls into question the decision to award the contract or the contractor becomes subject to restrictive measures hindering the performance of the contract;
  - 8) 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;
  - 9) if the contractor is in breach of the data protection obligations;
  - 10) 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 CTAO with sufficient assurances of its future performance.
- b. Grounds for termination by the contractor. The contractor may terminate the contract if CTAO materially fails to comply with its obligations, in particular the obligation to provide the information needed for the contractor to perform the contract as provided for in the Technical Specifications and Statement of Work (Annex I). The contractor may also terminate the contract in

the event of force majeure, where resuming performance is impossible.

- c. 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 fifteen (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, or the assurances it gives to fulfil its contractual obligations in the future. 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. The date on which the termination takes effect must be specified in the formal notification. In the cases referred to in points 5, 6 and 7 of Article 16, the termination takes effect on the day following the date on which the contractor receives notification of termination. In addition, at the request of CTAO and regardless of the grounds for termination, the contractor must provide all necessary assistance, including information, documents and files, to allow CTAO to complete, continue or transfer the delivery of the supplies to a new contractor or internally, without interruption or adverse effect on the quality or continuity of delivery of the supplies. 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 Technical 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.

- d. Effects of termination. The contractor is liable for damage incurred by CTAO as a result of the termination of the contract including the additional cost of appointing and contracting another contractor to provide or complete the supplies, except if the damage is a result of a termination in accordance with Article 16.a or Article 16.b. CTAO 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 the first subparagraph of Article 16.b. The contractor must take all appropriate measures to minimise costs, prevent damage and cancel or reduce its commitments. Within sixty (60) days of the date of termination, the contractor must submit any report and any invoice required for supplies that were provided before the date of termination. In the case of joint tenders, CTAO may terminate the contract with each member of the group separately.

## **§17 INVOICES**

Invoices must contain the contractor's identification data, the amount, the currency and the date, as well as the contract reference.

Invoices must indicate the place of taxation of the contractor for value added tax (VAT) purposes and must specify separately the taxable amount per rate or exemption, the VAT rate applied and the VAT amount payable.

## **§18 PRICE REVISION**

- a. If a price revision index is provided, this 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, CTAO 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 CTAO for verification.

- b. The price revision is calculated using the following formula:

$$Pr = 0,8 \times Po \times ( - ) + 0,2 \times Po$$

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.

## §19

### PAYMENTS AND GUARANTEES

- a. The date of payment is deemed to be the date on which CTAO's account is debited.
- b. Payments are made in EURO.
- c. CTAO makes any conversion between the euro and another currency at the daily euro exchange rate published in C series of the Official Journal of the European Union.
- d. The costs of the transfer are borne as follows:

- 1) CTAO bears the costs of dispatch charged by its bank;
- 2) the contractor bears the costs of receipt charged by its bank;
- 3) the party causing repetition of the transfer bears the costs for repeated transfer.

- e. Advance-payment, performance and money retention guarantees. If a financial guarantee is required for the payment of advance money, as performance guarantee or as retention money guarantee, it must fulfil the following conditions:

- 1) the financial guarantee is provided by a bank or a financial institution approved by CTAO; and
- 2) the guarantee shall have the effect of making the bank or financial institution provide irrevocable collateral security or stand as first-call guarantor of the contractor's obligations without requiring that CTAO 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. CTAO must release the guarantee within the following month.

Performance guarantees cover compliance with contractual obligations until CTAO has given its final approval for the supply. The performance guarantee must not exceed ten (10)% of the total price of the contract. CTAO must release the guarantee fully after final certificate of conformity of the supply has been delivered, as provided for in the contract.

Retention money guarantees cover full delivery of the supplies in accordance with the contract including during the contract liability period and until their final certificate of conformity has been delivered by the contracting authority. The retention money guarantee must not exceed ten (10)% of the total price of the contract. CTAO must release the guarantee after the expiry of the contract liability period as provided for in the contract.

CTAO must not request a retention money guarantee where it has requested a performance guarantee.

f. Interim payments and payment of the balance.

The contractor must send an invoice for any payment.

The contractor must send an invoice for payment of the balance within sixty (60) days of the end of the period of provision of the supplies.

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.

g. Suspension of the time allowed for payment.

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

- 1) because it does not comply with the contract;
- 2) because the contractor has not produced the appropriate supplies or documents; or
- 3) because CTAO has observations on the supplies or documents submitted with the invoice;
- 4) 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 CTAO with sufficient assurances of its future performance.

CTAO must notify the contractor (or leader in the case of joint tender) as soon as possible of any such suspension, giving the reasons for it. In cases b) and c) referred above, CTAO 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 CTAO requires it.

Suspension takes effect on the date CTAO sends the notification. The remaining payment period resumes from the date on which the requested information, sufficient assurances 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 CTAO to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the first paragraph of this Article and the new document produced is also rejected, CTAO reserves the right to terminate the contract in accordance with Article 16.a/3.

h. Interest on late payment. On expiry of the payment, 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 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 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.

## **§20 RECOVERY**

- a. If an amount is to be recovered under the terms of the contract, the contractor must repay CTAO the amount in question.
- b. Recovery procedure. Before recovery, CTAO 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 receipt.  
If no observations have been submitted or if, despite the observations submitted, CTAO 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, CTAO may, after informing the contractor in writing, recover the amounts due:
  - 1) by offsetting them against any amounts owed to the contractor;
  - 2) by calling in a financial guarantee if the contractor has submitted one;
  - 3) by taking legal action.
- c. Interest on late payment. If the contractor does not honour the obligation to pay the amount due by the date set by CTAO in the debit note, the amount due bears interest at the rate indicated in this article. Interest on late payments will cover the period starting on the day after the due date for payment and ending on the date when CTAO receives the full amount owed.

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

- d. Recovery rules in the case of joint tender. If the contract is signed by a group (joint tender), the members of the group are jointly and severally liable. CTAO shall send the debit note first to the leader of the group.  
If the leader does not pay by the due date the whole amount, and if the amount due cannot be offset or can only be offset partially, CTAO may claim the amount still due from any other member or members of the group by respectively notifying them with a debit note.

## **§21 CHECKS AND AUDITS**

- a. CTAO may check or require an audit on the performance of the contract. This may be carried out by any outside entity authorised to do so on its behalf. Such checks and audits may be initiated at any moment during the provision of the supplies and up to five years starting from the payment of the balance. Audits are carried out on a confidential basis.
- b. 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.
- c. The contractor must grant CTAO's staff and outside personnel authorised by CTAO the appropriate right of access to sites and premises where the contract is performed 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.

- d. On the basis of the findings made during the audit, a provisional report is drawn up. CTAO or its authorised representative must send it to the contractor, which has 30 days following the date of receipt to submit observations. The contractor must receive the final report within 60 days following the expiry of the deadline to submit observations.
  - e. On the basis of the final audit findings, CTAO may recover all or part of the payments made and may take any other measures which it considers necessary.
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