

# European Patent Organisation ("EPO")

## GENERAL CONDITIONS OF CONTRACT FOR SMALL-SCALE PROCUREMENTS

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| <b>1.</b>  | <b>Scope</b><br>These General Conditions of Contract for Small-Scale Procurements apply unless they are varied, superseded or otherwise rendered inapplicable by virtue of the terms of higher-ranking provisions of the Contract.   |      |  |
| <b>2.</b>  | <b>Quantities of goods</b><br>The EPO may increase or decrease any specified quantities of goods by up to 20% after the Contract has been concluded (and up to 14 days prior to delivery), without prejudice to the unit price and any agreed fixed periods and dates.   | 11.4 |  |
| <b>3.</b>  | <b>Changes in prices</b><br>Unless otherwise provided in the Contract, price increases are not permitted.  |      |  |
| <b>4.</b>  | <b>Taxes and duties</b><br>The Contractor must afford the EPO all necessary assistance to ensure that it is exempt from, or reimbursed for, the taxes, duties and charges referred to in Articles 4 and 5 of the Protocol on Privileges and Immunities of the EPO of 5 October 1973 ("PPI"). To this end, the Contractor must comply with the instructions given to him by the EPO and provide in due time the information which it requires.  | 11.4 | <b>12.</b><br><b>Assistance in cases of IT procurement</b><br>If so specified in the Contract, the Contractor must provide, free of charge throughout the period of liability for defects, user support by telephone ("hotline") and, if possible, e-mail and/or a remote diagnosis system during normal EPO working hours, i.e. 8.00 to 17.00 hrs CET.  |
| <b>5.</b>  | <b>Invoices</b>  |      | <b>13.</b><br><b>Liability</b>   |
| 5.1        | Invoices must be submitted after the goods have been delivered, unless the Contractor is additionally obliged to provide certain ancillary services (e.g. installation of the goods), in which case they may be submitted only after those ancillary services have been performed. Where the goods themselves, partial deliveries or ancillary services are subject to an acceptance procedure, invoices may be submitted only after their acceptance.   | 11.4 | The Contractor is liable to compensate the EPO in accordance with the statutory provisions for all damage or expenses it suffers as a result of a culpable breach by him of his contractual obligations.   |
| 5.2        | All invoices must refer to the Contract. Any turnover tax must be shown separately.  |      | The EPO is liable only for damage caused to the Contractor by an intentional or grossly negligent breach of duty by its employees, statutory representatives or auxiliary persons employed to perform duties under the Contract. Where a claim for damages against the EPO is based on simple negligence on the part of the EPO (including the persons listed above), it is liable only for  |
| 5.3        | The Contractor must make such amendments to his invoices as the EPO may consider appropriate.  |      | (a) death, personal injury or damage to health, or<br>(b) where the duty breached is an essential contractual obligation on compliance with which the Contractor is usually and legitimately entitled to rely as a precondition for due performance of the Contract, foreseeable damage typical of such contracts.   |
| <b>6.</b>  | <b>Payment</b>   |      | <b>14.</b><br><b>Termination for breach of contract</b>  |
|            | The EPO makes payments within 30 calendar days of receipt of a duly issued invoice. Payment is considered to be made on time if the EPO's payment order reaches its bank within this period.   | 14.1 | If the EPO has serious cause, it may terminate the Contract in writing without advance notice.   |
| <b>7.</b>  | <b>Transport and delivery of goods</b>   |      | 14.2   |
|            | All goods are to be delivered to the EPO duty paid (DDP) (Incoterms 2010). Where they are imported for the EPO, however, the Contractor need not pay duties or charges (including turnover tax) if the EPO is exempt from payment of such duties or charges (see Articles 4 and 5 PPI). The goods are to be delivered to the place specified by the EPO.   | 14.2 | In cases of a minor breach of contractual obligations by the Contractor, the EPO may terminate the Contract if the Contractor fails to remedy the breach within a reasonable period not exceeding 14 calendar days from the date on which he was notified of it.   |
| <b>8.</b>  | <b>Contractor's staff</b>  |      | 14.3   |
| 8.1        | The Contractor must take out adequate employer's liability insurance covering the risks of damage to property or personal injury caused by his staff or any other person acting on his behalf in or in connection with performing their activities for the EPO.  | 14.3 | If the Contract is terminated, the EPO, if it so wishes, may require that any delivery of goods already in progress be completed, without prejudice to any other right it may enjoy, or remedy to which it may be entitled, under the Contract or the law governing it.  |
| 8.2        | The Contractor's staff and any person acting on his behalf must, while on the EPO's premises, comply with the rules and safety and security regulations applicable there, as well as with all other rules on public safety, security and order.  |      | <b>15.</b><br><b>Rights of third parties</b>   |
| <b>9.</b>  | <b>Dates, periods and delay</b>  |      | 15.1   |
| 9.1        | Dates or periods agreed for performance of deliverables are binding and their observance is particularly important to the EPO.   |      | The Contractor warrants that the import, possession, use and onward sale of deliverables is not precluded by any industrial property rights (in particular, patents, utility models, designs and models or trade marks), copyright or other rights held by third parties.  |
| 9.2        | If at any time it seems likely that dates will be missed or periods exceeded, the Contractor must notify the EPO immediately in writing, explaining the reasons for the delay and proposing a new fixed date or an alternative period. Although the Contractor's failure to observe the original dates or periods will continue to constitute default despite any agreement as to an extension, he will additionally be required to observe the newly agreed dates and periods. If the deliverable in question has not been performed by the newly agreed date or within the newly agreed period, the EPO may, on expiry of another reasonable grace period, rescind the Contract in whole or in part. The EPO also reserves the right to claim damages.   |      | 15.2   |
| 9.3        | The above provisions apply without prejudice to any statutory provisions on delayed performance.   |      | If the EPO is sued by a third party for infringement of any right within the meaning of Article 15.1, the Contractor must indemnify the EPO against all claims made by that third party and compensate the EPO for all costs and damage arising in connection with such suit. The Contractor must endeavour to support the EPO to the best of his ability in conducting its defence against any such suit. Without prejudice to any more extensive rights, the EPO may also acquire from the third party at the Contractor's expense the right to import, possess, use and/or sell the deliverables as per usual market conditions. At the EPO's request, the Contractor will assist it to the best of his ability in acquiring such rights. The duty to indemnify against and compensate costs and damage does not apply if the Contractor is not responsible for the claim made by the third party against the EPO. He is in any event responsible for the claim to the extent that its cause falls within his sphere of influence and/or organisation and/or he himself is liable to the third party. |
| <b>10.</b> | <b>Acceptance</b>  |      | <b>16.</b><br><b>Applicable law</b>  |
|            | Work carried out and the results of services performed are subject to acceptance by the EPO. Services and any other contractual deliverables must meet at least the general requirements under Article 11.1.   |      | 16.1   |
| <b>11.</b> | <b>Liability for defects</b>   |      | 16.2   |
| 11.1       | In addition to any other warranties, the Contractor warrants that all deliverables are free from defects. There is a defect, for example, if they lack one or more of the agreed properties, if they are unsuitable for either the use specified in the Contract or their ordinary purpose or if a different item has been delivered or an insufficient quantity has been supplied.  |      | The Contract is governed by the law applicable at the place of delivery. The Contract is to be interpreted in such a way as to preserve the EPO's rights under the PPI in all cases.   |
| 11.2       | Unless a longer period is provided for by statute or in the Contract, claims for defects are subject to a limitation period of 24 months commencing on the date of handover. In the event of delivery in stages, the limitation period commences on the date of handover of the final delivery. The limitation period for replacements commences on the day of their handover. Where the contractual deliverables are subject to acceptance, acceptance must be read in place of handover. Where the Contractor remedies defects in accordance with his warranty obligations, the limitation period is extended by a period of time equal to that elapsing between the date on which the Contractor is notified of the defect and the date on which the remedied contractual deliverables are handed over or accepted. |      | <b>17.</b><br><b>Language</b>  |
| 11.3       | If the deliverables are found to be defective and the defects are not remedied by repair or replacement within a reasonable period set by the EPO, the EPO may, at its discretion and without prejudice to its statutory rights:   |      | All communications between the parties must be in the language of the Contract.  |
|            | (a) require that the Contractor remedy the defect or produce or deliver afresh (cure), or  |      | <b>18.</b><br><b>Miscellaneous</b>   |
|            | (b) keep the defective deliverables and require that the contract price be reduced by an amount equal to the difference which would have existed at the time the Contract was concluded between the value in the defective state and the value in the non-defective state, or  |      | 18.1   |
|            |  |      | 18.2   |
|            |  |      | The Contract constitutes the entire agreement between the parties. The Contractor's terms and conditions do not form part of the Contract. There are no oral agreements or understandings. Any amendment or addition to the Contract, particularly amendments affecting the price, must be in writing. Any waiver of the requirement of written form must likewise be in writing.  |
|            |  |      | Should a clause of the Contract be or become invalid, the remainder of the Contract remains in force.  |